THE CONTINUED RELEVANCE OF LIMITATION OF LIABILITY IN MARITIME CLAIMS IN THE 21ST CENTURY

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Abstract
The concept of limitation of liability for maritime claims was developed to encourage investment in shipping industry when investment in that business was considered perilous and the technology for checkmating the dangers inherent in the trade was non-existent. The 20th and 21st centuries have witnessed a great deal of advancements in information and communications technology and investment in shipping industry. This paper examines the continued relevance of limitation of liability in maritime claims in today’s business environment. The authors contend that given the development of modern technologies that greatly reduce the risks inherent in maritime business, the advent of insurance and the corporate form of ownership of ships which provides ship owners with additional ways to insulate their investments from risk, limitation of liability for maritime claims should be consigned to the dust bin of history.

Keywords: Limitation of liability; Maritime claims; Modern maritime business environment.

1. Introduction
Generally, every commercial undertaking carries with it concomitant rights and obligations. These rights and obligations may be designed by the parties or stipulated by the statute governing such transaction. In the business environment, every breach of contract or tortious wrong entitles the injured or aggrieved party to a claim for damages or compensation. The amount of damages payable in each case depends on the degree of injury sustained as well as the court’s perceived intent of the contract breaker or tortfeasor, and once assessed, payment must be made in full. Limitation of liability clauses are common in all areas of contract law because of the inherent risk involved in most commercial ventures.

A limitation of liability clause is a clause in most commercial agreements that sets out the extent of responsibilities of parties to a contract in the event of breach of any of the fundamental obligations of the contract. It actually limits the amount and types of damages the aggrieved or the injured party could recover from the defaulting party.

Limitation of liability in maritime claims is the rule that allows those who are parties to the marine adventure, with particular reference to ship owners and their representatives, to limit their liability in the event of loss or injury to persons or
things caused by or on board a ship. At its inception, the concept of limitation of liability in maritime claims was aimed at encouraging investment in trade and commerce when shipping business was at its lowest ebb. Then, it was thought that limiting the liability of those involved in maritime business would encourage investment in that area of business that was considered very perilous. However, commercial law is continually evolving and with advancement in shipping technology and the development of complex maritime insurance which ensures maximum protection for all the interests involved in maritime business, limitation of liability may no longer be desired. This article therefore discusses the significance of limitation of liability in maritime claims vis-à-vis modern business environment and contends that the circumstances that gave rise to the development of limitation of liability in maritime undertaking no longer exist. The practice is no longer relevant in modern business environment and should be discontinued.

2. Historical Development of the Concept of Limitation of Liability

The concept of limitation of liability in maritime claims dates back to the 17th century. It was originally a continental European practice. The concept, as it were, allowed ship owners to cap their culpability to the cost of the ship including her consignment in the event of maritime disasters. The main policy reason behind limitation of liability for maritime claims was to encourage investment in the shipping industry and encourage trade and commerce.

Limitation provisions existed in early codes such as the Codes of Hamburg, Hanseatic Ordinances and in the Maritime Code of Sweden. Of all these codes, the most important was the French Marine Ordinance of Louis XIV which provides that ship owners shall be liable for the acts of the master of the ship but will be discharged by deserting their vessel and consignment. This became known

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2 Ibid.
3 1603.
4 1614 and 1644.
6 1681
as the French abandonment system for limitation of liability.\textsuperscript{7} In the United Kingdom, limitation of liability for maritime claims was not regulated until 1733 when Responsibility of Ship Owners Act\textsuperscript{8} was enacted following the petition of ship owners after the ruling in \textit{Boucher v Lawson}\textsuperscript{9} where the ship owner was found fully liable for the loss of a cargo of gold bullion which was stolen by the master of his ship. The RSOA allowed the ship owner to cap his culpability only in respect of theft by master or crew to the worth of the vessel and her cargo. This restricted provision was later extended in 1786 by the RSOA\textsuperscript{10} of that year to cover any act, matter or thing or damage or forfeiture done or occasioned or incurred by the said master or mariners or any of them without the privity and knowledge of such owner or owners. The Merchant Shipping Acts of 1854\textsuperscript{11} and 1894\textsuperscript{12} UK made provisions for a ship owner to limit his liability for loss of life or personal injury or loss or damage to property which took place without his actual fault or privity. Under the UK system therefore, perceived fault or privity on the part of the ship owner disentitles him from limiting his liability.

