A LEGAL APPRAISAL OF SAFETY AT SEA AND MARINE POLLUTION, COLLISION AT SEA, SALVAGE, SHIP WRECK AND POLLUTION OF SHIP IN NIGERIA

By

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Abstract

Safety at sea is a complex and challenging issue, but it is one that is essential to the safe and efficient operation of the maritime industry. Currently marine pollution is an increasing threat to a healthy marine environment. Indeed, marine pollution may severely damage the environment, including ecosystems, and human health. The paper examined the topic; "Safety at Sea and Marine Pollution, Collision at Sea, Salvage, Ship Wreck and Pollution of Ship". The research methodology adopted is the Doctrinal Research Method where both primary sources of law derived from constitution, statutes, subsidiary legislations, caselaw, treaties, conventions, and protocols, while the secondary sources were derived from textbooks, journals and electronic articles from verified sources. The objective of the presentation includes: the conceptual clarification of terms such as pollution; analyzing the concept of safety at sea, marine pollution, and more; highlighting the safety at sea, marine pollution and international laws ratified by Nigeria, a comparative analysis of best practices from other jurisdictions. The paper finds that issue of marine pollution is at the forefront of international discussions; that as comprehensive as the Nigerian Law of the Sea may seem in the books, they are plagued with the challenge of adequate implementation, checks and supervision. The paper gave a concise conclusion on issues bothering on safety at sea and marine pollution, as well as practicable recommendations on more enlightened ways Nigeria can embrace international decisions on the protection of the sea from pollution and degradation through adopting a legal framework that draws on international laws of sea and foreign laws of other nations.

Keywords: *Safety, Sea, Marine, Pollution, Collusion, Salvage, Shipwreck, Nigeria*

1.0 Introduction

It is trite that throughout history, the seas have served mankind as a medium of communication, trade and livelihood. But, regrettably, due to its vastness, mankind has over the centuries tended to regard the sea and its resources as limitless and inviolable, no matter the amount of resources extracted or the quantity of pollutants dumped into it. Marine pollution is an issue that has been of global concern for the past several decades fearing that it will, most probably, continue to be so for several decades more, the international community has formulated rules and regulations and concluded a number of international conventions that comprehensively address the protection and preservation of the marine environment. Among these, the United Nations Conventions on the Law of the Sea[1] lays down the obligations of States to protect and preserve the marine environment which requires States to cooperate on a regional and global basic directly

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[1] United Nations Conventions on the Law of the Sea, 1982, <www.nationalgeographic.com/environment/ocean/critical-issues-marine-pollution.> accessed 7 July, 2023.

or through competent, organizations, in formulating rules and standards for the protection of the marine environment.

Foremost amongst the international conventions governing the safety at sea was the Safety of Live at Sea (SOLAS) Convention 1914. The first version of SOLAS Treaty was passed in 1914 in response to the sinking of RMS Titanic, which prescribed numbers of lifeboats and other emergency equipment along with safety procedures, including continuous radio watches.[2] The 1914 treaty never entered into force due to the outbreak of the First World War.[3] Furthermore, the UN has developed Sustainable Development Goals (SDGs).[4] The Ocean SDG (SDG 14) includes targets related to the conservation and sustainable use of oceans, seas, and marine resources. Moreover, SDG 14 recognizes the importance of ocean sustainability and pollution prevention.[5] The objective of SDG 14 is to eliminate marine pollution and to protect the biodiversity of coastal and marine ecosystems.[6]

2.0 Conceptual Clarification

2.1 Safety

Safety is the condition of a "steady state" of an organization or place doing what it is supposed to do. "What it is supposed to do" is defined in terms of public codes and standards, associated architectural and engineering designs, corporate vision and mission statements, and operational plans and personnel policies.[7] For any organization, place, or function, large or small, safety is a normative concept. It complies with situation-specific definitions of what is expected and acceptable.[8] Furthermore, safety can also be defined as the state of being "safe" the condition of being protected from harm and other dangers[9] It is also referred to as the control of recognized hazards in order to achieve an acceptable level of risk.[10] In the world of everyday affairs, not all goes as planned.[11] Some entity's steady state is challenged, reason for safety plans.

2.2 Safety at Sea

Safety at sea is the state of being protected from hazards and the risk of injury or fatality while on or near the water. It is a broad term that encompasses a wide range of safety concerns, including: the safety of ships and their crews, the safety of passengers and other people who use the waterways and the safety of the marine environment. There are many different factors that can contribute to safety at sea, including: The design and construction of ships, the training and qualifications of crews, the weather condition, the

[2] https://www.history.com.
[3] https://en.m.wikipedia.org › SOLAS Convention – Wikipedia
[4] Sosa-Nunez, G. (2017). The 'blue' perspective of the sustainable development goals in North America. In G. Sosa-Nunez's (Ed.), Widening the scope of environmental policies in North America: Towards blue approaches (pp. 193-214). Cham, Switzerland: Springer.
[5] Takano, A. (2017). Land-based pollution of the sea and due diligence obligations. Journal of Law, Policy and Globalization, 60. Retrieved fromhttps://www.iiste.org/Journals/index.php/JLPG/article/viewFile/36647/37662
[6] Y Tanaka, "The International Law of the Sea", 2nd Edn, 2015, 268.
[7] C G. Oakes, Blue Ember Technologies, LLC." Safety versus Security in Fire Protection Planning. <www.wikivoyage.com> accessed 10 July, 2023.
[8] Nationally Recognized Testing Laboratories (NRTLs) - Occupational Safety and Health Administration". <www.osha.gov.> accessed 10 July, 2023.
[9] Rheinland, TÜV. "Pressure Vessel Inspection According to ASME". Archived 14 January 2017. <www.tuv.com> accessed 10 July, 2023.
[10] Cay Man Compass, www.caymancompass.com/page/384/?id=76023&smsss=facebook&at_xt=4da6f2959caf31eb accessed 10 July, 2023.
[11] N Ann. "Going to Extremes". Harper's Magazine. (2019) 22, books.google.com/books?id=VdZResiMCeE

