1–323 In similar vein the London Salvage Convention 1989 (which now has the force of law) provides:

> "Article 17
> Services rendered under existing contracts
> No payment is due under the provisions of this Convention unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose."

Articles 4 and 17 reflect the effect of many decisions of the courts: in turn the terms and conditions to be found in many standard forms of towage contracts take account of the effect of these decisions.

Standard towage contracts

1–324 The United Kingdom Standard Conditions for Towage and Other Services (revised 1986)[512] provide by cl.6 as follows:

> "Nothing contained in these conditions shall limit, prejudice or preclude in any way any legal rights which the Tugowner may have against the Hirer including, but not limited to, any rights which the Tugowner or his servants or agents have to claim salvage remuneration or special compensation for any extraordinary services rendered to vessels or anything aboard the vessels by any tug or tender ...".

1–325 However, the standard forms published by BIMCO for towage for either a lump sum price (code named "Towcon") or for a daily rate (code named "Towhire") provide in cl.21 and 19 respectively for more circumscribed rights, as follows:

> "(a) Should the Tow break away from the Tug during the course of the towage service, the Tug shall render all reasonable services to reconnect the towline and fulfill this Agreement without making any claim for salvage.
> (b) If at any time the Tugowner or the Tugmaster considers it necessary or advisable to seek or accept salvage services from any person or vessel on behalf of the Tug or Tow, or both, the Hirer hereby undertakes and warrants that the Tugowner or his daily authorised servant or agent including the Tugmaster shall have the full actual authority of the Hirer to accept such services on behalf of the Tow on reasonable terms. Where circumstances permit the Tugowner shall consult with the Hirer on the need for salvage services for the Tow."

1–326 It would seem to follow that in most instances which would arise in practice, under these two BIMCO forms of contract, the tugowner retains no right to recover salvage. It is possible, however, that a right to salvage would subsist when:

[512] See Appendix 7, para.15–21, below.

(a) the tugowner has exhausted all reasonable efforts but a salvage service is still necessary, e.g. when the tow has grounded on a rocky shore and has been badly damaged so as to require the undertaking of a major salvage operation well outside mere towage; or
(b) the tugowner has salved property not belonging to the "hirer" and has not waived his right to salvage as regards that owner.

Towage contracts: the English authorities

1–327 In *The Princess Alice*[513] Dr Lushington held that towage service may be described as the employment of one vessel to expedite the voyage of another when nothing more is required than the accelerating of her progress. In *The Minnehaha*[514] Lord Kingsdown laid down the principles of law governing the duties of a tug in rendering towage services under a towage contract and the principle to be applied if a claim for salvage is successfully to be made. He summarised the law as follows:

> "When a steam-boat engages to tow a vessel for a certain remuneration from one point to another, she does not warrant that she will be able to do so and will do so under all circumstances and at all hazards; but she does engage that she will use her best endeavours for that purpose, and will bring to the task competence, skill, and such a crew tackle and equipment as are reasonably to be expected in a vessel of her class.
>
> She may be prevented from fulfilling her contract by a vis major, by accidents which were not contemplated and which may render the fulfilment of her contract impossible; and in such case, by the general rule of law, she is relieved from her obligations.
>
> 1–328 But she does not become relieved from her obligations because unforeseen difficulties occur in the completion of her task; because the performance of the task is interrupted, or cannot be completed in the mode in which it was originally intended, as by the breaking of the ship's hawser. But if in the discharge of this task, by sudden violence of wind or waves, or other accidents, the ship in tow is placed in danger, and the towing-vessel incurs risks and performs duties *which were not within the scope of her original engagement*, she is entitled to additional remuneration for additional services if the ship be saved, and may claim as a salvor, instead of being restricted to the sum stipulated to be paid for mere towage .... In the cases on this subject, the towage contract is generally spoken of as superseded by the right to salvage.
>
> 1–329 It is not disputed that these are the rules which are acted upon in the Court of Admiralty, and they appear to their Lordships to be founded in reason and in public policy, and to be not inconsistent with legal principles."

[513] (1849) 3 W. Rob. 138 at 139.
[514] (1861) 15 Moo. P.C. 133 at 153.

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1–330 In *The Strathnaver*[515] it was held that a vessel engaged to tow another which is in neither actual or imminent danger to accelerate her progress renders towage and not salvage services.[516] Whether a tug is engaged as a salvor or not will depend on the facts. For example in *The Medora*,[517] a steam tug within its usual locality proceeded to and assisted a brig aground on sand: the service was not mere towage but salvage.

1–331 Many cases have as stated above come before the court to determine whether or not services rendered amount merely to a tug or tugs fulfilling a mere duty to tow under a towage contract or whether the circumstances which have arisen justify an award of salvage. The principles to be applied are well established. In *The Homewood*[518] Hill J. held:

> "To constitute a salvage service by a tug under contract to tow two elements are necessary:
>
> (1) That the tow is in danger by reason of circumstances which could not reasonably have been contemplated by the parties; and
>
> That risks are incurred or duties performed by the tug which could not reasonably be held to be within the scope of the contract."

1–332 This test was applied by Langton J. in *The Glenbeg*[519] where he held:

> "One aspect which one may take is this: Is a ship in that condition, when tugs take her in tow, in a position which requires from the tugs services of a different class and therefore bearing a higher rate of payment than for ordinary towage? In other words, assuming that a contract had to be made to deal with the vessel in that condition, would the tugowner be ready to render services at the ordinary towing rate?"

1–333 The facts of *The Glenbeg* are instructive in that Langton J. held that the services performed amounted to salvage albeit that in cross-examination the tugmaster admitted that the kind of service which they were called upon to render did not really differ from that which they would have had to do in the normal way. However, Langton J. held that the question which he had to ask himself was:

> "Were they called upon to exert skill of a character which would not be necessary at all, and is not, therefore, contemplated in the ordinary service of a tug to a ship going upriver?"

1–334 He held on the facts that skill had been exhibited which was outside what was necessary in the ordinary performance of the towage contract, the *Glenbeg* being at the material time partly out of control and in an "uncomfortable and unpleasant

[515] (1875) 3 Asp. M.L.C. PC.
[516] cf. *The Jubilee* (1879) 3 Asp. M.L.C. 275 at 276 (Sir Phillimore).
[517] (1853) 164 E.R. 10 at 11 (Dr Lushington); 1 Sp. Ecc. & Ad. 17.
[518] (1928) 31 Ll. L. Rep.336 at 339–340.
[519] (1940) 67 Ll. L. Rep.437 at 441; and see *Halsbury* Vol.43, para.1046.

position" as a result of her port propeller becoming foul of a buoy and its chain. If she had not got rid of the obstruction she might have drifted on to a wall distant some 80 feet and the two tugs in holding her "smartly" enabled her to rid herself of the buoy and proceed in safety.

