

A Legal Understanding of the word 'Ship': A Comparative Analysis of Indian, English and Canadian Jurisprudence

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ABSTRACT

This paper dives into the research of the understanding of the word ship. This necessary to decode in order to establish liability. In the contemporary times the understanding of the word 'ship' or 'vessel' or any 'sailing object' is wide. Therefore it is necessary to inquire into the actual legal understanding of the said words. The aim is to establish objectivity in the laws of maritime dealings and admiralty issues. This can help in demystifying the true nature of the field where vessels or ships are not restricted to carriage but also has expanded itself into other arena as well such as recreational and entertainment activities. Therefore here in this paper the author has tried to bring all the developed legal aspects of the word ship or vessel under the common legal system. To accomplish this the paper compares Indian, English and Canadian Laws of Admiralty.

Keywords: Ship, Vessel, Admiralty law, sail, navigate

INTRODUCTION

In U.K. according to Senior Courts' Act, 1981 "unless the context otherwise requires, "ship includes any description of vessel used in navigation¹ and (except in the definition of "port" in section 22(2) and in subsection (2) (c) of this section) includes, subject to section 2(3) of the Hovercraft Act 1968, a hovercraft"". The Act of 1981 does not define the term "Vessel" and is also no longer defined by the Merchant Shipping Act, 1995.² Canada on the other hand lays down a wider definition to the term "ship" and embraces more number of structures to be understood as ship. Federal Courts Act, 1985; Section 2 (1) defines "ship" to mean "any vessel or craft designed, used or capable of being used solely or partly for navigation, without regard to method or lack of propulsion, and includes (a) a ship in the process of construction from the time that it is capable of floating, and (b) a ship that has been stranded, wrecked or sunk and any part of a ship that has broken up".

In India the word "ship" has been defined under General Clauses Act, 1897 under clause (55) of Section 2. It says "Ship shall include every description of vessel used in navigation not exclusively propelled by oars". The definition is wide enough to include everything under the sun that is propelled mechanically or otherwise except that it is propelled by oars³. Further, the Admiralty Act, 2017 defines the term "vessel" and it says "vessel includes any ship, boat, sailing vessel or other description of vessel used or constructed for use in navigation by water, whether it is propelled or not, and includes a barge, lighter or other floating vessel, a hovercraft, an off-shore industry mobile unit, a vessel that has sunk or is stranded or abandoned and the remains of such a vessel".

Unlike the Senior Courts Act, 1981 the Canadian and the Indian maritime law define the word 'vessel' and expands the meaning of the word 'ship'. Since in modern times there many objects being used for the purposes of sailing either for a smaller adventure or for a larger adventure, in any case or scenario the Canadian and the Indian law includes within its folds all that has the capability of navigation through sailing would be considered as a vessel for the purposes of admiralty law. Both these states' laws differ from the U.K.'s law in the sense that the

¹ "this definition is identical to the definition contained in § 313 (1) of the *Merchant Shipping Act* (MSA) 1995 although "every" replaces "any".

² *Merchant Shipping Act* (MSA), 1894 under § 742 defined the term "vessel" as follows: "'Vessel" includes any ship or boat, or other description of vessel used in navigation".

³ A long pole with a wide, flat part at one end, used for rowing a boat. Available at <https://dictionary.cambridge.org/dictionary/english/oar> (last accessed 10.01.2020)

later does not define the word vessel neither under the Senior Courts' Act, 1981 nor under the Merchant Shipping Act, 1995⁴. An open ended definition may also sometime be problematic wherein anything that can be put to sailing should not be considered as a vessel for the purposes of invoking rights and liabilities. Therefore only those structures that can be put to navigation are involved in navigation are to be considered a vessel.

BACKGROUND

Historically, the word 'ship' was given a narrow meaning obviously because of the lesser developments in the field of maritime transaction. It identified ship as a vessel sailing with three or more masts containing square rigged sail on all three masts. The Oxford English Dictionary refers to "ship" as "a large seagoing vessel (opposed to a boat)". Justice Blackburn in *Ex. P. Ferguson*⁵ has said:

"What, then, is the meaning of the word 'ship' in this Act? It is this, that every vessel that substantially goes to sea is a 'ship'. I do not mean to say that a little boat going out for a mile or two to sea would be a ship; but where it is business really and substantially to go to sea, if it is not propelled by oars, it shall be considered a ship for the purpose of this Act.