presence of hazards; such as icebergs or oil spills. Safety at sea is important for everyone who travels by water, whether it be on a commercial ship, a private boat. There are many hazards that can occur at sea, such as:

a) **Weather**: Storms, high winds, and rough seas can be a major threat to safety.
b) **Collisions**: Ships and boats can collide with each other, or with other objects in the water, such as rocks or buoys.
c) **Fire**: Fires can be very dangerous on ships and boats, as there is often limited access to water and fire suppression equipment.
d) **Man overboard**: People can fall overboard from ships and boats, and it can be difficult to rescue them.
e) **Medical emergencies**: Medical emergencies can occur at any time, and they can be more difficult to treat at sea.

3.0 Legal Framework

3.1 National Legal Framework

3.1.1 Constitution of the Federal Republic of Nigeria (1999) as amended

The Constitution of the Federal Republic of Nigeria 1999 (as amended) is the grund norm of the nation.[12] The Constitution is supreme and its provisions have binding force on all authorities and persons throughout the Federal Republic of Nigeria.[13] If any other law is inconsistent with the provisions of the Constitution, the Constitution prevails and that other laws shall to the extent of the inconsistency be void.[14] The 1999 Constitution (as amended) provides for the protection of the environment as a state objective provided for in Chapter Two captioned "Fundamental Objectives and Directive Principle of State Policy".[15]

The 1999 Constitution provides for on environmental protection that the state shall protect and improve the environment and safeguard the water, air, land, forest and wild life in Nigeria.[16] The Constitution confers jurisdiction on the Federal High Court to the exclusion of any other court in civil causes and matters relating to any admiralty jurisdiction, including: shipping and navigation on the River Niger or River Benue and their affluent; on such other inland waterway as may be designated by any enactment to be an international waterway; all federal ports (including the constitution and powers of the ports authorities for Federal ports); and carriage by sea.[17]

3.1.2 Admiralty Jurisdiction Act 2004[18]

[12] Constitution of the Federal Republic of Nigeria 1999 (as amended), Cap C23 Laws of the Federation of Nigeria, 2004.
[13] *Ibid*, s 1 (1)
[14] *Ibid*, s 1 (1)
[15] Chapter II of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
[16] *Ibid*, s 20
[17] *Ibid*, s 125 (1) (g)
[18] Admiralty Jurisdiction Act 2004, Cap A5 Laws of the Federation of Nigeria 2004

The Admiralty Jurisdiction Act provides for the extent of the jurisdiction conferred on the court as follows:[19] (a)jurisdiction to hear and determine any question relating to a proprietary interest in a ship or aircraft or any maritime claim specified in section 2 of this Act; (b) any other admiralty jurisdiction being exercised by any other court in Nigeria immediately before the commencement of this Act; (c) any jurisdiction connected with any ship or aircraft that is vested in any other court in Nigeria immediately before the commencement of this Act; (d) any action or application relating to any cause or matter by any ship owner or aircraft operator or any other person under the Merchant Shipping Act or any other enactment relating to a ship or an aircraft for the limitation of the amount of his liability in connection with the shipping or operation of aircraft or other property; and more.

The admiralty jurisdiction of the court in respect of carriage and delivery of goods extends from the time the goods are placed on board a ship for the purpose of shipping, to the time the goods are delivered to the consignee or whoever is to receive them; it does not matter whether the goods were transported on land during the process or not.[20] The Act further provides that any agreement or purported agreement, monetary or otherwise connected with or relating to carriage of goods by sea, whether the contract of carriage is executed or not, shall be within the admiralty jurisdiction of the court.[21] The admiralty jurisdiction of the Court shall apply to: (a) all ships, irrespective of the places of residence or domicile of their owners; (b) all maritime claims, wherever arising.[22]

3.1.3 Coastal and Inland Shipping (Cabotage) Act 2003[23]

The Coastal and Inland Shipping (Cabotage) Act, 2003 to restrict the use of foreign vessels in domestic coastal trade to promote the development of indigenous tonnage and to establish a cabotage vessel financing fund.[24] The Act provides that a vessel other than a vessel wholly owned and manned by a Nigerian citizen, built and registered in Nigeria shall not engage in the domestic coastal carriage of cargo and passengers within the Coastal, Territorial, Inland Waters, Island or any point within the waters of the Exclusive Economic Zone of' Nigeria.[25]

The Act promotes Nigerian ship ownership and delimit the honour and use of foreign vessels in the Nigerian marine trade while boosting the nation's economy through the ownership of ships and in the engagement of the business of carriage of goods and services on the Nigeria inland waterways domain. The Act empowers Nigerians involved in maritime activities to invest largely in domestic coastal trade, but it also allows Nigerians to manage vessels in collaboration with foreign partners.[26] The Act established the Cabotage Vessel Financing Fund to promote the development of indigenous ship acquisition capacity by providing financial assistance to Nigerian operators in the domestic coastal shipping.[27]

[19] *Ibid*, s 1 (1) (a) - (j)
[20] *Ibid*, s 1 (2)
[21] *Ibid*, s 1 ((3)
[22] *Ibid*, s 3
[23] Coastal and Inland Shipping (Cabotage) Act, 2003, Cap C51 Laws of Federation of Nigeria 2004
[24] Preamble to Coastal and Inland Shipping (Cabotage) Act, 2003
[25] *Ibid*, s 3
[26] *Ibid*, s 4, 5, 6
[27] *Ibid*, s 42