1–335 *The Westburn*[520] is an example of a tug acting outside the terms of a towage contract, i.e. refloating a grounded vessel and recovering salvage. *The Madras*[521] is another example of tugs acting outside an uncompleted towage contract, refloating a grounded vessel and recovering salvage.

1–336 A more recent example of the application of the principles occurred in *The North Goodwin (No.76)*.[522] Two tugs were engaged under the United Kingdom Standard Conditions (referred to above).[523] They were engaged to tow the defendants' light vessel *North Goodwin (No.16)* from a position a little to the east of the entrance of the River Tyne where it was anticipated that she would be handed over to the two tugs in order to be docked. A gale was blowing. The light vessel was towed further inshore than was originally anticipated in order that she might be handed over in a more sheltered position and in the course of so doing the flotilla came to a position too close to the coast. Whilst the original tug was turning to ameliorate the situation the towing hawser parted and the light vessel was left free to drift downwind. One of the two waiting tugs, seeing what happened, went to the assistance of the light vessel and passed a towing connection to those on board. This tug then towed the light vessel to an anchorage. The claim by the owners, master and crew of that tug was rejected by Sheen J. The light vessel was equipped with three anchors which would have enabled her to anchor promptly. The tug whose line had parted could have manoeuvred to make fast. Further, on the facts there was no doubt that if the waiting tug had offered her services on salvage terms such an offer would have been declined. The light vessel was not in danger. The tug had not incurred risks or performed duties which were not within the scope of her towage contract.[524]

1–337 More recently salvage was awarded to a sub-contracted tug when the tow line of the lead tug (owned by a LOF contractor) parted. In the *Star Maria*[525] the claimants' harbour tug had been subcontracted to assist in bringing a casualty salved on LOF into Dover Harbour, during the course of which the lead tug's line parted and the casualty was set adrift. Efforts to turn the stern into the wind were unsuccessful. The casualty dropped her anchor but continued to drift shorewards. She came within two cables of the shore and the tug pulled her stern out of the shallows, whereupon the casualty dropped her other anchor. With some difficulty the tug held the casualty in position until eventually it was taken into the harbour. The court applied the test in the *Homewood*, as follows:

> "To constitute a salvage service by a tug under contract to tow, two elements are necessary:

[520] (1896) 8 Asp. M.L.C. 130 at 131 (Sir Francis Jeune P.).
[521] (1898) 8 Asp. M.L.C. 397 at 398 (Sir Francis Jeune P.).
[522] [1980] 1 Lloyd's Rep.71.
[523] Appendix 7, para.15–21 et seq., below.
[524] cf. *The Orelia* [1958] Lloyd's Rep.441 where the facts clearly entitled the tugs to salva.
[525] [2003]1 Lloyd's Rep.183.

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(1) that the tow is in danger by reason of circumstances which could not reasonably have been contemplated by the parties; and
(2) that risks are incurred or duties performed by the tug which could not reasonably be held to be within the scope of the contract.

I have no doubt that pursuant to those principles the services of Dauntless became services in the nature of salvage when, at about 0529, the towage connection with Far Turbot parted. The casualty was then in danger of grounding which could not reasonably have been foreseen when Dauntless was instructed to assist Far Turbot and Dauntless incurred risks and performed duties which could not reasonably be held to be within the scope of her contractual duty to act as a steering tug.

The services remained in the nature of salvage until 0605 when the towage connection with Far Turbot was re-established and all that Dauntless then had to do was assist in steering the casualty into Dover harbour. That was the service originally requested of her by Far Turbot on behalf of the owners of the casualty."

1–338 The principles enunciated in *The Minnehaha* and in *The Homewood* were applied by the New South Wales Court of Appeal in *The Texaco Southampton*.[526] In that case services were rendered by the plaintiff owners, master and crew of a tug. The shipowners had a pre-existing towage contract with a tug-owning company which had in turn subcontracted the work to the plaintiff tug owners. It was held (allowing the defendants' appeal) that the plaintiff tug owners (and the master and crew) were no more volunteers than if the services had been rendered by the tug owners (and their master and crew) who stood in a direct contractual relationship with the shipowners. At no time had the plaintiff on the facts assumed the character of salvor.

1–339 The effect upon the towage contract if salvage services are performed was considered by the President, Sir Samuel Evans, in *The Leon Blum*[527] The President reviewed the previous authorities and held that:

"Where salvage services (which must be voluntary) supervene upon towage services (which are under contract) the two kinds of services cannot co-exist during the same space of time. There must be a moment when the towage service ceases and the salvage service begins; and, if the tug remains at her post of duty, there may come a moment when the special and unexpected danger is over, and then the salvage service will end, and the towage service would be resumed. These moments of time may be difficult to fix, but have to be, and are, fixed in practice. During the intervening time the towage contract, in so far as the actual work of towing is concerned, is suspended. I prefer the word 'suspended' to some of the other words which have been used, such as 'superseded', 'vacated', 'abandoned', &c."

1–340 As to the obligations of the tug towards the tow under a towage contract the President held[528] that:

[526] [1983] 1 Lloyd's Rep.94.
[527] [1915] P.90; affirmed on appeal [1915] P.290.
[528] [1915] p.90 at 96.

"Tugs which have been engaged to tow have certain duties, to remain by the tow in circumstances of danger, and to render such assistance as they can, or perhaps such as it would be fair and reasonable to expect them to render without running undue risks to themselves and their crew. Apart from such duties arising from the contract they would have others of a moral kind, which must be distinguished from the former. Thus the duties of tugs may be only of such a character as are common to all honest seafaring persons, apart from any legal obligations; such moral duties as were in the mind of Lord Stowell, when he said: 'It is the duty of all ships to give succour to others in distress; none but a freebooter would withhold it,'[529] or they may be such duties as are obligatory by law on persons who have contracted to tow. The line between these may be difficult to draw, and the use of the word 'duties' as common to both classes must not be allowed to confuse them."