Whenever the vessel does go to sea, whether it be decked or not decked, or whether it goes to sea for the purposes of fishing or anything else, it would be a ship. I take it that this was what the justices thought. The facts stated are, that this vessel, though of small size (of only ten tons burthen, and only twenty-four feet long), yet goes out twenty or thirty miles to sea – does go there almost entirely with sails, does stay out many hours, as the affidavits state, and it think it is probable that it goes out for days and nights. This makes it impossible to say that it is not a sea-going vessel, and consequently a 'ship', coming within the Act without the aid of the interpretation clause."

The definitions though quite extensive also raises certain challenges such as that it does not mention whether the ship is actually sailing, it merely says it must be capable of being put to sailing and is a navigable vessel. The issue concerns unmanned ships, where this extensive definition includes unmanned ships as well under the definition of 'vessel'⁶. The above discussion makes it clear that the essence is 'any sea-going vessel that can navigate would be considered 'ship'.

Vessel

The word 'vessel' is also defined in Oxford English Dictionary as "A craft or ship of any kind now usually one larger than a rowing-boat and often restricted to sea-going craft or those plying on the larger rivers or lakes". This has been approved through judicial authority by Justice Sheen in *Steedman v. Scofield*⁷, wherein he said:

"A vessel is usually a hollow receptacle for carrying goods or people. In common parlance 'vessel' is a word used to refer to craft larger than rowing boats and it includes every description of watercraft used or capable of being used as a means of transportation on water."⁸

With respect to the question 'what forms of property on board the ship is considered to be part of the ship?', it has been concluded in various judicial dictums that it extends to all its accessories and equipments.⁹ Justice Sheen in *The "Silia"* held that "ship meant all the property aboard the ship other than that which is owned by someone other than the owner of the ship, it should be noted that bunkers will usually count as part of the ship's equipment unless a term in the charter party deems them to belong to a charterer".

"Used in Navigation"

This phrase must comply with requirements i.e. firstly the water in which the ship or the vessel is to sail should be navigable i.e. navigable waters and secondly the ship or the vessel must be in a position to sail or is capable of being "used in navigation". The test was applied in the case of *Michael v. Musgrave*¹⁰ wherein the admiralty court concluded that RIB (rigid inflatable boat) was a ship under the Athens Convention. A RIB was used for a bird watching trip near the coast of Angelsey.

⁴ "it was formerly defined by the *Merchant Shipping Act* (MSA), 1894, § 742 as follows: 'Vessel' includes any ship or boat, or other description of vessel used in navigation."

⁵ 6 LR 280 (QB 1871)

⁶ See R VEAL AND M. TSIMPLIS, THE INTEGRATION OF UNMANNED SHIPS INTO THE LEX MARITIMA, LMCLQ 304 (2017)

⁷ 2 Lloyd's Rep. 163, 166 col. 1 (1992)

⁸ Also been approved in *R v. Goodwin* 1 Lloyd's Rep 432 (2006)

⁹ The "Eurosun" and "Eurostar" 1 Lloyd's Rep. 106 (1993)

¹⁰ 2 Lloyd's Rep. 37 (2012)

Navigable Waters

The phrase “used in navigation” includes within its fold two necessary requirements as discussed above, one of which is ‘navigable waters’. The question pertinent to be noted here is whether all waters are navigable waters? The answer to the question has been dealt under the following cases:

- Lord Coleridge CJ in the case of *The Mayor & Corporation of Southport v Morriss*¹¹ considered the issue that whether an electric passenger launch be considered a ship which is exclusively used on a small artificial lake. He said:

“We are therefore reduced to the question whether this launch was a vessel used in navigation. I think that having regard to the size of the sheet of water on which it was used, it was not. Navigation is a term which, in common parlance, would never be used in connection with a sheet of water half a mile long.”