3.1.4 Merchant Shipping Act 2007[28]

The Merchant Shipping Act regulates merchant shipping issues and other labour related matters.[29] The Act established an Agency for Maritime Safety Administration, responsible for maritime safety, administration and security.[30] All ships operating commercially in or from the waters of Nigeria are required to obtain a certificate of licence under the Act.[31] The Minister may by notice exempt generally or specifically from registration under this Act, a licensed Nigeria ship or a class of Nigerian ship when operating outside the waters of Nigeria.[32]

The Merchant Shipping Act is the principal legislation governing collision, including liabilities in collision cases in Nigeria.[33] The Act provides for rules as to division of loss as follows: (1) Where, by the fault of two or more ships, damage or loss is caused to one or more of them, or to their cargo or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was at fault; (a) 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; (b) nothing in this section shall operate so as to render any ship liable for any loss or damage to which her fault has not contributed; and (c) nothing in this section shall affect the liability of any person under a contract of carriage, or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.[34]

The Merchant Shipping Act further provides for limitation of actions in Nigeria for maritime claims or lien against a ship or its owners in respect of any damage or loss. Proceedings in respect of such damage or loss are to be commenced within two years from the date when the damage or loss or injury was caused or the salvage services were rendered.[35]

3.1.5 Nigerian Maritime Administration and Safety Agency Act 2007[36]

Nigerian Maritime Administration and Safety Agency Act 2007 provides for the promotion of maritime safety and security, protection in the maritime environment, shipping registration and commercial shipping, maritime labour, and the establishment of Nigerian Maritime Administration and Safety Agency.[37]

[28] Merchant Shipping Act 2007, Cap M224 Laws of the Federation of Nigeria, 2004
[29] S C Dike and P G Gininwa, 'An Appraisal of the Nigerian Legislation and Institutions Governing Maritime Environment' SSRN Electronic Journal (2019) 10.2139/ssrn.3514479.
[30] *Ibid*, s 2
[31] *Ibid*, s 5 (1)
[32] *Ibid*, s 5 (2)
[33] *Ibid*, s 338 - 344
[34] *Ibid*, s 340 (1), (2)
[35] *Ibid*, s 343
[36] Nigerian Maritime Administration and Safety Agency Act 2007, Cap N161 Laws of the Federation of Nigeria 2004
[37] Preamble Nigerian Maritime Administration and Safety Agency Act 2007

The Act provides for the establishment of a National Maritime Administration and Safety Agency who shall be responsible for the executing the provisions of this Act, the Merchant Shipping Act and its amendments and all other Federal legislation on maritime labour, safety and security.[38] The Agency established by this Act shall be under the supervision of the Federal Ministry responsible for Marine Transportation.[39] The Act provides for the objectives of the Agency which include: (i) promote the development of indigenous commercial shipping in inter- national and coastal shipping trade; and (ii) regulate and promote maritime safety, security, marine pollution and maritime labour.[40]

The Act provides for the functions and duties of the NIMASA. These functions and duties include: administering the registration and licensing of ships; regulating and administering the certification of seafarers; pursuing the development of shipping and regulatory matters relating to merchant shipping and seafarers; establishing maritime training and safety standards; regulating the safety of shipping as regards to the construction of ships and navigation; and more.[41]

3.2 International Legal Framework

3.2.1Safety of Life at Sea (SOLAS) Convention, 1974

The SOLAS Convention is a comprehensive set of international regulations that aim to improve the safety of life at sea. It covers a wide range of issues, such as: The construction and equipment of ships, Fire safety, Lifesaving appliances, Radio communications, Navigation and voyage planning. The SOLAS Convention is regularly updated to reflect new safety technologies and practices. It is a vital tool for ensuring the safety of ships and their crews, and it has played a major role in reducing the number of maritime accidents.[42] The SOLAS Convention was ratified by the Nigerian Government on February 23, 1990 and came into force on May 23, 1990. [43]

3.2.2 International Convention for the Prevention of Pollution from Ships (MARPOL), 1973

The MARPOL is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes. The convention was adopted in 1973 and has undergone series of amendments to meet up with global demands.[44]

This convention has been ratified by so many nations including Nigeria. Until date, it is the only IMO convention which Nigeria has ratified and enacted as part of its municipal law by virtue of the Oil in Navigable Water Act by its legislature. It is therefore applicable in Nigeria only to the extent to which it has been enacted into the Nigerian law.[45] The overarching objective of the MARPOL Convention is to

[38] *Ibid*, s 3
[39] *Ibid*, s 2 (4)
[40] *Ibid*, s 1 (1)- (2)
[41] *Ibid*, s 22
[42] hubla.dephub.go.id/home/post/read
[43] www.tnt.com/express/en_kr/site/terms-conditions.content.html
[44] en.wikipedia.org/wiki/SOLAS_Convention
[45]www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-(SOLAS), 1974.aspx.

entirely eliminate pollution of the marine environment by discharges of oil and other hazardous substances from ships and to minimize such discharges in connection with ships accident.[46]