1–341 By applying the test laid down by the President in *The Leon Blum* (and many other cases cited above) it is possible to establish whether or not the tug owner is a volunteer not bound to render his services by a pre-existing covenant (as envisaged by Lord Stowell in *The Neptune*).[530]

1–342 Although, as discussed in Ch.5, seamen are protected from renouncing their right to salvage by s.39 of the Merchant Shipping Act 1995, nevertheless if in performing their services they are merely carrying out the work they are employed to do, and no more, they are not volunteers although not parties to the towage contract as such.[531]

1–343 The danger from which the tug rescues the vessel under tow may have arisen wholly or in part from the negligence or breach of contract of the tug owner, his servants or agents and liability for such negligence or breach of contract may or may not be excluded or restricted under the towage contract. The effect in law of such negligence or breach is discussed in Ch.7.[532]

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Tug and tow: American law

1–344 The principles in American law[533] under which a tug which is under a contractual obligation to tow a vessel may nevertheless recover salvage are the same as those in English law. In short, a tug is obliged by a contract of towage not to abandon the tow if it gets into difficulties until the tug's reasonable resources of good seamanship are exhausted: the tug may, however, recover salvage for

[529] See *The Waterloo* (1820) 2 Dods. 433 at 437.
[530] (1824) 1 Hagg. 227 at 236. The following cases are further illustrations of the application of the principles: *The Galatea* (1958) Swa. 349; *The Albion* (1861) 1 Lush. 282; *The Saratoga* (1861) Lush. 318; *The Annapolis* (1861) 1 Lush 355; *The Lady Egidia* (1862) Lush. 513; *The Pericles* (1863) Br. & Lush. 80 at 81; *The White Star* (1866) L.R. 1 A. & E. 68 at 70; *The I.C. Potter* (1870) L.R. 3 A. & E. 292; *The Hjemmett* (1880) 5 P.D. 227; *The Liverpool* [1893] P.154; *The Emilie Galline* (1903) 9 Asp. M.L.C. 401, 402 (Bucknill J.); *The Overe* (1920) 2 Ll. L. Rep.21; *The Dombey* (1941) 69 Ll. L. Rep.161; *The Slaney* [1951] 2 Lloyd's Rep.538.
[531] *The North Goodwin (No.16)* [1980] 1 Lloyd's Rep.71 at 74, per Sheen J.
[532] See Ch.5, para.5–20 et seq., below.
[533] See Benedict, Ch.13; Parks, *The Law of Tug Tow and Pilotage* (1982), pp.1151–1158. See now Parts & Catell, *The Law of Tug, Tow and Pilotage* 3rd edn (London: Sweet & Maxwell, 1994).

extraordinary services of a salvage nature not within the scope or contemplation of the towage contract, the burden of proof of these facts being upon the tug.[534]

1–345 It has been held that:

> "In order to claim salvage of its own tow, a tug bears the burden of proving that the danger from which the tow was rescued was not caused by the tug's fault . . . A tug found to be at fault in placing its tow in peril is not entitled to any reward for services rendered thereafter in saving its tow . . . In other words, a tug cannot profit from its own wrongdoing in saving its tow".[535]

1–346 Salvage was allowed in *The Connemara*[536] when the tug, using its pump and hose, extinguished a fire in the cotton cargo of the tow. Again salvage was awarded in *The City of Haverhill*[537] when the tug put her pumps to work when the seams of the tow opened and kept her afloat. In *Byrnes v M.V. Z.P. Chandon*,[538] however, salvage was not awarded when the towline (through no fault of the tug) parted, was retrieved and reconnected and the tow resumed: it was held that the tug and its crew have a duty to recover a lost tow unless there is a serious peril in doing so.[539] The converse of the usual case occurred in *Reynolds Leasing Corp v Tug Patrice Mcallister*[540] when the tug sent to escort a container ship broke down in bad weather and in the result, the container ship provided a lee for the tug. The container ship was held not bound under the escort contract to provide this service and recovered salvage.

1–347 In cases in which the tug, during the currency of the towage contract, renders salvage services to another vessel, the tow, if it plays no active part in the salvage operation, is not entitled to recover salvage or share in the tug's salvage remuneration.[541]

Fixed price salvage for one salvor: position of other contributing salvors

1–348 In *Maytom v The Master of the Harry Escombe*[542] the Supreme Court of South Africa was concerned with a case in which the plaintiffs, the master and crew of the tug *Harry Escombe*, sought to recover a proportion of a sum agreed on "no cure-no pay" terms for the refloatation of a ship stranded off Durban. The agreement was somewhat unusual in that the agreement had been made between the defendant (and appellant), a Mr Maytom, as salvor and the casualty's ship's agent. However, to perform the requisite service Mr Maytom entered into a contract with

[534] Benedict, pp.13–1–13–2, para.180.
[535] *Vessel Engineering and Development Corporation v Zidell (The Barge "ZPC 404")* [1989]A.M.C. 2782 at 2788 (USDC, District of Oregon).
[536] 108 US 352 (1882).
[537] 66 F. 159 (1985); see also *The Joseph F. Clinton* 250 F. 977 (1918) for a similar case.
[538] (1987) A.M.C. 2587.
[539] See also *Vessel Engineering & Development Corporation v The Barge ZPC 404* (1989) A.M.C. 2782 to the same effect.
[540] 572 F. Supp.113 (1983).
[541] Benedict, pp.13–7–13–8, para.183; see *Holbrook v Freeport Sulphur Transport Co* 300 F. 63 (1924); *The Ephraim and The Anna* 21 F. 346 (1894).
[542] 1920 A.D. 187.

the Durban Port Captain for the provision of the tug on an hourly rate payable in any event, i.e. not "no cure-no pay" terms. With difficulty the tug refloated the casualty and the agreed sum was paid. The plaintiffs (although not parties to the agreement) then claimed against the defendant for a share of what had been paid. The question arose as to whether the plaintiffs had adopted the correct course in suing the defendant (who had no interest in the res); or whether they should have brought a salvage action in the normal way. It was held that they had no right to recover anything against the defendant under the agreement because they were not parties to it. It was not a case of apportionment of a sum "finally ascertained" under s.556 of the Merchant Shipping Act 1894 (now s.229 of the Merchant Shipping Act 1995) because the "aggregate amount of salvage payable in respect of salvage services" had never been ascertained. Assuming their services were salvage services, they would not be without redress because they were entitled to bring a salvage action in the normal way.

