Flaws In the Maritime Carrier's Liability Rules for Passengers Under the Qatari Law: A Need for Reform - A Comparative Study

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Abstract

Maritime Law No. 15 of 1980 (QML) regulates the international and national maritime carriage of passengers in Qatar. It is considered the principal source of law in this regard. That is because Qatar did not ratify the international treaties that regulate the maritime carriage of passengers and the Qatari Trade Law No. 27 of 2006 (QTL) expressly excluded maritime carriage from its application. However, there are flaws in the QML in addition to contradiction in some provisions, expressly the rules of liability limitation of the carrier. In addition, there are oversights in the QML regarding some important rules causing uncertainty in the maritime industry. This article provides an analytical comparative approach to analyse these flaws and oversights in the QML and makes some recommendations to rectify them. The following amendments are recommended. First, the QML should revisit the rules that govern the liability of the shipowner and the carrier in order to eliminate the contradiction between them. It is also recommended that the QML adopts a regime of limited liability in the carriage of passengers by sea and implement the advanced payment in cases of passenger injury or death. Further, new provisions regarding the performing carrier and the compulsory insurance scheme should be introduced by the new QML. Establishing an obligation on the carrier to provide the passenger with proper and understandable information on the liability rules in the carriage contract has become essential in such contracts. Finally, the author also recommends that Qatar ratifies the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL2002) and the Convention on Limitation of Liability for Maritime Claims (LLMC), which will have a practical positive impact on the international maritime carriage in Qatar.

Keywords: Maritime Carrier; Limitation of Liability; Shipowner; Carriage of Passenger; Qatari Law

I. Introduction

The State of Qatar enjoys important maritime location halfway between Europe and Asia. Hamad port, which is one of the largest and most advanced ports in the Middle East, is Qatar's entrance point to international shipping to and from more than 150 maritime destinations across the world(1). The Qatari Ministry of Transport acknowledges the commitment of the maritime transport sector to its development and modernization. It aims to retain 'a close relationship with the International Maritime Organization (IMO) and runs constant reviews of national legislation to ensure their compliance with relevant international legislation in the best interests of the State of Qatar'(2). To this end, Qatar participated in several maritime international events and ratified several international instruments. However, Qatar did not ratify the international conventions related to the maritime carriage of goods and those of passengers(3).

In particular, Qatar did not ratify(4) the 'Limitation of Liability for Maritime Claims Convention (LLMC)'(5) nor it ratified the 'Athens Convention (PAL1974 and PAL2002)'(6). Therefore, the maritime carriage of passengers in Qatar is mainly governed by the Qatari Maritime Law (QML)(7) and its provision would apply to all types of carriages including the international carriage and the local one(8).

(1) For more information on the strategic location and the maritime ports in Qatar, see the website of the Qatari Ministry of Commerce and Industry at: https://investor.sw.gov.qa/wps/portal/investors/home/why-qatar/why-qatar-details/strategiclocation/, last accessed 23/07/2022.

(2) https://www.motc.gov.qa/en/sectors/maritime-transport, last accessed 23/07/2022.

(3) For more details of the conventions Qatar has ratified, see the governmental website (AlMeezan) at the following link: https://www.almeezan.qa/AgreementsBySubject.aspx.

(4) For the list of state parties to this convention, check: https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx, last accessed 17/07/2022). However, in 1981 Qatar ratified the International Convention for the Safety of Life at Sea, 1974 (SOLAS), https://treaties.un.org/Pages/showActionDetails.aspx?objid=080000028016b2b3&clang=_en, last accessed 20/07/2022. For information on the Categories of the Conventions Adopted by the IMO, see Talal Aladwani 'International Maritime Organisation Conventions as Incorporated under Kuwaiti Law' (2019) 33(4) ALQ 360.

(5) The Convention on Limitation of Liability for Maritime Claims (hereinafter will be referred to as LLMC1976), entered into force 1986. It was amended by Protocol of 1996, which entered into force in 2004. The latter was amended in 2012 and entered into force 2015.