3.2.3 International Convention for Preventing Collision at Sea (COLREGs), 1977

The international convention for prevention of collision at sea (COLREGs) are a set of international rules that govern the conduct of ships and other vessels at sea to prevent collisions. They were adopted by the International Maritime Organization (IMO) in 1972 and entered into force in 1977. The COLREGs are an important part of maritime safety and have helped to reduce the number of collisions at sea. They are also an important tool for ensuring the safe passage of ships through busy traffic areas. Some of the key provisions of the COLREGs are:

i. **Right-of-way**: The COLREGs establish a hierarchy of vessels that determines who has the right-of-way in a collision situation. For example, a power-driven vessel has the right-of-way over a sailing vessel.
ii. **Rules of the road**: The COLREGs also establish a set of rules that vessels must follow when navigating in order to avoid collisions. These rules include things like maintaining a safe speed, giving way to other vessels, and using the appropriate lights and shapes.
iii. **Lights and shapes:** The COLREGs specify the lights and shapes that vessels must display at night and in restricted visibility. These lights and shapes help other vessels to see each other and avoid collisions.
iv. **Sound and light signals**: The COLREGs also specify the sound and light signals that vessels must use to communicate with each other. These signals are used to warn other vessels of potential hazards and to indicate the intentions of a vessel.
v. **Restricted visibility:** The COLREGs have special provisions for navigating in restricted visibility, such as fog. These provisions help to ensure that vessels can safely navigate in these conditions.
vi. **Traffic separation schemes**: The COLREGs also recognize the use of traffic separation schemes (TSS). TSS are designated areas of the sea where vessels are required to follow specific routing rules in order to reduce the risk of collisions.

3.2.4 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978

The Convention Was adopted by the International Conference on Training and Certification of Seafarer on 7th July, 1978. The 1978 STCW Convention entered into force on 28th April, 1984. Since then it has undergone series of amendments and the most recent was in 2018. The Convention is an international treaty that sets minimum standards for the training, certification, and watchkeeping of seafarers.

[46] History of MARPOL. <https://www.Imo.org> accessed 6 July, 2023.

The STCW Convention applies to all ships that are engaged in international voyages, regardless of their flag state. It covers a wide range of issues, such as:

i. The minimum age for seafarers
ii. The qualifications and training required for different levels of seafaring positions
iii. The medical fitness requirements for seafarers
iv. The requirements for watchkeeping, which is the system of organizing seafarers to ensure that the ship is properly manned and operated at all times
v. The STCW Convention is an important safety instrument for the maritime industry. It helps to ensure that seafarers have the knowledge and skills they need to operate ships safely and efficiently. The Convention also helps to promote uniformity of standards among different countries, which makes it easier for seafarers to work on ships flagged by different countries.
vi. The STCW Convention is implemented by each flag state. The flag state is responsible for ensuring that seafarers who are employed on ships flying its flag meet the requirements of the Convention. This is done through a system of certification, which is the process of issuing a document that confirms that a seafarer meets the required standards.
vii. The STCW Convention is a valuable tool for improving the safety of life at sea. It helps to ensure that seafarers have the knowledge and skills they need to operate ships safely and efficiently. The Convention also helps to promote uniformity of standards among different countries, which makes it easier for seafarers to work on ships flagged by different countries.

4.0 Components of Marine Safety

Marine Safety is composed of four element namely technological and operational ships' safety, safety of navigation, safety of person in distress and prevention of pollution of maritime environment

a) **Technological and operational ships' safety**: Ships are required to be built to certain standards, and they must be equipped with life-saving equipment and navigational aids. Crews must be trained in safety procedures, and they must be familiar with the ship's operating systems. It is undoubtedly clear that marine adventure is hazardous, thus a ship must be seaworthy. A ship must be capable to undergo the voyage of carrying goods and persons from one location to another. Evidence of seaworthiness can be seen in the particulars. Also, SOLAS requires ships to be equipped with lifeboats, fire extinguishers, and other safety equipment. Ships are also required to have qualified crew members who are trained in safety procedures.

b) **Safety of navigation:** Ships must use navigational aids to stay on course, and they must be aware of the risks of collisions and other hazards. Ships must also comply with regulations on speed and maneuvering in restricted waters. A ship must not only be seen floating, it has to be propelled, steered and capable of moving from one place to another. A navigator must ensure the presence of lighthouses, buoys, and electronic charts. Ships are also required to have navigation equipment such as radar and GPS.

c) **Safety of persons in distress**: Ships must carry lifeboats and other life-saving equipment, and they must have a plan for responding to emergencies. Ships must also be equipped with devices for sending distress signals.

d) **Prevention of pollution of the maritime environment**: Ships are required to use fuel and other materials that minimize pollution, and they must be equipped with pollution prevention equipment. Ships must also comply with regulations on the disposal of waste. MARPOL, prohibits the discharge of oil, chemicals, and other harmful substances from ships. Ships are also required to have pollution prevention equipment such as oil pollution control systems.[47]

4.1 Collision at Sea and Existing Liabilities

Collision is a physical interaction between two or more bodies in which they come near enough to exert a mutual influence, generally with exchange of energy. In physics, a collision is any event in which two or more bodies exert forces on each other in a relatively short time. There are quite a number of types of collision, namely; elastic, inelastic and perfectly inelastic collision. The outcome of these different types of collision vary in degrees. Collisions are a common occurrence in nature and in everyday life. It can have a variety of effect, depending on the type of collision and the object involved. In some cases, the object involved in collision may be completely destroyed or slightly damaged. The most common example of collision is physical collision.

Ship collision happens when two or more objects come into contact with each other with enough force to cause damage. Ship collision is the structural impact between two ships or one ship and a floating or still object such as an iceberg[48] which in most cases could lead to loss of human lives, properties or injuries. Furthermore, ship collision is the name given to the physical impact that occurs between two ships resulting in a damaging accident.

4.1.1 Causes of Collision

Some of the most common causes of collisions at sea are as follows: In some cases, collisions may be caused by a combination of factors.

i. **Human error:** This is the most common cause of collisions at sea, and can include errors or carelessness by crewmembers, such as misreading charts or failing to maintain a proper lookout.
ii. **Weather:** Bad weather conditions, such as fog, high winds, or storms, can significantly reduce visibility and make it difficult for vessels to see each other's. This can lead to collisions, especially in busy shipping lanes.
iii. **Equipment failure:** Engine failure, loss of maneuvering capabilities, or other equipment malfunctions can also cause collisions.
iv. **Infrastructure problems:** If something on land is out of position, such as a drawbridge dropping prematurely, it can cause collisions.