It is worth noting that the idea of permitting a ship owner to cap his liability by allusion to the value of his ship in addition to the freight which had been realised on the expedition was a continental European concept and the same was adopted by the UK. The policy consideration behind such a conception was that of apportioning risk. Thus if the cargo owner was prepared to take the risk of exposing his goods to the perilous adventure with the likelihood of losing them, the ship owner also who was prepared to put his valuable ship on the spot should equally not lose more than the value of his ship. This concept of sharing the risks of the adventure was obviously appropriate at a time when insuring this type of risk was not particularly common.\textsuperscript{13} This augured well for ship owners and propelled maritime nations around the world to adopt it in order to place their merchant mariners on the same pedestal with their foreign counterparts.

In the United States there was outright rejection of the concept of limitation of liability until the early part of the 19th century when states like Massachusetts and Maine enacted limitation of liability laws both of which were modelled on the 1733

\textsuperscript{8} RSOA 1733.
\textsuperscript{9} [1733] Cas.1 Hard 85.
\textsuperscript{10} RSOA 1786.
\textsuperscript{11} Merchant Shipping Act of 1854.
\textsuperscript{12} Merchant Shipping Act of 1894.
\textsuperscript{13} Griggs (n 5).
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English statute\(^\text{14}\) There was no federal legislation on this matter until after the Supreme Court’s decision in *New Jersey Steam Navig. Co. v The Merchants Bank of Boston (The Lexington)*.\(^\text{15}\) The ripple effect of the decision in *The Lexington* coupled with the need to put America on the same pedestal with other maritime nations propelled Congress to enact the Limitation of Liability Act in 1851.\(^\text{16}\) The original intendment of the Act was to apply only to ocean-going commercial vessels but in 1886 it was amended and its application expanded to accommodate sea-going vessels as well as vessels used on lakes, rivers, or inland navigation including canal boats, barges and lighters.\(^\text{17}\) The application of the Act was later extended to all commercial vessels on inland waters\(^\text{18}\) The Act was amended in 1935 and 1936 by the provision of supplemental limitation fund for personal injury and death claims in respect of sea-going vessels.\(^\text{19}\) The supplemental limitation fund was increased from $60 to $420 per ton in 1984 following a further amendment of section 183(b) of the Act.\(^\text{20}\)

Apart from the US and UK, other maritime nations around the world were compelled to enact their own legislation on limitation of liability because of the advantages the system brought to their ship owners. As the domestic laws of more and more maritime nations had provisions limiting the liability of ship owners, steps were taken towards international uniformity.\(^\text{21}\) The first of such effort was *International Convention for the Unification of Certain Rules Relating to the Limitation of Liability of Owners of Sea Going Vessels 1924*.\(^\text{22}\) This Convention, as expected, did not go down well with some maritime nations and only a few ratified it. The second attempt at an international unification of limitation of

\(^{14}\) Zou (n 7); See also Massachusetts Limitation of Liability Act 1818 adopted by Maine in 1821.

\(^{15}\) *The Lexington* 47 U.S (6 Hon) 344, 1 (848). The Supreme Court held the ship owner liable for the loss of a cargo containing $18,000 in gold and silver notwithstanding that the ship was totally destroyed by fire and that the contract of affreightment provided expressly that the carriage was at the shipper’s risk. The court was able to come to that conclusion because of the seemingly culpable conduct on the part of the ship owner.

\(^{16}\) Limitation of Liability Act in 1851.

\(^{17}\) Limitation of Liability Act 1886.

\(^{18}\) Zou (n 7).

\(^{19}\) Limitation of Liability Act 1935 and 1936 s 183(b) – (f).