Contract not on "no cure-no pay" basis

1–349 In *South African Railways & Harbours v Johnson Navigation Co S.A. (The Manchester)*[543] a laden bulk carrier suffered a mechanical breakdown at sea and drifted helplessly. The plaintiffs as tugowners claimed salvage; alternatively towage. The defendants disputed the first claim but not the second. The problem in the case related to an express term in the plaintiffs' standard contractual terms which, as opposed to being "no cure-no pay" terms, provided for payment whether the ship "is lost or not lost". It was held by Burger J. that in principle these terms did not preclude the right to recover a salvage award.

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Salvage service: examples

1–350 There is no definition of a "salvage service" in either the Brussels Convention 1910 or in the London Salvage Convention 1989: 1(a) of the latter Convention merely refers in defining "Salvage operation" to ". . . any act or activity undertaken to assist a vessel or any other property in danger . . .". Although no exhaustive list of what amounts to a salvage service can be given, case law provides innumerable examples.[544] The following are typical examples which arise in practice (depending on the nature of the casualty):

(1) proceeding to a casualty, finding the casualty and standing by at request;
(2) carrying out inspections and surveys (including diving surveys) of a casualty and assessing her predicament;
(3) giving advice or formulating and executing a salvage plan including making necessary calculations and bringing necessary craft, supplies, equipment and men to the scene (hiring in as necessary);
(4) pumping and making temporary repairs to a damaged ship;

[543] [1981] (2) S.A. 798.
[544] See, e.g. the list in Kennedy, pp.144–148.

Bunkers are frequently in the case of time chartered vessels owned not by the shipowners but by the charterers who provide and pay for the bunkers under the terms of the relevant charterparty. If the bunkers are owned by the shipowners, they are frequently included in the value of the ship as a matter of practice; but often, when they are owned by others, they are identified and valued separately.

3–68 In *The Silia*[104] a ship was sold by the court and her bunkers were sold with her. The plaintiff time charterers contended that the bunker oil in the ship was not part of the ship and therefore that the proceeds of the sale of that oil was not part of the fund available to creditors who had obtained judgments in rem against a ship. Sheen J.[105] reviewed the history and practice of what the court treated as part of the ship and what was not and held that if Parliament had not intended the oil in the bunker tanks of the ship to be part of the ship it would have so stated in clear language in the Administration of Justice Act 1956 (now the Senior Courts Act 1981). He held that the bunkers and the proceeds of sale thereof were part of the res and as such were available to judgment creditors in rem. On the facts of the particular case, however, it was not contended that the bunkers belonged to the plaintiff charterers but to the owners and for that reason the plaintiffs sought to enforce proceedings in personam by means of a charging order against those bunkers.

3–69 In *The Span Terza*[106] bunkers had been provided by time charterers and received on board a time chartered ship. When the Admiralty Court made an order for appraisement and sale of the ship a dispute arose as to whether the bunkers were owned by the shipowners or the charterers. The House of Lords held[107] that *possession* of the bunkers once they were on board the ship was vested in the owners as *bailees*. The owners were under a duty to procure that the bunkers were used by the master in carrying out the orders which under the charter the charterers were authorised to give. Ownership remained vested in the charterers.

The interest in the salved property

3–70 It has been recognised that there are instances where persons other than the actual owners of salved property, having benefited from its preservation, have been held liable to pay salvage notwithstanding the fact that proceedings against them could only be brought in personam and not in rem by reason of the fact that they were not the owners of the property. This topic is not considered at all in the Brussels Convention 1910. In the London Salvage Convention 1989 all that is referred so far as any interest in the salved property is concerned is to the "owner": for example in art.8(2) and 14(1).

[104] [1981] 2 Lloyd's Rep. 534; and see *The Pan Oak* [1992] 2 Lloyd's Rep. 36; *The Eurosun and The Eurostar* (1992) L.M.L.N. 341.
[105] [1981] 2 Lloyd's Rep.534 at 537–538.
[106] [1984] 1 Lloyd's Rep. 119 HL; *The Saint Anna* [1980] 1 Lloyd's Rep. 180 at 182–183, per Sheen J. to the same effect. In general average, bunkers contribute separately: Lowndes & Rudolph, p.436, para.17.38; see also *The Honshu Gloria* [1986] 2 Lloyd's Rep. 63 at 67 where Sheen J. held that bunkers, although part of the vessel, were not mortgaged under the terms of the ship mortgage before the court.
[107] [1984] 1 Lloyd's Rep. 119 at 122–123, per Lord Diplock.

3–71 In *The Owners of Cargo Lately Laden on Board the Ship Subro Valour v The Owners of the Ship Subro Valour*[108] Clarke J. in a case under LOF 1990 held that it was sufficient that the risk (though not the property) in cargo had passed from the sellers to the buyers for the buyers to be entitled under s.1 of the Bills of Lading Act 1855 to recover from the shipowners salvage they had paid to the salvors [paid though liable in respect of salvage of the cargo while it was at their risk only].

3–72 However, art.13.2 refers to "the vessel and other property interests" when it provides:

> "Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salved values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares. Nothing in this article shall prevent any right of defence."

3–73 An early example of the court awarding salvage against a person other than in his capacity as owner of the property saved is to be found in a Scottish decision, *Duncan v Dundee Shipping Co.*[109] In that case the Court of Session held that the shipowners were liable to pay salvage in respect of the salvage of cargo not belonging to them. The shipowners were common carriers and liable under the contract of carriage for the safe delivery of the goods in question. This was held by the court to be sufficient to found a liability upon the shipowners to pay salvage in respect of the salvage of such goods.

3–74 In *The Five Steel Barges*[110] the owners of a tug entered into a contract with the defendants by which the tug was to tow five steel barges from Chepstow to Portland for a fixed price. There were two men on each barge, the barges being towed in line. On two occasions some or all of the barges broke adrift in bad weather and three of the barge men were drowned. An action was commenced by the owners of the tug and her crew to recover salvage remuneration. It was held on the facts that the services which these plaintiffs had rendered were beyond what had been contemplated by the parties when entering into the towage contract and therefore the plaintiffs were not debarred from claiming salvage for that reason. Proceedings against three of the barges were brought in rem and against the remaining two barges in personam. These two barges which had been constructed by the defendants for the government had not been given into the possession of the government until after the termination of the salvage services but, under the terms of the building contract, the property in the two barges had been in the government at the time when the salvage services were rendered.