[47] lawcarenigeria.com/admiralty-jurisdiction-act/
[48] Collision - Comite Maritime International – CMI Wikipedia <https://en.m.wikipedia.org> accessed 6 July, 2023.

v. **Navigational errors:** This can include errors in navigation charts, or mistakes made by pilots or navigators.
vi. **Vessel design:** Some vessel designs are more prone to collisions than others. For example, vessels with high superstructures can block the view of the crew, making it difficult to see other vessels.
vii. **Regulatory compliance:** Failure to comply with maritime safety regulations can also increase the risk of collisions.

A collision between ships is deemed an unlawful act or omission and liability depends on the capacity to prove negligence. Ships proceeding along the course of a narrow channel or fairway are expected to take early precautions to allow sufficient sea room for the passage of other ships. The International Regulations for the Prevention of Collision at Sea has international application, but this is subject to local laws. Nigerian maritime law, clearly makes provisions for guidelines to be adopted in addressing maritime collision in Nigeria.

In Nigeria, the Merchant Shipping Act, has provided guidelines on how collision damage should be assessed. Where there has been a collision, a claimant can only be entitled to recover such damages as may reasonably be the direct and immediate consequence of the collision. The damages recoverable shall be such as to place the claimant in the same financial position as he would have been, had the collision not occurred. Collision claims fall under the general category of claims that can be instituted under maritime law and therefore a party who seeks to invoke the admiralty jurisdiction of the Federal High Court in Nigeria on a collision claim must do so within three years of the cause of action arising, otherwise the action will be considered statute barred and unenforceable.

4.1.2 Liability for Collusion at Sea

The MSA defines collision as "collision between ships". Under maritime law, the liability for collision damage is based on the fault principle. This means that the colliding vessel will not be held responsible for damage to another ship or to a fixed object unless the collision is caused by a deficiency in the colliding vessel or by negligence or a willful act on the part of its navigators.

In the event of a collision, the first step is to determine the fault of each vessel involved. This can be a complex process, as it may involve assessing the actions of the navigators, the condition of the vessels, and the prevailing weather conditions. Once the fault has been determined, the liability for the collision will be apportioned accordingly. In some cases, it may not be possible to establish the fault of each vessel with certainty. In these cases, the liability for the collision will be apportioned equally between the vessels involved. The liability for collision damage is usually covered by the hull insurance of the vessels involved. However, if the damage caused by the collision exceeds the limits of the hull insurance, then the owners of the vessels may be personally liable for the remaining amount.

In Nigeria, the Merchant Shipping Act 2007 makes provision for the liability for collusion at sea as follows:

a) the MSA sets out the general principles of liability for collisions, while the AJA provides for the specific procedures for bringing a collision claim in Nigerian courts.

b) Under the MSA, the fault of the ship's master or crew is presumed to be the fault of the ship owner. This means that, in the absence of evidence to the contrary, the ship owner will be liable for any damage caused by a collision involving their ship. However, the ship owner may be able to avoid liability if they can show that they were not at fault, or that the collision was caused by the fault of the other ship involved.

Furthermore, the AJA provides for a number of specific defenses that may be available to a shipowner in a collision claim. The Admiralty Jurisdiction Act 2004 also provides for a number of specific rules that apply to collisions involving Nigerian ships. These rules include:

i. The Nigerian ship must be registered in Nigeria

ii. The collision must occur in Nigerian waters

iii. The collision must cause damage to a Nigerian ship or property

Where a collision occurs which meets these criteria, the Nigerian shipowner will be liable for the damage caused, even if they were not at fault. The liability of ships that collide at sea is governed by the MSA and the AJA 2004 of Nigeria. The general principles of liability are set out in the MSA, while the AJA provides for the specific procedures for bringing a collision claim in Nigerian courts.

4.2 Wreck

The destruction of a ship at sea by sinking or breaking up, for example in a storm or after striking a rock.[49] Ship wreck can be caused by any of the following.[50]

i. **Bad weather**: Rough seas, strong winds, and heavy rains can all contribute to a ship sinking. In fact, bad weather is the leading cause of shipwrecks.

ii. **Collisions**: Ships can collide with other ships, icebergs, or even the shoreline. These collisions can cause serious damage to the ship's hull, which can lead to sinking.

iii. **Fire**: Fires can break out on ships for a variety of reasons, such as electrical malfunctions, cooking fires, or sabotage. If a fire is not quickly extinguished, it can spread throughout the ship and cause it to sink.

iv. **Human error**: Human error is a factor in many shipwrecks. This can include mistakes made by the crew, such as navigating the ship incorrectly or failing to properly stow cargo.

v. **Design flaws**: Ships can sink if they are not properly designed or built. This can be due to factors such as structural defects, inadequate safety features, or improper loading of cargo.

[49] lawcarenigeria.com/admiralty-jurisdiction-act/
[50] en.wikipedia.org/wiki/International_Maritime_Dangerous_Goods_Code

vi. **Natural disasters**: Shipwrecks can also be caused by natural disasters such as hurricanes, tsunamis, and earthquakes. These disasters can cause the sea to become too rough for ships to navigate safely, or they can cause the ship to be struck by debris.

There are many other factors that can contribute to a ship sinking, and the specific cause of a shipwreck will vary depending on the circumstances which include:[51]

a. **Sabotage**: Ships can be sunk intentionally by saboteurs, such as pirates or terrorists.
b. **Warfare**: Ships can be sunk during wartime, either by enemy action or by friendly fire.
c. **Technical failures**: Ships can sink due to technical failures, such as engine problems or hull breaches.
d. **Environmental pollution**: Ships can sink if they are contaminated by pollutants, such as oil or chemicals.