\(^{20}\) See Limitation of Liability Act 1984

\(^{21}\) Zou (n 7).

liability came in 1957 with the Limitation of Liability Convention of that year.\footnote{The Convention on Limitation of Liability for Maritime Claims 1957 (Brussels, 10 October 1957, in force 31 May 1968).} There was great dissatisfaction with the limits set by the Limitation Convention 1957 due to inflation which necessitated the adoption of a new convention in 1976.\footnote{The Convention on Limitation of Liability for Maritime Claims 1976 (London, 19 November 1976, in force on 1 December 1986).}

Unlike the previous conventions, the 1976 Convention was successful in achieving a viable compromise. It introduced some radical changes in the form of establishing much higher limits and an almost unbreakable right to limited liability that was insurable within the capacity of the insurance market at a cost that could be met at an acceptable level. In spite of its glorious achievements, the 1976 Convention suffered the same fate as earlier conventions. It failed to incorporate a not so much orthodox process for altering the limits in the convention without summoning a conciliatory conference. It was therefore not surprising that the convention is no longer acceptable to many states. In 1996, the terms of a protocol to amend the Limitation Convention 1976 were agreed upon and became operational on 13 May 2004.\footnote{Protocol to the 1976 Convention (London, 2 May 1996, in force 13 May 2004).} The highlights of the protocol included an increase in the amount that ship owners may limit following drastic reduction in the amount allowable under the 1976 Convention, as well as the inclusion of a more convenient method of amending the amount the ship owners are entitled to limit in future.\footnote{Zou (n 7).}

1.1 Historical Justification of Limitation of Liability

The historical justification of limitation of liability invariably was to encourage investment in the maritime industry. It was thought that by limiting the liability of various entities such as owners in regard to mishaps at sea, investment in shipping would be encouraged and this would help increase the wealth and influence of the maritime nations.\footnote{Mustill, ‘Ships are Different - or Are They? [1993] Lloyd's Maritime and Commercial Law Quarterly. 490.}

Mustill\footnote{Killingbeck (n 1).} advanced some arguments as justification for limitation of liability. According to him, the general average concept of common adventure, benefit and risk makes it inappropriate for a heavy risk to be removed from one party and placed...
entirely on another. He relied on the decision in *Lawson v Boucher* 29 which was the original impetus for the concept of limitation of liability in the UK as a basis for his argument. Another argument put forward by Mustill as justification for the concept of limitation of liability was that the concept was established at a time when the value of cargo often exceeded the value of the ship. It was therefore considered unfair that a ship owner should be exposed to a risk in excess of the value of his contribution to the common adventure. The only reasonable thing in that circumstance was for each party to the common exploit to be liable to the extent of his capital involvement in the transaction. 30

Another justification for the concept is that as maritime disasters often occur without any fault on the part of the owner of the ship, it will be manifestly unfair and unjust to make the owner of the ship to pay for the entire loss to co-adventurers. It was equally believed that limitation of liability would attract investors in maritime business which in turn will assist in developing investment in shipping. It is obvious that the concept of limitation of liability goes against the basic concept in law of *restitutuo in integrum*. 31 This was aptly captured by Lord Blackburn in the case of *Stoomvaast Maatschappy Nederland v Peninsula and Oriental Navigation Company*, 32 where he stated that there appeared to be some injustice in reducing liability owed by those who are to blame to those who are not to blame. Lord Denning also agreed that there is no justice in the concept of limitation of liability in *Bramley Moore* 33 where he opined that:

The principle underlying limitation of liability is that the wrong doer should be liable according to the value of his ship and no more. A small tug has comparatively small value and it should have a correspondingly low measure of liability even though it is towing a great liner and does great damage. I agree there is not much room for justice in this rule but limitation of liability is not a matter of justice. It is a rule of public policy which has origins in history and its justification in convenience.

29 [1733] Cas.1 Hard 85.
30 Mustill (n 28).
31 Killingbeck (n 1).
32 [1882] 7 A.C 795.
33 [1964] 1 All ER 105 at 109 (CA).
Thus the major justification for the concept of limitation of liability was to promote investment in shipping which will in turn boost trade and commerce.