- In *Weeks v. Ross*¹² the question was with respect to usage of a motorboat used exclusively between the Exeter¹³ and a lock in the river Exe. The water in concerned river connected itself through locks and a tidal estuary. The water in this case was not the one enclosed and self-contained.
- In *Curtis v Wild*¹⁴ dinghies used on a river were held to be not “used in navigation”. Justice Henry held that “Navigable waters meant waters that are used by vessels going from point A to point B and not simply used for pleasure purposes even if those pleasure purposes may involve steering a pre-set course¹⁵, and that in that case there was no navigation in the sense of proceeding from an originating place A to a terminus B for the purpose of discharging people or cargo at the destination point. It was simply used for pleasure purposes by people who were messing about in boats.”¹⁶

It must be noted that such distinction of water ranging from lake to reservoir and to river water connected with lock might hold good in some scenarios however, might not hold good in some other scenarios, for example a dinghy used in the river ranging from one country to other country or state will be considered to be “used in navigation”. International Regulations for Preventing Collisions at sea 1972 applies to “all vessels on the high sea and all waters connected therewith navigable by seagoing vessels”.¹⁷

Capable of Being Used in Navigation

The above discussion leads us to a concern where we need to understand and differentiate between vessel and ship. Vessel is a broader terminology that includes ship that is a self sufficient object equipped for sailing and also includes other objects that can float over the water, however are not equipped to sail and reach their destination. This provides us to deal with two types of scenarios as far as the term ‘vessel’ is concerned, wherein the former is considered to be a ‘seagoing’ vessel and the other one is simply ‘mobile’. In the year 2013 Supreme Court of United States declared a floating home to be not a vessel for the purpose of admiralty claim in order to recover charges of dock and thus the claim for maritime lien failed¹⁸.

Further, Justice Sheen in *Steedman v. Scofield*¹⁹ had to consider whether a jet-ski is a “ship”. He said:

“Navigation is the nautical art or science of conducting a ship from one place to another. The navigator must be able (1) to determine the ship’s position and (2) to determine the future course or courses to be steered to reach the intended destination. The word ‘navigation’ is also used to describe the action of navigating or ordered movement of ships on water. Hence ‘navigable waters’ means waters on which ships can be navigated. To my mind the phrase ‘used in navigation’ conveys the concept of transporting persons or property by water to an intended destination. A fishing vessel may go to sea and return to the harbor from which she sailed, but that vessel will nevertheless be navigated to her fishing grounds and back again. ‘Navigation’ is not synonymous with

¹¹ 1 QB 359 (1893)

¹² 2 KB 229 (1913)

¹³ Exeter is historic place in England having lakes and rivers connected through lockes from different sides.

¹⁴ 4 All ER 172 (1991)

¹⁵ *Curtis v. Wild* 4 All ER 175j to 176a (1991)

¹⁶ *Curtis v. Wild* 4 All ER 167h to 167j (1991)

¹⁷ Part A, Rule 1

¹⁸ *Lozman v. City of Rivera Beach* 1 Lloyd’s Rep. plus 17 (2013)

¹⁹ 2 Lloyd’s Rep 163 (1992)

movement on water. Navigation is planned or ordered movement from one place to another.”

Justice Sheen held that though jet-ski may be used for navigation however, it is not vessel used for the purposes of navigation²⁰. The definition provided by Justice Sheen appears to be in consistency with that of the activity performed by jet-ski as nothing planned or ordered with respect to the movement of jet-ski takes place on water. He observes:

“A jet ski is capable of movement on water at very high speed under its own power, but its purpose is not to go from one place to another. A person purchases a jet ski for the purpose of enjoying ‘the thrills of waterskiing without the ties of a boat and towrope’ and for the exhilaration of high speed movement over the surface of water. The heading of the craft at any particular moment is usually of no materiality.”²¹

Again in *R v. Goodwin* in the year 2006 Court of Appeal (Criminal Division) dealt with criminal conviction with respect to section 58 (2) (a) of the Merchant Shipping Act, 1995. The said provision excludes the phrase “used in navigation” with the intention of including any vessel sailing with all of its functionality over the waters that are navigable. Therefore even if jet-skies are used for fun and is without any object of reaching anywhere would be included under the said provision. Following paragraphs of the case are pertinent to be noted:

“[27]. . . we have come to the conclusion that for a vessel to be ‘used in navigation’ under the Merchant Shipping Acts it is not a necessary requirement that it should be used in transporting persons or property by water to an intended destination, although this may well have been what navigation usually involved when the early Merchant Shipping Acts were enacted. What is critical in the present case is, however, whether, for the purposes of the Merchant Shipping Act 1995 definition of ship, navigation is ‘the planned or ordered movement from one place to another’ or whether it can extend to ‘messing about in boats’ involving no journey at all.