4.3 Removal of Ship Wreck in Nigeria

In Nigeria the ship owner has the responsibility of the removing wrecks on the. The shipowner must remove the wreck within a reasonable time, and if he fails to do so, the Nigerian government may intervene and remove the wreck at the shipowner's expense.[52] The Wreck Removal Act 2007 domesticated in Nigeria in the terms of the Nairobi International Convention for the Removal of Wrecks. This Act provides for the marking and removal of hazardous wrecks in Nigerian waters.[53] The Nigerian government has the power to designate a wreck as hazardous, and the shipowner is then required to mark the wreck and remove it within a specified time period. If the shipowner fails to do so, the Nigerian government may remove the wreck at the shipowner's expense.

The Nigerian Maritime Administration and Safety Agency (NIMASA) is the official receiver of wrecks in Nigeria. This means that NIMASA is the body responsible for removing wrecks from Nigerian waters when the shipowner does not do so after being given notice. NIMASA has the following number of procedures in place for the removal of wrecks:

1. Determining whether a wreck is hazardous. NIMASA will assess the wreck to determine if it poses a hazard to navigation or the environment. If the wreck is determined to be hazardous, it will be marked and removed as soon as possible.

2. Marking hazardous wrecks. Hazardous wrecks are marked with buoys or other markers to warn other vessels of their presence.

3. Removing hazardous wrecks. NIMASA will remove hazardous wrecks by either dismantling them on site or towing them to a safe location for disposal.

[51] https://www.researchgate.net: The Maritime Safety System, its Main Components
[52] Lisbon Rules 1987. Wikipedia
[53] www.britannica.com/topic/maritime-law/Limitation-of-liability

4. Setting the deadline for removal. Where a shipowner elects to remove the wreck, NIMASA will set a deadline for removal. If the wreck is not removed by the deadline, NIMASA will remove it and seek reimbursement from the shipowner.

4.4 Salvage

Ship salvage is the process of recovering a ship and its cargo after a shipwreck or other maritime casualty. Salvage may encompass towing, lifting a vessel, or effecting repairs to a ship. Protecting the coastal environment from oil spillages or other contaminants from a modern ship can also be a motivator, as oil, cargo, and other pollutants can easily leak from a wreck. Before the invention of radio, salvage services would be given to a stricken vessel by any passing ship. Today, most salvage is carried out by specialist salvage firms with dedicated crews and equipment.

The legal significance of salvage is that a successful salvor is entitled to a reward, which is a proportion of the total value of the ship and its cargo. The bounty is determined subsequently at a "hearing on the merits" by a maritime court in accordance with Articles 13 and 14 of the International Salvage Convention of 1989.[54] The common law concept of salvage was established by the English Admiralty Court, and is defined as "a voluntary successful service provided in order to save maritime property in danger at sea, entitling the salvor to a reward"; this definition has been further refined by the 1989 Convention.

All vessels have an international duty to give reasonable assistance to other ships in distress for saving lives, but there is no obligation to try to salve the vessel. Any offer of salvage assistance may be refused; if it is accepted, a contract automatically arises to give the successful salvor the right to a reward under the 1989.[55] The techniques applied in marine salvage are largely a matter of adapting available materials and equipment to the situation, which are often constrained by urgencies, weather and sea conditions, site locations, and financial considerations. Diving is considered to be counterintuitive, but may be the only, or most efficient, way to complete the salvage job. Salvage work includes towing an abandoned or disabled vessel which is still afloat to safety, assisting in fighting a fire on board another vessel, refloating sunk or stranded vessels, righting a capsized vessel, recovering the cargo, stores, or equipment from a wreck, or demolishing it in place for scrap. The work may be done for profit, clearing a blocked shipping lane or harbour, or for preventing or limiting environmental damage.

4.4.1 Types of Marine Salvage

4.4.1.1 Contract salvage

In contract salvage, the owner of the sunken property and salvor enter into a salvage contract prior to beginning, and the amount that the salvor is paid is determined by the contract. This can be a fixed amount, based on a "time and materials" basis, or any other terms that both parties agree to. The contract may also

[54] en.wikipedia.org/wiki/Marine_salvage-dexteroffshore.com/marine-salvage-types/
[55] Ingpen, Brian "Basic Principles of Marine Salvage". Marine Studies South Africa. (2015), <maritimesa.org.> accesses 20th November, 2024.

state that payment is only due for successful operations only, or that payment is due even if the operation fails.[56]

A ship that has broken down but is not in immediate danger is usually in a position to negotiate terms and may request to be towed to a safe haven on a commercial hire basis rather than in terms of a Lloyds Open Form.[57] If the casualty appears to be beyond salvage or at a high risk of sinking, breaking up, burning out or otherwise becoming uneconomical to salvage on a LOF, the salvage operator may change the contract from LOF to SCOPIC, which stipulates that all costs plus a reasonable profit are paid to the salvage operator by the casualty's insurers. If the salvage operator is unable to salvage the vessel, they or a different salvage contractor may be requested to remain on site to help manage the risk of pollution or decrease the damage.