(6) Athens Convention relating to the carriage of passengers and their luggage by sea, 1974. Concluded at Athens on 13 December 1974 (hereinafter will be referred to as PAL1974) and entered into force 1987. It was amended by Protocol 2002, which entered into force 2014 (hereinafter will be referred to as PAL2002).

(7) For more details on the QML, see O›Brien Glenn, 'Maritime Law in the State of Qatar' (Law Update 2006, 179, 15).

(8) The Maritime Law number 15/1980 regulates the maritime carriage of passengers.

In its regulation of the maritime carriage of passengers, the QML encountered flaws, oversights and contradicting provisions. This article will provide an analytical study to those provisions aiming at making some suggestions to rectify such flaws. The focus of this research will be the QML and other Qatari laws such as the Qatari Trade Law (QTL)([9]). Despite the fact that the QTL, which established detailed regulations of the contract of carriage of passengers, expressly excluded maritime carriage from its application([10]). Nonetheless, this article will refer to the QTL provisions as a kind of comparison between its provisions and those in the QML. As a result, in case of a lack of provisions, the general rules of liability under Qatari civil law would apply to the maritime carriage.

This article provides an analytical comparative study of the Qatari rules governing the maritime carriage of passengers. The compassion will focus on the maritime carriage in the Qatari civil law and the international conventions.

The objectives of this article are the following:

- Identifying the contradictions between the provisions governing the maritime carrier's liability and the liability of the shipowner.
- Analysing the oversights in the provisions governing the maritime carriage of passengers.
- Highlighting the abstracted rules of the shipowners' liability.
- Providing suggestions and recommendations to rectify the omissions and contradictions in the rules governing the maritime carriage of passengers under the QML.

This article is divided into four parts. Part I is the introduction. Part II distinguishes between the shipowner and the carrier as mentioned in the QML and discusses of the nature of the liability of the carrier arising in the maritime carriage of passengers. Part III analyses the oversights and inconsistencies in the provisions governing the maritime carriage of passengers. It focuses on analysing the limitation of the liability of the maritime carrier under the QML

(9) Law No. 27 of 2006 Promulgating the Trading Regulation Law (hereinafter will be referred to as QTL). Chapter three in articles (165-232) of QTL regulated the carriage contract. It provided specific sections to regulate the contract of carriage of goods, the contract of carriage of passengers, agency commission for carriage and the contract of carriage by air.

(10) Article (166) of the QTL provides that: 'With the exception of maritime transport, the provisions stipulated in this chapter shall apply to all types of transport, regardless of the capacity of the carrier, considering provisions stipulated by special laws regarding some types of transport and provisions of international transport agreements to which the State is a party.

and emphasises the abstracted rules overlooked by the QML concerning the carriage of passengers by sea. The final part provides the conclusion.

II. The regime and the basis of liability in the passenger maritime carriage under the QML

To analyse the maritime carrier's regulations, it is necessary to examine its nature, basis, the potential of exempting the carrier from liability through an agreement with the passenger, and ultimately, the period of the liability of the carrier. However, it is important to distinguish between the carrier and the shipowner in order to examine the different rules of the QML that regulated them.

A. The carrier v. the shipowner

In the maritime contract of carriage, the passenger(11) and the carrier are the parties to the contract. Maritime carriers might be the shipowner, the charterer or the person who is managing the vessel. The QML provided different rules of liability for the carrier and the shipowner and some of these rules contradict each other, which will be discussed below. Hence, this article will try to draw a distinction between the carrier and the shipowner. The QML defined neither one of them, the carrier nor the shipowner. Linguistically, the carrier is defined as 'an individual or organization engaged in transporting passengers or goods for hire'(12). The shipowner is the person or entity that owns a ship. The QML did not define the contract of maritime carriage of passengers.