3. Claims within the Ambit of Limitation of Liability
Traditionally, only ship owners can limit their liability. The development of shipping business saw the extension of persons who can limit their liability to include charterers, salvors, their employees and agents as well as liability insurers. Under international conventions, the Limitation Convention 1924\(^{34}\) allowed only ship owners to limit their liability. Subsequently, with the development of shipping industry and also to overcome attempts by a claimant to circumvent the effect of limitation of liability by claiming against persons other than the ship owner such as the master or crew of the vessel, the Limitation Convention 1957\(^{35}\) extended the classes of persons entitled to limit liability to the charterer, manager and operator of the ship and to the master, members of the crew and other servants of the owner, charterer, manager or operator acting in the course of their employment in the same way as they apply to an owner himself.\(^{36}\)

The right to limit liability was further extended to salvors and liability insurers under the 1976 and 1996 Limitation Conventions\(^{37}\) as a measure to boost the salvage industry and, in consideration of the impact of insurance industry on the concept of limitation of liability.

A careful analysis of the conventions and national legislation reveal that originally, before any person could be entitled to limit his liability, such a person must have an interest in the vessel and must exercise sufficient control and management of the ship. The idea was to make sure that only parties who have a stake in the maritime adventure that can limit their liability. Thus their liability is determined on the basis of the volume of the entire vessel. However, with the evolution of the limitation regime in the shipping industry, the guiding principle has been the desire to afford the right to limit liability to all those who could incur liability directly as a result of the operation of the vessel.

It is to be noted that just as only certain categories of persons are entitled to limit their liability with regards to maritime claims, not all maritime claims are capable

\(^{34}\) Limitation Convention 1924.
\(^{35}\) Limitation Convention 1957.
\(^{36}\) Zou (n 7).
\(^{37}\) See Limitation Conventions 1976 and 1996.

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of being subject to global limitation of liability.\textsuperscript{38} In all the conventions and national legislation, there are basically three major claims prone to limitation of liability. They include claims for damage or loss to property, personal injury and loss of life which happened in transit or in straight association with the employment of the ship. The object of limiting liability for personal injury or death claims has been questioned as unjustified, irrational and unfair, but in spite of all the criticisms, the concept still holds sway in most jurisdictions of the world. However, personal injury and death claims are given preferential treatment over other claims. This invariably increases the chances for the victims to be adequately compensated.\textsuperscript{39}

3.1 Conducts barring Limitation of Liability

For any person to be able to rely on the privilege of limitation of liability, such a person must first of all fall within the categories of persons entitled to that privilege and the particular occurrence or loss must be shown to be subject to limitation of liability. There are basically two tests of conduct barring limitation as could be seen from the provisions of national legislation and international conventions. These are the old test and the new test. The old test could be found under the Limitation Convention\textsuperscript{40} and the US Limitation Act\textsuperscript{41} Under this Act and Convention, ship owners are entitled to limit their liability in respect of defined claims except where the loss or damage is a direct consequence of the definite act or privity of the owner. The Limitation Convention 1976 and the UK Maritime legislation\textsuperscript{42} reflect the new test. Under the Convention, for a person to be barred from taking advantage of the privilege afforded by the doctrine of limitation of liability, the disaster or destruction must have emanated from the exclusive act or oversight of the person and must have been done deliberately with the intention to commit such injury or carelessly knowing fully well that such loss is a direct consequence of his action. An onerous burden of establishing wilful conduct and actual knowledge on the part of the owner is placed on the claimant by the new test unlike the old test where the burden is placed on the ship owner to prove lack of actual negligence or fault on his part.

The words actual fault, privity or knowledge of the owner connotes that the ship owner or any other person relying on the privilege must have not only personally participated in the deed or misgiving that resulted in the claim but also was

\textsuperscript{38} Zou (n 7).
\textsuperscript{39} Ibid.
\textsuperscript{40} 1957.
\textsuperscript{41} 1851.
\textsuperscript{42} Merchant Shipping Act 1894 UK.
negligent in not taking appropriate steps to avert the loss or damage. To absolve himself or herself from liability, the ship owner must ensure efficient management and control of the ship at all times.

As sound as these tests may appear, they are not in themselves conclusive as the courts are always ever ready to interpret the laws as they deem fit. For as Gilmore and Black put it, the foregoing tests have been described as empty containers into which the courts are free to pour whatever content they will, due to their lack of convincing and consistent methodology for the legal interpretation. The U.S. judiciary has been very hostile to the limitation regime and the courts are always eager to deny this privilege to those entitled by applying these tests.