4.4.1.2 Pure salvage

In pure salvage (also called merit salvage), there is no contract between the owner of the goods and the salvor. The relationship is one implied by law; the salvor of property under pure salvage must bring his claim for salvage in a court which has jurisdiction, and this will award salvage based upon the "merit" of the service as well as the value of the property itself. Pure salvage claims are divided into two types:

i. **High-order and low-order:** In high-order salvage, the salvor exposes their crew to risk of injury, and their equipment to damage or loss to salvage the property that is in peril. Examples of high-order salvage are boarding a sinking ship in heavy weather or currently burning, raising a ship, plane, or other sunken property, or towing a ship which is in the surf away from the shore. In low-order salvage, the salvor is exposed to little or no personal risk. Examples of low-order salvage include towing another vessel in calm seas, supplying a vessel with fuel, or pulling a vessel off a sand bar. Salvors performing high-order salvage receive substantially greater rewards than those performing low-order salvage.[58] It is trite law that in salvaging a ship, the Salvor may decide to do all or any of the following:

i. **Salvage** is a vital part of maritime law, and it helps to ensure that ships and their cargo are recovered safely and efficiently. It also helps to protect the environment from the harmful effects of shipwrecks.

ii. **Towing** - This involves using a tugboat to tow a disabled or damaged ship to safety.

iii. **Lifting** - This involves using a crane or other lifting equipment to raise a sunken or stranded ship to the surface.

iv. **Repairs** - This involves repairing a damaged ship so that it can be returned to service.

[56] "LOF 2011" (PDF). Archived from the original (PDF) on 18 December 2014.
[57] Heinrich, Mark; LeHardy, Peter K. (2021). "Record Breaking Deep Ocean Salvage Operations". OCEANS 2021: San Diego – Porto: 1–6.
[58] Kinder, Gary (1998). Ship of Gold in the Deep Blue Sea. New York: Atlantic Monthly

v. **Environmental protection** - This involves preventing or minimizing environmental damage caused by a shipwreck or other maritime casualty.

4.4.4 Negligence in Salvaging Ships

Negligence in salvaging a ship can occur in a number of ways, including:

1. Failure to use proper equipment or techniques. This could include using outdated or malfunctioning equipment or using techniques that are known to be unsafe or ineffective.
2. Failure to follow the instructions of the ship's owner or other responsible party. This could include ignoring instructions about how to safely salvage the ship or failing to take into account the environmental risks of the salvage operation.
3. Failure to take reasonable precautions to prevent damage to the ship or its cargo. This could include failing to secure the ship properly or failing to take steps to prevent pollution.
4. Failure to exercise reasonable care for the safety of the salvors and other personnel involved in the salvage operation. This could include failing to provide adequate safety equipment or failing to take steps to prevent accidents.

If a salvor is negligent in the course of a salvage operation, he may be liable for any damages that result. This could include damage to the ship, its cargo, or the environment. In some cases, the salvor may also be liable for personal injury or wrongful death. The amount of damages that a salvor may be liable for will depend on the specific facts of the case. However, in general, the salvor will be liable for all damages that were reasonably foreseeable and that were caused by their negligence. The salvors may be held liable for the damages that resulted from their negligence. The amount of damages that the salvors may be liable for will depend on the specific facts of the case. However, in general, the salvors will be liable for all damages that were reasonably foreseeable and that were caused by their negligence.

4.5 Marine and Ship Pollution

Marine pollution is the introduction of harmful substances or energy into the marine environment. It can come from a variety of sources, including land-based runoff, ocean dumping, and shipping accidents. Marine pollution can have a devastating impact on marine life, human health, and the economy. It occurs when substance used or spread by humans such as industrial, agricultural and residential waste, particles, noise, excess carbon or invasive organisms enter the ocean and cause harmful effects there. Most of this waste comes from land-based activity, although marine transportation significantly contributes as well.[59]

Marine Pollution is direct or indirect introduction by human of substances or energy into the marine environment (including estuaries) resulting in harm to living resources, hazard to human health, hindrances

[59] (Marine Pollution. En.m.wikipedia.org) Shephard, Charles, ed.(2019). World sea:an environmental evaluation. Vol.III, Ecological Issues and Environmental Impacts

to marine activities including fishing, impairment of the quality of sea water and reduction of amenities.[60] There are many ways the marine environment may be polluted, but this work focuses on the pollution introduced into the water body by ships as well as other vessels.

4.6 Ship Pollution

The shipping industry is a major contributor to air pollution, water pollution, and noise pollution. Over 90 percent of world trade is carried across the world's oceans. Like all modes of transportation that use fossil fuels, ships produce carbon dioxide emissions that significantly contribute to global climate change and acidification. Besides carbon dioxide ships also release a handful of other pollutants that contribute to the problem. The shipping industry is responsible for a significant proportion of the global climate change problem. More than three percent of global carbon dioxide emissions can be attributed to ocean-going ships.

4.6.1 Pollution of the Marine Environment by ships

i. **Oil spills:** Oil spills are one of the most visible and devastating forms of marine pollution. When oil spills occur, they can coat marine life in a thick layer of oil that can suffocate them, block their airways, or poison them. Oil spills can also damage marine habitats, such as coral reefs and seagrass beds.

ii. **Sewage**: Ships also discharge sewage into the ocean. This sewage can contain harmful bacteria, viruses, and parasites that can sicken or kill marine life. Sewage can also contain nutrients that can lead to algal blooms, which can block sunlight and suffocate marine life.

iii. **Solid waste**: Ships also generate a lot of solid waste, such as food scraps, plastic, and paper. This waste can end up in the ocean, where it can entangle or choke marine life. It can also break down into smaller pieces that are ingested by marine life, which can poison them.

iv. **Ballast water**: Ships take on ballast water to help them maintain stability. This water is often taken from one body of water and released into another. This can introduce harmful invasive species into new environments, which can displace native species and disrupt the marine ecosystem.

v. **Noise pollution**: Ships also generate noise pollution, which can disrupt the communication and behavior of marine animals. This can make it difficult for animals to find food, mates, or avoid predators. Also, when a sunken ship becomes a wreck, it pollutes the water body.

vi. **Improve waste management**: Ships can improve waste management practices, such as by recycling more waste and disposing of sewage more safely.

vii. **Reduce noise pollution**: Ships can reduce noise pollution by using quieter engines and operating at slower speeds.

viii. **Reduction of speed**: ships traveling at slow speeds have been found to be far more efficient and less polluting.