However, the QML defined the carriage of goods by sea contract as the contract whereby the carrier, shipowner, the operator of the ship, and the charterer(13), undertake to transport goods on a ship to a particular port. Clearly, article (143) extended the status of the carrier to the shipowner creating complications in applying the rules of liability to the shipowner when he is acting in the capacity of the carrier. In cases where the shipowner is the carrier, which rules would apply to him, rules governing the shipowners' liability or those governing the carriers' liability? As this article will discuss below, there are significant differences between the rules regulating the shipowner's

(11) The passenger was defined by article (1) of the Amended Athens Convention to be 'any person carried in a ship: (a) under a contract of carriage; or (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods not governed by this Convention'.

(12) https://www.merriam-webster.com/dictionary/carrier, last accessed 29/07/2022.

(13) Article (143) of the OML. It is worth noting that it refers to the charterer without specifying whether he is a demise charterer, the person who takes over the vessel, controls it, and is in charge of overseeing the vessel›s operations and providing the master and crew, or the time and voyage charterers.

liability and those regulating the liability of the carrier.

The author's opinion is that in cases where the carrier is the shipowner, the rules that must be applied are those governing the carriers' liability as these rules are specifically intended to provide provisions governing the liability of the carrier.

B. The basis of liability of the maritime carrier in the carriage of passengers:

Most transportation laws and conventions, in order to protect passengers and create a balance between the parties to the carriage contract, deviate from the general rules of liability that is based on fault to the liability where the fault is presumed to the strict liability. QML is no exception and created a strict liability regime for the maritime carrier in cases of delay, injury and death of the passenger(14).

The liability can be escaped only if the carrier proves the external or irrelevant cause according to article 179 of the QML. The onus of proof is on the carrier to demonstrate the external cause. External cause includes the negligence or the wrongful acts or omissions on part of the passenger and contributed to the damage in addition to the force majeure and acts of third parties(15).

However, the QML did not determine how to divide responsibility between the parties if more than one cause contributed to the injury or death. Regarding the nature of the shipowner's liability, the QML did not specify it. Therefore, the general civil liability rules would regulate these issues. In deciding the liability of the shipowner, the Cassation Court its decision(16) applied the tort liability rules under the Qatari law on the shipowner for the death of a passenger. Under tort liability(17) that were established by the Qatari Civil Law (QCL), the claimant has to prove fault as an element of the liability of the ship owner.

The issue of statute of limitations in tort, which is three years, was also discussed by the parties in this case. It is not clear why the court relied on tort liability and not on contractual liability. Taking into consideration that the case involved the death of a *passenger* and therefore, a carriage contract must have

(14) Article (179) of the QML.

(15) See article (204) of Law no: 22 of 2004 Regarding Promulgating the Civil Code (Qatar).

(16) Decision number 304 / 2015, the Court of Cassation/Civil and Commercial Department (Qatar). More details of this case will be discussed below in this research.

(17) Article (199) of the Qatari Civil Law provides that 'Every fault that causes harm to another obliges the one who committed it to pay compensation'.

existed making the contractual liability a better source of liability. Obviously, basing the liability of the carrier on the QML provisions is a better choice for the passenger than basing it on the general rules of liability under the QCL tort or contract rules. On an international level, the claimant must establish the incident that produced the injury, the location of its occurrence, and the scope of the loss or damage in order for the marine carrier's culpability under the PAL1974 to be established.

The carrier, on the other hand, may refute its negligence or fault, as well as that of his servants or agents during the course of their employment(18). The PAL2002 amended the basis of the maritime carriers' liability. It distinguished between the cases resulting from shipping incidents(19) and those not resulting from shipping incident. Besides, it provided two-tier liability systems, less or more of 250.000 units of account(20).

For losses up to 250.000 units of accounts, the liability is strict where the carrier can escape liability if he provide evidence that the shipping incident 'resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or was wholly caused by an act or omission done with the intent to cause the incident by a third party(21). If losses exceed 250.000 units of account or if the loss did not result from a shipping incident(22), the carrier's liability is a presumed fault liability where the liability of the carrier is presumed unless the carrier disproves(23) his fault and provides evidence that the incident that caused the loss occurred due to circumstances beyond his control(24).