3.2 Calculating the Quantum of Damages under Limitation of Liability

Two systems exist for calculating the quantum of damages under limitation of liability, namely calculation based on the value of the ship and calculation based on the tonnage of the ship. The value-based system was developed originally to boost investment in the risky business of shipping by ship owners. The system limited the liability of the ship owner to the tune of the value of the vessel whatever remained of her after the casualty plus the freight earned on the voyage. This has since remained the European continental mechanism for limitation of liability predominantly noticeable under the French abandonment scheme and German maritime lien.

The tonnage system which was originally developed in the UK was used for the computation of the limitation fund. The value of the ship in addition to the freight earned on a particular voyage was used as a basis for allowing owners of vessels for limiting their liability with regards to certain types of claim by the RSOA. However, the English version of limitation unlike its European continental predecessors used the pre-casualty value of the vessel as the basis for calculating the limitation fund. The Merchant Shipping Act of 1854 introduced the calculation of limitation fund according to the capacity of the ship and a base of fifteen pounds each for the capacity of the ship was set as a limit for claims relating to personal injury. As expected, the Merchant Shipping Act was amended in 1894 and while retaining the set limit of fifteen pounds for personal injury claims, it set a limitation amount of eight pounds per ton for damage claims. Also incorporated

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44 Zou (n 7).
45 The Merchant Shipping Act of 1894.
into the Act were claims relating to loss or damage to property and loss of life. The value of the vessel was thence removed as the upper limit for calculating limitation thereby marking a departure of English law from the calculation of limitation of liability based on the worth of the vessel. Ever since then, all the subsequent limitation legislation in the UK has been based upon the tonnage system.  

In the U.S, the pre-casualty worth of the vessel was used as a basis for computation of the earliest forms of limitation of liability for maritime claims. A federal law was enacted in 1851 which made it possible for a ship owner’s liability to be computed based on the post casualty worth of the vessel in line with what was obtainable in continental European nations. This Act was later amended in 1936 to provide for calculation of limitation of liability based on the tonnage of the vessel. Calculation based on the tonnage of the ship has been adopted at the international level by the limitation Conventions. But whereas the 1957 Convention provided that limitation should be computed in accordance with the worth of the vessel and her shipment, the 1976 Convention focuses on what insurance coverage is available at reasonable cost. Another distinguishing feature in the conventions is that while the 1957 Convention established a flat rate for individual scores of the ship’s capacity, the 1976 Convention provides a sliding scale with various layers of limitation depending on the vessels tonnage. The tonnage system has been adopted by most maritime nations of the world. This is because of the obvious advantageous nature of the tonnage system to claimants which often provide higher limits than the value based regime where claimants run the risk of almost not getting anything in the event of serious destruction of the ship.

4. Continued Relevance of Limitation of Liability in Modern Maritime Business Environment

There can be no doubt that the doctrine of limitation of liability was used in the shipping industry as a commercially practicable device by which the risk of a maritime disaster are reasonably apportioned and individuals with limited assets other than their vessels are encouraged to invest money in the development of the national merchant fleet. This concept flourished at that time because the business of shipping was regarded as a low investment which needed a lot of encouragement.

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46 Zou (n 7).
47 Limitation of Liability Act 1851.
48 Limitation of Liability Act 1936.
49 Zou (n 7).
50 Ibid.
Today, one wonders if those original justification that gave impetus to the doctrine can still be justified in the face of modern advancement in technology that ease trade and commerce, complex maritime insurance that affords greater protection to the parties in maritime adventure and the latest form of incorporation of companies in which the corporation is distinct from its members.

Opinions are sharply divided as to the continued relevance of the doctrine of limitation of liability in contemporary oceangoing business environment. On one divide are proponents like