4.7 Judicial Intervention in Safety at Sea and Maritime Pollution

[60] UN data source: Environmental Glossary/UN statistics Division

i. ***The African & Orient Navigation Co. Ltd v The State:***[61] This case concerned the liability of the Nigerian government for the collision of two ships in Nigerian waters. The Supreme Court held that the government was liable, because it had a duty to ensure the safety of navigation in Nigerian waters.

ii. In the case of ***L.L.S.P.I.A. Ltd v M/T Tuma***,[62] it concerned a claim for insurance premiums in respect of a ship that had been damaged in a collision. The Supreme Court held that the Federal High Court had jurisdiction to hear the claim, as it was a maritime claim bordering on safety.

iii. ***The Queen v Captain George C. O'Brien*:**[63] this case concerned the liability of a shipowner for the death of a crew member due to the negligence of the ship's master. The Supreme Court held that the shipowner was liable, even though the master was not his employee, because he had delegated the duty of care to the master.

iv. ***Nigerian Ports Authority v N.L.I. Shipping Co. Ltd*:**[64] This case concerned the liability of the Nigerian Ports Authority for the loss of a ship due to a negligently maintained buoy. The Supreme Court held that the Nigerian Ports Authority was liable, because it had a duty to ensure the safety of navigation in the port.

v. ***Nigerian National Petroleum Corporation v Sea Truck Nigeria Ltd*:**[65] This case concerned the liability of a shipowner for the pollution of Nigerian waters. The Supreme Court held that the shipowner was liable, because he had failed to take reasonable steps to prevent the pollution.

vi. ***The State v N.M.A.*:**[66] This case concerned the liability of the Nigerian Maritime Administration and Safety Agency (NIMASA) for a collision between two ships. The Supreme Court held that NIMASA was liable for the collision because it had failed to properly regulate the activities of the two ships.

vii. ***Maritime Bank Plc. v Trans-Nation Shipping Line Ltd.*:**[67] This case concerned the liability of a shipping company for the loss of cargo due to a fire on board one of its vessels. The Supreme Court held that the shipping company was liable for the loss of cargo, even though it was not the only partly responsible for the fire.

viii. ***Shell Nigeria Exploration Co. (Nig.) Ltd. v Federal Inland Revenue Service*:**[68] This case concerned the liability of a shipping company for pollution caused by a spill from one of its vessels. The Supreme Court held that the shipping company was liable for the pollution, even though it was not the only partly responsible for the spill.

[61] (1954) 13 WACA 443

[62] (2021) 10 NWLR (Pt. 1784) 347.
[63] (1927) 8 NLR 174
[64] (1974) 10 SC 1
[65] (2021) 17 NWLR (Pt 1806) 545
[66] (2009) 17 NWLR (Pt 1166) 419
[67] (2001) 10 NWLR (Pt 716) 222
[68]
[48] (2021) 17 NWLR (Pt 1806) 545

ix. ***Nigeria Ports Authority v Owners of M/T Akata*:**[69] In this case, the Supreme Court held that the Nigeria Ports Authority is vicariously liable for the negligence of its employees who were responsible for the collision of two ships.

x. ***Adebayo v The Owners of M/V Sea Success*:**[70] In this case, the Supreme Court held that the owner of a ship is liable for the negligence of the master of the ship, even if the owner was not aware of the negligence.

xi. ***Oluwatosin v The Owners of M/T Equator:***[71] In this case, the Supreme Court held that the owner of a ship is not liable for the negligence of the crew of the ship, unless the owner was aware of the negligence and failed to take reasonable steps to prevent it.

5.0 Conclusion

Safety at sea and Marine Pollution are two important issues that Nigeria needs to address. Marine Pollution is a major threat to the country's marine Ecosystems and its economy. It also poses a serious health hazard to those who live and work near the coast. This clearly means that the ocean is essential for our very survival, yet we treat it with neglect. As a matter of fact, we are currently allowing millions of tons of solid waste into our oceans on a daily basis. This waste pollution is having terrible impacts on ocean wild life, spreading through marine ecosystem and affecting our wellbeing and potentially our health. "The whole of the ecosystems of the world are based on the ocean and if that part of the planet becomes dysfunctional and goes wrong, then the whole of life on this planet will suffer".

5.1 Recommendations

In the light of the above, the following recommendations are made to improve safety at sea and prevent or at best reduce marine pollution in the Nigerian shipping industry:

1. **Legal Reforms for Maritime Laws and Regulations**: Nigeria has a number of maritime laws and regulations, but these are often not enforced effectively. The government needs to strengthen these laws and regulations and ensure that they are enforced consistently.
2. **Improved training and certification of seafarers**: Seafarers play a critical role in ensuring the safety of ships. The government needs to improve the training and certification of seafarers to ensure that they have the skills and knowledge necessary to operate ships safely.
3. **Enforcement of regulations and Increased awareness of environmental issues:** The government needs to enforce existing regulations on marine pollution, such as the International Convention for the Prevention of Pollution from Ships (MARPOL). This includes ensuring that ships are properly equipped with pollution prevention equipment and that they are not discharging pollutants into the sea. The shipping industry needs to be more aware of the environmental impact

[69] (2018) 11 NWLR (Pt 1630) 330 S.C
[70] (2018) 5 NWLR (Pt 1603) 231 S.C
[71] (2018) 2 NWLR (Pt 1600) 458 S.C.

of its operations. The government needs to raise awareness of these issues among stakeholders in the shipping industry.

5. **Public awareness**: The government needs to raise public awareness of the problem of marine pollution. This can be done through education campaigns and other initiatives.