(18) Article (3) of the PAL 1974.

(19) Article (3/5) of the PAL2002 provides that the "'shipping incident' means shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship".

(20) According to article (9) of the PAL2002, the Unit of Account is 'the Special Drawing Right as defined by the International Monetary Fund'.

(21) Article 3 of the PAL2002.

(22) For more analysis of these provisions and the definition of shipping incident and the burden of proof, see Mohamed Salem Abu Elfaraj, 'The Basis and Limits of the Maritime Carrier›s Liability: An Analytical Study of the Athens Convention relating to the carriage of passengers and their luggage by sea (2002)' (2019) Al-Manar Review for Legal and Political Studies and Research Vol 3 (1), 1-49, p 9-15. The full article is available at: https://www.asjp.cerist.dz/en/article/195362, last accessed 27/09/2022.

(23) Under the PAL 2002, the burden of proof is on the shipowner is cases of shipping incidents and on the claimant if the injury did not result from a shipping incident. Id, p. 16-17.

(24) Article (3/1) and (3/2) of the PAL2002.

C. The validity of contractual terms to exempt maritime carriers from liability

Under the QML, the maritime carrier is prohibited from exempting himself from liability in cases of the passengers' injuries or death and any clause to this end is considered null and void(25). Regarding the exemption of maritime carriers from liability in delay cases under the QML, the situation is not clear because unlike the liability of the maritime carrier in cases of death or injury, the law was silent.

One may question the absence of such provision. Did the QML intend to leave the issue for the general rules to regulate it? Regarding the QTL, it allows the carrier to exempt himself from liability resulting from delay and 'material losses' provided that the exemption clause is written, and the carrier explicitly informed the passenger of this exemption(26). The term 'explicitly' in this article opens the door for speculation. Is it enough to insert such a term in the carriage contract or does it require specific notification to the passenger?

The author believes that it is not enough to insert a written notice in the contract of carriage relieving the carrier from liability for delay, in order to fulfil the condition. The QTL must be requiring more than that, for example, a special notification to the passenger to this effect.

D. The period of the liability of the maritime carrier in cases of passengers' injuries

An oversight in the QML is determining the period of the liability of the carrier for injuries to the passengers. If the injury to the passenger occurred in the port of departure or while he/she is under the supervision of the carrier in the waiting area, will the carrier be liable for such injury, or his liability starts only from the time the passenger boards the ship? Article 200 of QTL decided that the carrier is liable to the safety of the passenger when the latter boards the means of transportation until the time he disembarks.

In addition to that, under the QTL there is a general obligation on the carrier for the safety of the passenger in the waiting area in preparation for the implementation of the transport. According to PAL1974, the carrier is responsible for the passenger's death or personal injuries 'if the incident which caused the damage so suffered *occurred in the course of the carriage'*(27).

(25) According to article (179) of the QML.

(26) Article (203) of QTL.

(27) Article (3) of the PAL1974.

Obviously, the terminology used in the PAL1974 is more favourable to the passengers because it extends the duration of the liability of the carrier to cover all activities related to the carriage. Indeed, the carrier would have control over such activities and would be logical to be liable for incidents occurring during such activities.

III. Oversights and inconsistencies in the Liability rules for passengers under the QML

The QML has regulated the maritime carrier's liability for passengers in chapter 4 articles (168-183). Most of these articles provided detailed rules relating to the ticket, travel fare and the carriage contract. However, it did not provide satisfying rules regarding the liability of the carrier. In the following, the paper will explore the omissions and the contradictions of the liability of the carrier under the QML.