3–75 The President, Sir James Hannen, held that the right to recover salvage in personam is not confined to an action against the legal owner of the property

[108] [1995] 1 Lloyd's Rep. 509.
[109] (1878) 5 R. 742. US law recognises the liability of persons other than owners who have benefited from the salvage service (e.g. bailees and charterers liable in contract): Benedict, Vol.3A, pp.3–25–3–27, para.46.
[110] (1890) 15 P.D. 142.

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saved, but exists also in cases where the defendant has "an interest in the property saved" which interest has been saved by the fact that the property is brought into a position of safety. He held that the jurisdiction which the court exercises in salvage cases is of a peculiarly equitable character. On the facts, had the defendants not been able to deliver the barges to the government, they would have been liable in damages for non-performance of their contract with the government or liable to make restitution of instalments of the purchase price which had been paid to them in respect of those barges. In these circumstances the defendants, it was held, had an interest to the full value of the barges at the time of the salvage services and that the same moral obligation to which the law has given force in the case of the owner applies to those who have such an interest in the property.

3–76 *The Five Steel Barges* was approved by the Court of Appeal in the *Cargo ex Port Victor*.[111] In that case, a vessel, due to the negligence of her master and crew, came into collision and salvage services were rendered in returning to port. Government stores which had been shipped on board and for the safety of which charterers were responsible under contract were thereby preserved by the salvors. The salvors claimed salvage against the charterers in personam. The charterers denied that they were liable to pay salvage because they were neither the owners nor in possession of the ship or her stores. The charterers contended that they were not in the same position as the defendants in *The Five Steel Barges* because in that case the defendants were in possession of the salved barges.

3–77 At first instance the President, Sir Francis Jeune, found the charterers liable on the grounds that they had received a benefit arising out of the saving of the property and were therefore liable to pay salvage no less than the actual owners of that property. It is important to note that the President expressly declined from defining exhaustively the classes of person against whom, under various circumstances, claims for salvage might be made and did not deal expressly with the defendants' argument that the claim, as put forward, would expose such persons as mortgagees or insurers to salvage actions.

3–78 In the Court of Appeal the judgment of the President was affirmed[112] but it would seem that a different view of the facts may have been taken by the Court of Appeal. Lord Alverstone C.J. thought that the defendant charterers were bailees of the stores and held that persons who have the interest of owners in the goods by virtue of the contract they have made for the purpose of delivery of those goods have an interest for the purpose of salvage. He confined his observations to the particular case before him, namely to charterers who have received goods upon a hired ship and who were liable to replace those goods if they were lost. In these circumstances he declined to deal with the further developments which might follow as a consequence of that view.

3–79 In *The Meandros*[113] the court was faced with the converse situation where salvage services had been rendered to a ship when it was owned by a Greek company but requisitioned by the Greek Government so that possession and control passed to the Greek Government. The defendant shipowners disputed

[111] [1901] P.243.
[112] But cf. view of Dr Lushington in *The Louisa* (1863) Br. & Lush. 59 on the position of; mortgage, though the point appears to have been of a procedural nature.
[113] [1925] P.61.

their liability for salvage but it was held by the President, Sir Henry Duke, that they were liable. He accepted that any person whose interest in the salved property is real, though it falls short of ownership, may be liable in respect of salvage but the term "owner" includes all persons who are collectively or singly owners. The defendants were the owners in the true sense notwithstanding that they were out of possession and control of the ship at the material time. The salvors had conferred a benefit upon the owners in saving the ship as opposed merely to leaving the owners with a claim against the Government which had requisitioned the ship.

Charterer's liability for salvage

3–80 In the South African case of *States Marine Corporation v South African Railways & Harbours*[114] plaintiff salvors sought to recover salvage for an ocean tow of a disabled ship from the defendant charterers who were said to be in the possession and control of the ship (which was owned by the US Government). The charterers, who did not own the ship and who had no proprietary interest in the cargo, denied that they had a sufficient interest to be liable for salvage. It was argued on their behalf (successfully) that the basis of their alleged liability was not sufficiently pleaded to enable the court to grant the declaratory relief sought. De Villiers A.J.P., from whom declaratory relief was sought, reviewed the English cases such as *The Five Steel Barges*[115] and held[116] that in certain circumstances a charterer could be liable for salvage where it was proved that he had a "beneficial interest" in the salved property and who would have suffered pecuniary loss if the property had not been salved. The salvage liability in such cases is confined to the value of the interest preserved or pecuniary loss avoided by the salvage operation. He further held (p.970):

> "A ship having been successfully salved, *prima facie* the person benefiting would be the owner. If any person other than the owner is to be held liable by the salvor for the services rendered to the ship, the material facts upon which it is sought to rest his liability should be alleged. Should the charterer be sought to be held liable on the ground of the benefit received through the protection of his interest in the continued use of the vessel for the purpose, *e.g.* of earning freight, the allegation of fact necessary to support such a claim should be inserted in the [pleading] so that the defendant can plead thereto."

3–81 These cases illustrate the recognition by the court of an obligation to pay salvage where a benefit has been conferred upon a person who is not the actual owner of property but who has a real interest in the salved property amounting to less than legal ownership. The extent of this interest is not defined but clearly it seems to encompass bailees of the property and possibly persons other than bailees. It is, however, submitted that the court will probably be slow to extend the

[114] 1949 (1) S.A. 963.
[115] 16 P.D. 142 (Sir James Hannen P.).
[116] Page 966.

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classes of person liable to pay salvage even though a financial benefit is conferred. For example, a mortgagee or other creditor may receive a substantial benefit by reason of the preservation of the property, as indeed may an insurer particularly when the insured value is far greater than the actual value of the salved property.[117]

The interest in the salved property: American law

3–82 As with the English courts, the American courts[118] have found parties with a direct pecuniary interest in the salved property other than ownership liable to pay salvage. A bailee answerable for the loss of the property is liable.[119] An insurance company which for its own benefit *requested* salvage services has been held liable in personam.[120] Again, the US Government has been held liable for salvage where, but for the successful salvage services, the Government would have had to refund duty on cargo which was exposed to a risk of destruction.