Buglass,^51^ Rein,^52^ Starring,^53^ Hughes,^54^ Steel,^55^ and Zou^56^ who believe that there is no going back on the doctrine of limitation of liability. They put forward several reasons why the doctrine should not be consigned to the dust bin of history in the maritime industry. Steel^57^ for instance posit that in as much as the original consideration for limitation of liability was to encourage trade and commerce but there appears to be a shift from invigorating commerce and sustaining the growth of shipping to that of capping potential insurance pay-outs. Insurability and cost of insurance was put forward as the basis for the argument in support of the continued application of the doctrine. Continuing, Steel^58^ posits that the suspension of limitation of liability will persuade owners of ship to seek habits that are detrimental to the industry and probable claimants, generation of activities such as self-insurance because insurance companies will want exorbitant premiums or may not be willing to insure certain classes of risk. Moreover, vessels are likely to be reduced to one ship companies to avoid claims against an owner’s other assets and there will be increased freight rates due to increased insurances and coverage for claims against shipping organisations would probably also occur.^59^ Steel is of the strong opinion that limitation of liability still has a place in the contemporary

^56^ Zou (n 7).
^57^ Steel (n 55).
^58^ Ibid.
^59^ Ibid.
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maritime industry for the following reasons: to persuade global venture in the business of shipping and insurance underwriting; it helps to promote a level playing ground for international competition by exposing all those involved in the business to the same degree of risk in what is a universal business; it gives some measure of comfort to insurance companies by having their exposure to risk limited and generates a steady and disciplined path for claimants and discourages an unhealthy approach to litigation which is most likely to result to an irreconcilable system of settlement. Steel concludes by saying that the best thing for victims of maritime disaster is limitation of liability because a limited claim that is certain in payment is best, the alternative being unlimited claims against potentially insolvent parties. Steel’s arguments were supported by Donaldson Report which while supporting limitation of liability for maritime claims recommended more stringent measures in terms of safety and accountability. He noted that limitation of liability could never be a solution to getting ship owners to exercise due diligence in the maritime adventure. Instead, other people involved in the business of maritime should exert influence on owners of ship to take necessary precautions relating to safety such as encouraging insurance companies to insure only those ships that comply with minimum standards. Donaldson’s proposition aligns with Steel’s contention that unfettered liability will not strengthen enhanced shipping measures but, in fact would, galvanize capricious behaviour by ship owners.

Another major argument put forward in support of limitation of liability is that it gives room for permanent insurance with generous remuneration reassuring settlement and discouraging forum shopping.

Zou has equally advocated for the retention of the doctrine of limitation of liability. He opines that obtaining insurance coverage for claims which are not protected by limitation of liability will be cumbersome. The concept of insurability was recognized as a viable foundation for limitation. The author summed up his position by stating that abolition of the right to limit is not a realistic solution. The cost of the resulting uncertainties to claimants seems to be an overriding concern.

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60 Ibid.
62 Ibid.
63 Killingbeck (n 1).
64 Ibid.
65 Zou (n 7).
Limitation of liability accords with commercial reality and allows some certainty in calculating the risks involved for the provision of insurance.

Another author who has canvassed for continued application of the doctrine of limitation of liability is Buglass. For him, the principle of limitation of liability is of high importance to the insurance industry who rely heavily on it. Most Marine liability policies are couched on the universal assumption that owners of ship have the right to limit their liability and that such a gesture will be indirectly beneficial to underwriters.

Similar to Zou’s contention that withdrawal of limitation of liability will impact greatly on insurance costs, Rein also agrees that limitation of liability increases the facilities for getting adequate insurance and reduces the costs of such insurance. Starring has equally stated that another reason for continued retention of the doctrine of limitation of liability is the procedural aspect in the limitation actions. In the limitation proceedings all claims are brought together against the same limitation fund so an equitable tonnage can be achieved. The right to have one court using one law and one procedure to hear all claims arising from the casualty is another important consideration for supporting the right to limit in the long run.

On the other side of the divide are the US judiciary and proponents like Lord Mustill who believe that limitation of liability is no longer relevant in the current economic and business environment and have advanced some arguments in support of their contention. For Lord Mustill, there has been a lot of technological advances in modern day business environment which were not there when the concept of limitation of liability was developed and as such, the concept may no longer be relevant. The fact that shipping organisations should be encouraged to remain in the shipping business should not be the ultimate consideration why the concept should be retained. The political impetus that gave rise to the development of the concept following from the decision in the Amalia obviously can no longer stand the test of time. The politicians at that time succeeded in using the concept to favour their allies under the guise that there was need to develop international trade. Mustill quarrels with the indiscriminate manner in which the doctrine of limitation of liability is practised. He notes that the different yardstick used for the application of the doctrine, has made it somewhat unjustified and out of place in modern times.