[32] In considering the effect of these authorities [ie *Curtis v Wild*; *Southport v Morriss*; *Weeks v Ross*] one must not lose sight of the context in which the issue of the meaning of a ‘ship’ arises. This is not easy, as the 1995 Act consolidates a number of statutes dealing with shipping, not least of which is the Merchant Shipping Act 1894, itself a consolidating Act. Whilst, as we have observed, there may be reasons for giving ‘ship’ a wide meaning for the purposes of Part I which deals with registration, one must not adopt a meaning that makes a nonsense of other provisions which govern the use and operation of ships. Those provisions, as the title ‘Merchant Shipping’ suggests, are primarily aimed at shipping as a trade or business. While it may be possible to extend the meaning of ship to vessels which are not employed in trade or business or which are smaller than those which would normally be so employed, if this is taken too far the reduction can become absurd.

[33]... We have concluded that those authorities which confine ‘vessel used in navigation’ to vessels which are used to make ordered progression over the water from one place to another are correctly decided. The words ‘used in navigation’ exclude from the definition of ‘ship or vessel’ craft that are simply used for having fun on the water without the object of going anywhere, into which category jet skis plainly fall. Mr Teare pointed out, by reference to a chart of Weymouth Harbour, that jet skis were required to follow a channel from the shore before reaching more open waters in which they could be driven. He argued that this demonstrated that jet skis are used in navigation. We do not agree. Following the channel was merely the means of getting to the area where the jet skis could be used for racing around in the manner which led to the accident with which this case is concerned.”

Problems arise when a floating body or an object is mobile enough to be considered as a ship. For example a buoy (“a floating object used to direct ship and warn of possible dangers”) or a lighthouse whether can be considered “ship”. The court in various cases concluded that it cannot be considered as a “ship” since it merely helps in navigation and is not navigating itself. Even if in certain situations a typically designed buoy carries cargo for the time being it will not be considered as “ship” since that will not carry the cargo to a certain destination. Such objects are fixed in their respective places specifically designed for those purposes and not for the purpose of navigation.

Similar to the above mentioned issue a pontoon was under a question to be considered under the meaning of a ship. In *Merchant’s Marine Insurance v. North of England P&I Association*²² the pontoon was identified to be in a naval dockyard permanently attached by cable to the river bank. Though it was in the shape of a ship however, it could be moved hardly with lot of difficulty. The appellate court held that it comes within the phrase “docks,

²⁰ In *Dependable Marine Co. Ltd. v. Customs & Excise* 1 Lloyd’s Rep 550 (1965), Justice Roskill had held that “a ‘ski-craft’ (a rudderless device for towing a water skier through the water controlled by the person being towed) was not a “boat” or “vessel””.

²¹ 2 Lloyd’s Rep 166 (1992)

²² 26 L1 L Rep 201 (CA 1926)

piers, quays, works, jetties, erections or any fixed or movable things other than ships or vessels”. It lay down that usage is one of the essential aspects of determination of an object to be categorized as a vessel.

“... it seems to me that one has to consider not only the structure of the floating crane but the purposes for which it is capable of being used and the purposes for which, taking its life history, it has been used, and to come to a conclusion, as it seems to me, upon what would ultimately be an inference from the facts. We have had the plans of this floating crane and we have had the photographs of it. We know that it is in the shape of a vessel and that it is constructed so that it will float on water, the object, of course, being to provide a platform for the crane, which is to be used not on land but on water. Therefore it is necessary to construct it in a form in which it will float. It is necessary, also, to construct it in a form in which it is capable of being moved, because it is not intended to be permanently moored at a particular place, and from its construction – and it is a very peculiar and a very old-fashioned construction – it seems to me that it would be useless for crane purposes unless it was capable of being moved. How in fact it is used is I think left unexplained, but it must obviously be capable of being moved, because its arm or jib is a fixed arm or jib, and therefore it can be used for a comparatively small number of purposes unless it is moved.”