3–83 An insurance company which had insured a yacht for total loss may be held directly liable to the salvors (who had preserved the yacht from total loss) on the basis the insurers had received a direct pecuniary benefit by reason of the salvors' services: *Cresci v Albany Insurance Co (The Billfisher)*.[121]

3–84 The English law authorities together with the American authorities were reviewed by the Supreme Court in *United States v Cornell Steamboat Co*.[122] Salvors had saved from destruction by fire 1,883 bags of imported sugar upon which duty had been paid to the US Government. But for the services the duty would have been repayable; or more precisely its refund would have been authorised.[123] The salvors sought an award of salvage against the US Government for having removed the danger of such loss. The court considered and approved[124] the decisions in *The Five Steel Barges*,[125] *The Cargo Ex Port Victor*,[126] and *Duncan v Dundee, etc. Shipping Co*.[127] In affirming, the salvors entitlement to salvage held:[128]

"Bearing in mind that the court held duties in this case had been actually collected, were in the hands of the Government and had been saved to it by the exertion of the salvors, who had been awarded salvage for saving the sugars upon which the duties had been collected, a strong case is presented for the allowance of salvage, which should not be lost sight of in determining the principles applicable to the situation."

[117] Edwards, *Admiralty Jurisdiction* (1847), p.185 recognised that "not every benefit done to property at sea . . . is cognizable in the Admiralty Court."
[118] For a full discussion of this topic see Benedict, Vol.3A, pp.3–24–3–27, para.46 (which has been cited with approval in the American courts).
[119] *The Public Bath* (1894) 61 F. 692; *Robert R. Sizer & Co v Chiarello Bros* (1929) 32 F. 2d. 333.
[120] *Cowles Towing Co Inc v Grain Transit Corporation, The G.L. 40* 66 F. 2d. 764 at 766.
[121] [1991]A.M.C. 146 at 147–148 (United States Court of Appeals, Eleventh Circuit). See also *Aetna Casualty and Surety Company v Eberheim* [1990] A.M.C. 2226 at 2228 (State of Connecticut, Superior Court).
[122] (1905) 202 U.S. 184.
[123] (1905) 202 U.S. at 192.
[124] (1905) 202 U.S. at 193–194.
[125] (1890) 15 P.D. 142.
[126] [1901]P.243.
[127] (1878) 5 R. 742.
[128] (1905) 202 U.S. 184 at 194–195.

3–85 Likewise, in *Tice Towing Line v James McWilliams Blue Line*[129] the English and American authorities were again reviewed. District Judge Woolsey held that bailee barge owners who would have been liable for loss of the bailed cargo (they not having the benefit of contractual exceptions) were liable to the salvors for the salvage of the cargo. He held:[130]

"A claim for salvage may be maintained *in personam* against any party whose relationship to the vessel or the thing salved is such that he might have been liable in respect of its damage or loss . . . or who, though not its owner, is benefited by its being salved, as was the case where the salving of cargo gave the United States an opportunity to impose customs duties on it."

3–86 However, it was held in *Lauro v Pennsylvania R. Co, The Cardy*[131] that a charterer is not liable to the salvor even though under the charter party the shipowner has rights over. District Judge Kennedy held:

". . . my attention has not been drawn to any case where a party has been held liable for salvage services merely because he was the charterer. . . . True enough, a charterer might be liable over to an owner for a salvage award. But I should think that he could not be held liable directly by the salvor except on the basis of special circumstances, for instance because he had requested the salvage services."

The salved value

3–87 Article 2 of the Brussels Convention 1910 simply provides, "In no case shall the sum [of salvage remuneration] to be paid exceed the value of the property salved".

Likewise, art.13.3 of the London Salvage Convention 1989 provides; "The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salved value of the vessel and other property."

It is therefore necessary to inquire how this value is to be assessed: neither convention explains this.

Time and place for assessment of salved values

3–88 Echoing the above principles, Brandon J. in *The Lyrma (No.2)*[132] held that the court in assessing a salvage award will never make an award amounting to the

[129] (1931) 51 F. 2d 243 at 246–251.
[130] (1931) 51 F. 2d 243 at 246.
[131] (1945) 64 F. Supp. 902 at 903.
[132] [1978]2 Lloyd's Rep. 30 at 33.

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against another had their anchor chains remained so entangled. In *The Port Caledonia* and *The Anna*[8] salvage was awarded to a tug against two vessels saved from an appreciable danger of collision. The same conclusion was reached by Hill J. in *The Overe* and *The Conde de Zubiria*.[9] In neither case was a reference made to the prospect of successful or unsuccessful claims being made for collision damage or the like. However, in *The Merannio*[10] (where two vessels had also been in collision) Lord Merrivale P. referred as a danger to the fact that if *The Merannio* had sunk:

> "The owners would have had the expense of removing her, or might have found themselves without either vessel or cargo, because the Port of London Authorities might have thought that the proper mode of clearing the channel was to destroy her."

Again, in *The Beatsa*.[11] Sir Boyd Merriman P. took into account as a danger the risk of the casualty colliding with a moored vessel and setting her adrift, damaging or even sinking her. Further, in *The Bertil*[12] Willmer J. took into account the danger of the casualty probably causing further damage by collision with another vessel (as well as sustaining damage).[13]

6–13 In *The Gregerso*[14] the defendants' ship grounded in a position which prevented entry to a port. The Port Authority in the exercise of its statutory power of removal towed the grounded ship clear. The claim by the Port Authority for salvage failed because the essential element in such a claim was missing, namely that of voluntariness.[15] The Port Authority were not volunteers but under a duty to exercise their statutory powers of removal. However, Brandon J. assessed the amount of salvage which would have been awarded had the claim succeeded and in so doing he bore in mind the potential liability of the defendants to third parties if the port had remained blocked.

6–14 It is submitted that notwithstanding certain difficulties in the approach adopted by the court in *The Whippingham* (and which are discussed below) that it is right for a court or tribunal to *enhance* salvage remuneration where the salvage services, in addition to removing the salved property itself from danger, prevent or minimise the risk of claims against the owner of the salved property by third parties for damage to their property. To adopt any other approach would be to ignore reality as is strikingly evident when one comes to consider cases of threatened oil pollution damage. The conferring of such a benefit should not be ignored; it may in fact be the greatest benefit conferred and the extent of potential claims may far outweigh the value of the salved property. In *The Tervaete*[16] Scrutton L.J.