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66 Buglass (n 51).
67 Rein (n 52).
68 Starring (n 53).
69 Hughes (n 54).
70 Mustill (n 28).
business environment. Although the business is favourable to insurers who are able to spread their risks to maintain an epileptic regime, and to as much as possible cap their exposure to risk that should not be a universal standard for sharing risk. Clearly, the brunt is borne by the aggrieved parties who suffer unjustly from the maintenance of such a culture.

Finally, Mustill\textsuperscript{71} questions the unsatisfactory manner in which the doctrine is practised. He notes that so long as the doctrine is not generally applicable to all those exposed to the risk of maritime adventure, the doctrine leaves much to be desired.

The American judiciary equally thinks that limitation of liability is no longer relevant in the contemporary business environment and has consistently shown manifest antagonism to the continued application of the doctrine. In *Maryland Casualty Co. v Cushing*,\textsuperscript{72} for instance, the court held that judicial expansion of the Limitation of Liability Act at this date seems especially inappropriate. Most of the circumstances prevalent in the shipping industry that necessitated the US Congress in 1851 to enact the Act no longer abound. Similarly in *Baldassano v Larson*,\textsuperscript{73} the court held that it might well be that the greatest beneficiaries under the Act today are not as was intended, ship builders and owners but rather insurance companies who are able to collect full premiums while limiting their liability to the value of the vessels. Equally in *Complaint of Hercules Carriers Inc. v Claimant State of Florida*,\textsuperscript{74} the court held that the Limitation of Liability Act is an antiquated statute, it is time for Congress to re-examine the policies which led to the legislation. In *Keys Jet Ski Incorporated v Keys*,\textsuperscript{75} the court made it clear that its parliamentary status is responsible for its continued support for the doctrine of limitation of liability. The doctrine of limitation of liability is best interpreted as an anachronism running counter to the proper and prevalent policy of ensuring full recovery.

We align ourselves with the views expressed by the US judiciary and Mustill above and contend that limitation of liability has outlived its usefulness and can no longer be justified in the modern business environment. The newest trend in technology which has improved businesses tremendously, the ever growing insurance schemes

\textsuperscript{71} Ibid.
\textsuperscript{72} 347 U.S 409 (1954).
\textsuperscript{74} 768 F. 2d 1588 (11th Circuit 1985).
\textsuperscript{75} F. 2d 1235 (11th Circuit 1990)) at 1228-29.
that afford maximum protection to all the parties and the concept of companies having distinct personality from the individuals who constitute it have made it possible for investors in companies to be liable only to the extent of their investment and that being the case, it is no longer the case as used to be that a maritime investor will lose all his investment in the event of a maritime mishap. The business of shipping has evolved and it is still evolving. If decision makers of past centuries had envisaged the modern shipping world, large scale maritime adventures involving many parties beyond just a single owner risking all his life savings every time a ship sailed, modern insurance arrangements and communication technology that enable comprehensive protection and constant contact with ships and their cargos they would definitely not have enacted legislations limiting liabilities of ship owners and their representatives. Moreover, the fact that the concept is applicable only to shipping industry makes it somewhat unfair. Other means of transportation of goods and services are equally exposed to the same type of risk as marine transport. There is therefore no reason why the doctrine should continue to apply to maritime business. Besides, the evolution of liability insurance has to a reasonable extent ameliorated the burden hitherto borne by ship owners alone. The objective underlying limitation today should be more inclined towards fairness to claimants and establishing adequate and reasonably priced insurance for the ship owner.

5. Conclusion
The foregoing discourse has demonstrated that the concept of limitation of liability as originally contrived is no longer justifiable in modern business environment. The business of shipping is now a fully developed area with modern insurance and technological advancement that aid navigation and affords maximum protection. Besides, companies are now run in such a manner that no individual member of the company is liable for all the debts of the company except as remaining unpaid when a call is made upon him. The implication therefore is that the original justification for the concept has been dissipated. The current economic climate is such that governments should be more concerned with ensuring that businesses are made more accountable to the society they serve. To this end, government should see to it that there is a correlation between the quantum of compensation paid by the defaulting party and the level of damages sustained by the injured.