Now what do we find with regard to the structure? It is in fact a structure upon which a crane is fixed, and permanently fixed. It has no motive power of its own.

“I do not attach much importance to that, but it is an incident. It is not capable of being steered: it has no rudder. I think that again is only an incident, but I think it is rather an important incident. It is undoubtedly capable of being moved, but it is obviously so unseaworthy that it can only be moved short distances, or comparatively short distances, and only when the weather is exactly favourable. It is a most unwieldy structure. Its arm, or jib, is 70 ft long: it is fixed athwart the platform, with two fixed struts, and obviously, upon looking at it, it is a most unseaworthy structure. We have also its life history, to this extent, that it was built very many years ago in 1868, I think the date is. Everyone agrees that the fact that it had to be towed a considerable distance to the place where the crane was fitted is immaterial for the present purposes. One has to consider what it is and what it has been since it became a floating crane, and, so far as the information goes, it has only been moved very occasionally during all these years. I think there are about five or six times when it has been moved since 1914, and therefore, although it is obviously moveable and it obviously must be moved, in order to make it an effective crane, from time to time, the conclusion I come to is that, for this purpose and for the purpose of the construction of this rule, it is more accurately described as a floating platform for this crane than as a ship or vessel. I desire to say, speaking for myself, that I do not think it is possible to frame an exhaustive definition which will be of assistance in other cases, or to attempt an exhaustive test to apply for the purpose of deciding whether any particular object is a ship or vessel.”

In furtherance to the above discussion Justice Atkinson considered if a flying boat can be categorized as a “ship or a vessel”²³. He emphasized upon giving the words “ship or vessel” their natural understanding and meaning and said “It seems to me that the dominant idea is something which is ‘used in navigation’, and not merely capable of navigating for the moment.”²⁴ In conclusion he said²⁵:

“I do not want to attempt a definition, but if I had to define ‘ship or vessel’ I should say that it was any hollow structure intended to be used in navigation, i.e., intended to do its real work on the seas or other waters, and capable of free and ordered movement thereon from one place to another. A flying boat’s real work is to fly. It is constructed for that purpose, and its ability to float and navigate short distances is merely incidental to that work. To my mind, that is where the difference lies.”

Similarly a “Blow Boat” or a “Seaplane” was not held to be “ship or vessel”. Though they are capable of navigation however are used for the purpose of games and fun and not for the purpose specified above to be categorized as a “ship or vessel”.

A “Hopper Barge” without any means of propulsion was considered to be a ship in “*The Mac*”²⁶. Chief Justice Lord Coleridge said:

“She could take men on board. She falls within the definition cited in Todd’s Johnson’s Dictionary of the word ‘ship’ from Horne Tooke, namely, ‘formatum aliquid, in contradistinction from a raft for the purpose of conveying merchandise, &c., by water, protected from the water and the weather’. Although this may not be the definition

²³ Polpen Shipping Company Ltd. v. Commercial Union Assurance Company Ltd., KB 161(1943)

²⁴ *Id.* at 164

²⁵ *Id.* at 167

²⁶ LR 7 PD 126 (CA 1882)

of Johnson, it is the definition of a great master of language; and I think that it applies to the present case.”

Lord Justice Brett said:

“The word includes anything floating in or upon the water built in a particular form and used for a particular purpose. In this case the vessel, if she may be so called, was built for a particular purpose, she was built as a hopper-barge; she has no motive-power, no means of progression within herself. Towing alone will not conduct her, she must have a rudder, and therefore she must have men on board to steer her. Barges are vessels in a certain sense; and so the word ‘ship’ is not used in a strictly nautical meaning, but is used in a popular meaning, I think that this hopper-barge is a ‘ship’.”