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[8] [1903] P. 184.
[9] (1920) 2 Ll. L. Rep. 21 at 25.
[10] (1927) 28 Ll. L. Rep. 352 at 353.
[11] (1937) 58 Ll. L. Rep. 85.
[12] [1952] 2 Lloyd's Rep. 176 at 182.
[13] cf. also *The Empress of Australia and The Debrett* (1947) 81 Ll. L. Rep. 24; *The New Australia* [1958] 2 Lloyd's Rep. 35.
[14] [1973] 1 Q.B. 274.
[15] See Cp.1, para.1–184 et seq., above.
[16] [1922] P. 259 at 271, CA.

appears to have regarded the existence of a claim as something which in itself affected the value of the ship (as discussed in Ch.3).[17]

Third party claims as a sole danger: not allowable

6–15 Whether the conferring of such a benefit *alone* is sufficient to found a claim for salvage as appears to be suggested or implied in *The Whippingham* is at the very least open to question. This can be illustrated by considering a case where ship A is navigated negligently so as to cause ship B, a laden tanker, to take evasive action and ground giving rise to a risk of her oil cargo escaping and causing pollution damage to the property of third parties. Assume in such a case ship B is refloated by a salvor. Following the principles adopted in *The Whippingham* the award to that salvor against ship B should be enhanced to take account of the threat of claims against the owners of ship B (whether or not they could be in the end successfully resisted).

6–16 However, in this illustration ship A has suffered *no physical damage* but the salvor in refloating ship B (which with her cargo was in peril) has also removed the threat of claims against the owners of ship A. Can it be said that in these circumstances the salvor has also salved ship A and is entitled to recover salvage remuneration from the owners of ship A for such services? Certainly the salvor has conferred a financial benefit upon the owners (and underwriters) of ship A; and *The Whippingham* taken literally would seem to lend support to such a claim. However, it is submitted that it is at the very least doubtful whether such a claim against ship A would succeed: for such a benefit to be taken into account it is only as an enhancing feature and only when the salvor has preserved the salved property from some other recognised danger, such as the threat of loss of or damage to the ship against whom or whose owners the claim is made. This would of course include the danger of financial losses caused by the immobilisation of the salved property.[18]

The international conventions and third party claims

6–17 The Brussels Convention 1910[19] did not expressly contemplate the conferring of such a benefit. The point was exhaustively considered in *Westar Marine Services v Heerema Marine Contractors S.A.*[20] where District Judge Lynch considered the provisions of the Brussels Convention 1910, the English authorities referred to above, US authorities, textbooks and articles and the like bearing upon those cases. He also considered the CMI Draft Convention 1981[21] which was basically similar in the relevant respects to the London Salvage Convention 1989. In that case a preliminary point was decided as to whether the threat of

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[17] See Ch.3, para.3–130, above.
[18] As discussed in Ch.1, para.1–159, above.
[19] See Appendix 2, para.10–01 et seq., below.
[20] 621 F. Supp. 1135 (D.C. Cal. 1985).
[21] Appendix 8, below.

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claims against the owner of the salved ship in respect of that ship drifting into a bridge was a factor properly taken into account in the assessment of salvage award.[22] Judge Lynch concluded that there was nothing in the Brussels Convention 1910 or the CMI Draft Convention 1981 entitling a court to take into account such a threat of claims or the damage to third party property. He concluded that there was no ground for including such a consideration in the assessment of the award on the grounds of property interest or policy.

6–18 Nevertheless he approved of a passage from an article[23] by Sheen J. Who there referred to *The Whippingham*,[24] *The Buffalo*[25] and *The Gregerso*[26] and their impact on English law when he stated:

"It seems to me that those dicta amount to no more than this: if the circumstances are such that, if it were not for the salvage services the ship owner might find himself liable in damages to others, that fact should have some bearing upon the amount of the salvage award because it makes the service of greater benefit to the ship owner."

However, Judge Lynch noted[27] "… that the benefit to the ship owner is not currently one of the independent factors of which the [Brussels Convention 1910] allows consideration in making an award."

6–19 As discussed in Ch.1,[28] art.2 of the Brussels Convention 1910 refers both to "useful result" and "beneficial result": both expressions in the Convention appear to mean the same thing. Article 12.1 and 12.2 of the London Salvage Convention 1989 refers only to "useful result." It is submitted that underlying the whole concept of the law of salvage is the conferring of a *benefit* on the owner of the salved property. The passage from the article by Sheen J. (with which Judge Lynch agrees so far as it reflects English law) is, it is respectively submitted, correct. Notwithstanding the absence of the word "benefit" within the considerations contained in art.13.1 of the London Salvage Convention 1989, a court is nevertheless entitled generally to take into account such a "benefit" as that referred to by Sheen J.

6–20 In this context it is to be noted that in *Flagship Marine Services Inc v Belcher Towing Co*[29] meritorious salvage services were rendered to a holed tug. She had cast adrift two barges which were swept along by the current. This appears to have been a wholly "domestic" case without any "non-American" parties. It was held[30] by District Judge Aronovitz:

"While the barges themselves were in no dire danger of peril, it is difficult to comprehend how two huge free-floating barges would not present an imminent

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[22] See also Ch.2, para.2–12, et seq., above.
[23] "Conventions on Salvage" 57 Tul. L. Rev. 1387 at 1405–1406.
[24] (1934) 48 Ll. L. Rep. 49.
[25] (1937) 58 Ll. L. Rep. 302.
[26] [1973] 1 Q.B. 274.
[27] At 1143.
[28] Ch.1, para.1–348 et seq., above.
[29] (1991) 761 F. Supp. 792.
[30] (1991) 761 F. Supp. 792 at 795, applying dicta of Circuit Judge Brown in *Mississippi Valley Barge Line Co v Indian Towing Co (The tug Cherokee)* 232 F. 2d. 700 at 755 (US Court of Appeals, Fifth Circuit), another "domestic" case.

danger to all lives and vessels caught in their path. Therefore, the Court finds that the barges added to the marine peril at the scene, and should therefore be included in the consideration of a salvage award."

6–21 It may be that in American law and practice a distinction will be made between purely "domestic" cases and those where the international salvage conventions are applied; but it is submitted that it is better if such a distinction can be avoided: there appears to be no obvious merit in it. In any event, on the topic of the scope of the London Salvage Convention 1989, the CMI report[31] states:

"The draft convention deals with many matters which have not been provided for in the 1910 Convention. Nevertheless the draft [CMI] convention is not intended to set out the law of salvage in any exhaustive manner. The CMI considers that as regards certain questions the solution adopted in the various national laws on salvage differ to such an extent that the acceptability of the draft convention might be reduced if an attempt were made now to bring about international uniformity by provisions which also deal with such matters."

Accordingly, even if the prospect of damage to the property of third parties is not expressly included in the Convention, national laws may it seems be permitted to include it without there being a breach of an international obligation.