Lord Justice Cotton said²⁷:

“ ‘Ship’ is a general term for artificial structures floating on the water; this is plain upon looking at the meanings given in Johnson’s Dictionary; and it is to be observed that one of the meanings of ‘boat’ is therein stated to be ‘a ship of a small size’. I think that the proper meaning is ‘something hollowed out’. Some expressions of Blackburn, J, in *Ex parte Ferguson*, may appear to support a different view; that learned judge seems at first sight to have been of opinion that a ‘ship’ meant a sea-going vessel; but I think that the remarks which he made must be read with reference to the subject-matter before him, and that he was merely explaining that the vessel in question was a ‘ship’. It is plain to my mind, that in order to be a ‘ship’ within the Merchant Shipping Act, 1854, a vessel need not be sea-going: it is only necessary to refer to s.19 of that statute which provides that British ships must be registered, except ‘ships not exceeding fifteen tons burden employed solely in navigation on the rivers or coasts of the United Kingdom, or on the rivers or coasts of some British possession within which the managing owners of such ships are resident’. I think that this shews that the hopper-barge was a ‘ship’ within the Act. The question cannot depend on the circumstance whether she carries a cargo from port to port. She was propelled by towing, and she carried mud with a crew on board.”

Through decades from the beginning to the end of 20th century new types of floating objects were designed and constructed. The question was raised before the court so as to consider them as ship. Such as in the case of “*St. John Pilot Commissioners v. Cumberland Ry & Coal Co*”²⁸ “barges” were held to be ship; in “*Marine Craft Constructors Ltd. v. Erland Blomquist (Engineers) Ltd*”²⁹ a “pontoon” structure, originally a floating crane was considered as ship; in “*Cook v. Dredging and Construction Co. Ltd*”³⁰ a “Blower Boat” was held to be ship. All of these vessels could either propel on their own however, if they cannot then they may allow itself to be towed by any other propelled machinery or tugged to a vessel bearing self propulsion. Since a barge cannot move with being towed and tugged to a machinery capable of propulsion.

Distinct from the objects discussed above where external propulsion and sailing will identify them as a ship, however in “*Addison v. Denholm Ship Management*” a “flotel” was under question to be considered as a ship. A flotel is a floating hotel that essentially has a rectangular shape and its platform is attached to the legs of pontoons so that it may float. Whenever it is on station the pontoons are submersed through ballasting to ensure stability. The purpose of flotel is primarily to provide accommodation for caterers, tradesman, laborers and secondarily to provide accommodation to hundreds of workers working at the construction site of oil and gas installations and also serves as storage area and workshop area. This must be differentiated from an oil rig since an oil rig would not be considered as a ship rather would be categorized as an artificial island.³¹

In Canada in the case of “*R v. St. John Shipbuilding & Dry Dock*”³² a “floating crane” was held to be a ship since it was capable of discharging cargo from one place to another place. Even though the crane was not self-propelled, it was declared to be understood as a ship as it was built to do something on water. This shows that the Canadian approach towards considering a floating object is much liberal as compared to English Approach. However, the recent trends are changing and we can identify the progressive legal scenario in England as well. Relatively Indian understanding of the term ship cannot be said to have developed through case laws, instead the latest Indian understanding of the term “ship or vessel” comes from the Admiralty Act of 2017. The Act of 2017 includes all that can float over waters except it is broken and cannot resume itself to be able to float or sail as identified and

²⁷ *Id.*

²⁸ AC 208 (1910)

²⁹ 1 Lloyd’s Rep 514 (1953) (Lynskey J.)

³⁰ ICR 770 (EAT Sc. 1997)

³¹ *Rodrigue v. Aetna Casualty & Surety Co* 395 US 352 (US Supreme Court 1969)

³² 126 DLR (3d) 353 (FCA Canada 1981)

verified by a surveyor this also then includes all the unfinished constructions floating on water. The Act seems to be a learning lesson from the English experience.

It must be noted that the above discussion helps us in concluding the variant types of structures to be considered as ship. It also depicts the requirements that must be undertaken as a guiding line to identify any floating structure to be a “ship or a vessel”.

CONCLUSION

With the above discussion it can be concluded that a ship or a vessel must comply following requirements to be categorized as a ship or a vessel where i.e.:

- (a) It must be sailing or capable to sail with specific object of navigation;
- (b) Over the navigable waters and;
- (c) There must be actual navigation and not a directionless movement.
- (d) The floating or sailing object is not an instrument to assist navigation.

The above four requirements fulfill the requirements of the term ‘navigation’.