6–22 As is explained above, it is very unlikely that the threat of claims is *by itself* enough to constitute a *danger* to maritime property. If that is so, how ought one juridically to classify such an element if it is to be taken into account at all in assessing the reward? It is submitted (consistent with *The Flagship Marine* decision) that the removal by the salvor of the threat of claims against the owner of the salved property can properly be regarded albeit very generally as one of the elements showing the merit of the salvor's *services* and to that extent an enhancing feature.

6–23 However, it is further submitted that it is inappropriate in a salvage action to investigate in detail who would have been liable in damages to third parties and for how much. For example, in the case of a laden ship suffering an engine or steering gear breakdown on a lee shore, complex questions could arise as to whether third party claims ought to or would have been made against the shipowner, the engine or steering gear manufacturers or the manufacturers of some component or against repairers. Similarly, the question of whether or not the shipowner would be entitled to limit his liability, and if so to what sum, might arise.

6–24 Detailed evidence and findings directed to answering these questions are beyond the scope of a salvage action. Save in the most straightforward case where the existence of liability on the owner of salved property is self evident, all the tribunal can say is that but for the success of the salvage services claims against the owner by third party owners of damaged property would have been made and would have had to have been investigated and defended.

Environmental dangers and American law

6–25 In *B.V. Bureau Wijsmuller v US*[32] the United States Court of Appeals (Second Circuit), after reviewing the history and necessary elements of the cause of action

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[31] See Appendix 8, para.16–04, below.
[32] (1983) 702 F. 2d. 333 at 339–340.

of salvage, took into account that the discharge of the casualty's ". . . bunkers into the ocean could have had severe ecological consequences to a nearby bird sanctuary." The casualty had stranded on the Scottish coast and the court went on to state:

> "The request of United Kingdom environmental authorities that remedial action be taken to prevent such an oil spill surely should have been a matter of concern to the defendant, [the] United States, as owner of the oil aboard the stricken ship."

6–26 However, in *Allseas Maritime S.A. v M.V. Mimosa* the United States Court of Appeals (Fifth Circuit) held,[33] in the case of a casualty threatening damage to oil rigs and platforms following a collision, that:

> ". . . traditional salvage law does not reward a salvor for saving the shipowner from liability for damages to other ships, oil rigs, or other nearby property. There is considerable merit, nonetheless, in the position that salvors should be compensated for liability avoided."

The court went on, after considering the effect of limitation of liability in the particular case, to hold, "While the owner of the [casualty] might not have benefited from the avoidance of damage to third parties, the third parties surely did, and the salvor's contribution should be recognised."

Liability to pay enhanced awards: the pro rata rule

6–27 On the assumption that the salvage remuneration may properly be *enhanced* for removing the threat of claims against the owners of salved property, it is necessary to consider by whom the amount by which such remuneration is enhanced is payable.[34] The impact of this problem in the field of insurance is discussed below.[35] There is of course the well-established general rule, first, that the owners of each part of the property salved contribute to the payment of the salvage remuneration; and, secondly, that the amount that each contributes is the proportion which the value of each particular item of salved property bears to the total value of all the salved property.[36] Accordingly, if the salved value of the ship is one-third of the total salved value then the ship bears one-third of the salvage remuneration and if the value of cargo is the remaining two-thirds then the cargo pays two-thirds. This is so although the degree of danger to and benefit conferred upon one part of the salved property is greater than that of the remainder.

[33] 812 F. 2d. 243 at 247.
[34] See also Brice, "Salvage and Enhanced Rewards" (1985) Ll. M.C.L.Q. 33.
[35] See para.16–209, below.
[36] And see art.13.2 of the London Salvage Convention 1989 applying that principle at Appendix 3, para.11–50, below.

Different types of danger: *The Velox*

6–28 This general rule may be subject to one exception, namely when the danger faced by one part of the salved property is of a different type (as opposed to degree) to that faced by the remainder. As can be seen from the decision in *The M. Vatan*,[37] the existence of this exception is open to doubt. The point was first considered in *The Velox*[38] where a ship laden with a cargo of perishable fresh fish was taken in tow when adrift in the North Sea. As a result the ship and cargo were brought into port but the cargo was saved from a danger of a type to which the ship was never subject, namely a danger of total loss which danger was fairly imminent. The President, Sir Gorell Barnes, held that it was in accordance with sound principles for him to make an award separately against the ship on the one hand and the cargo and freight on the other to reflect the real danger from which the different properties were rescued. This resulted in cargo and freight paying much more than would have been the case had the cargo and freight contributed to the whole award pro rata according to salved values.

6–29 The significance of this decision in the context of the present chapter is that if the benefit conferred by the salvor includes a prevention of claims by third parties then it could be said that it is only the owners of that part of the salved property potentially subject to those claims who should pay for the enhancement arising from that benefit. In cases arising from negligent navigation this will usually be the shipowner whose servants either were or might be held to be negligent and not the owner of cargo.

6–30 *The Velox* stood unchallenged in court for some 83 years until the decision in *M. Vatan*. It is submitted that the principle which it apparently seeks to apply is decidedly open to question. In the judgment it is stated that the course adopted was "not perhaps common"; no cases were cited in support of it and such a course or practice does not appear to be envisaged in the contemporary or earlier textbooks. It is of interest to note that in *The Velox* the defendant owners of the salved ship cargo and freight were all represented by the same counsel and solicitors, all the salved property being in common ownership. The defendants had tendered a sum to satisfy the plaintiffs' claim for salvage and there was an issue as to whether or not that sum was sufficient. The plaintiffs contended that it was not and, in support of that contention, relied upon the imminent danger of total loss to the perishable cargo and the consequent loss of freight.

6–31 Therefore, in reality the parties were to a large extent concerned with the total amount payable by the defendants to the plaintiffs; it was not a case in which the owners of the salved ship on the one hand and the owners of the salved freight and cargo on the other hand were in dispute as to the proportion each should pay of the overall sum of salvage remuneration. The decision has been referred to in other textbooks without adverse comment. In *The Beatsa*[39] it was contended that the principle in *The Velox* ought to be applied by making an award wholly against the ship and no award against the cargo. However, Sir Boyd Merriman P. held that on the facts the risks were not separate and declined to apply the principle in

[37] See para.6–43, below.
[38] [1906] P. 263.
[39] (1937) 58 Ll. L. Rep. 85 at 93.