A. Liability limitation for passengers by sea

The general rules of liability require that the loss is fully compensated(28). The term used to refer to the right to full compensation can be, *Restitutio in integrum*, which denotes 'the remedy of rescission of a contract where the aim is to return the parties to the position they would have been in if the contract had never existed'(29). Some industries, in order to evolve and help thrive the economy, deviated from this general principle by adopting the limited liability principle. Limitation of liability was invented to encourage maritime commerce, as the maritime carriage was a dangerous and risky endeavour, which may discourage investors and owners of ships from participating in maritime trade(30).

It permits the limitation of the shipowners' liability and was originally devised to promote the shipping industry(31). The carriers and other stakeholders in the maritime industry in order to calculate the risk and achieve certainty and

(28) For more details of this rule, see Abdul Razeq Al-Sanhoury, *The Theory of Commitment in General Description*, (Dar Al-Nahda Al-Arabia, 1952), 777, see also Suleiman Morcos, Civil Liability in Arab Laws, (Dar Al-Nahda Al-Arabia, 1971), 81.

(29) For thorough information on the history of limited liability, see Harris R, 'A New Understanding of the History of Limited Liability: An Invitation for Theoretical Reframing' (2020) 16 Journal of Institutional Economics 643,

(30) Tim Akpinar, «Defeating limitation of liability in maritime law: an anachronistic law can still prevent fair recovery for plaintiffs who suffer losses on the waves.» *The Free Library* 01 February 2006. 22 July 2022 <https://www.thefreelibrary.com/Defeating limitation of liability in maritime law: an anachronistic...-a0142569181>, last accessed 22/07/2022.

(31) William Tetley, 'Shipowners› Limitation of Liability and Conflicts of Law: The Properly Applicable Law', (1992) 23/4 J. Mar. L. & Com. 585-606.

predictability of results in the maritime industry desire the doctrine of liability limitation. The English Parliament was the first to pass a statute limiting liability in 1734, and the U.S.A. followed it in 1851[32]. The international community recognized the significance of unifying the liability limitation in the international maritime sector. To this end, three international treaties were organized by the CMI[33] (1924, 1957, and 1976) to provide a more consistent system of liability limitations between maritime countries[34].

Currently, the main international system governing shipowners' limitation of liability is the 1976 'Limitation Convention on Limitation of Liability for Maritime Claims'[35]. Understandably, obtaining a marine insurance would benefit indirectly the underwriters[36] and would provide the shipowners with an extensive protection against losses incurred in the ordinary course of shipping[37]. If the doctrine of liability limitation is not applied, the shipowners would certainly see a huge increase in the insurance prices or insufficient coverage[38].

Similar to most maritime laws around the world, the QML allowed the shipowner to limit his liability for several losses including the death or injuries of passengers. However, the QML rules concerning the liability limitation

(32) Madeline Burke, 'Duck and Cover: The Gross Attempts of Limiting Liability in the Titanic, Deepwater Horizon, and Table Rock Lake Accidents' (2019) Journal of Maritime Law & Commerce, Vol. 50, No. 4, 379-405, p 379. The 1851 Act enables the shipowners to limit their liability to 'the value of the vessel after the occurrence of the incident and any unpaid freight', which may result in zero damages if the vessel sank, and the freight was paid in advance. The scenario occurred 'when a duck boat operated by Ride the Ducks sank on Table Rock Lake in Missouri killing 17 people in 2018'. *For more information on the maritime carrier limitation of liability, see Hon. Thomas A. Dickerson, Panel Six Admiralty Law: The Cruise Passengers' Rights & Remedies 2016*, Appellate Division, Second Department Brooklyn, NY, https://nysba.org/NYSBA/Meetings%20Department/Section%20Meetings/TICL/TICL%202015%20Fall%20Meeting/Panel%206.pdf, last accessed 22/07/2022.

(33) The name of this organization is the "Comité Maritime International." It is an international, non-governmental, not-for-profit organization that was founded in Antwerp in 1897 with the goal of aiding in the unification of maritime law. For more information on this organisation, see: https://comitemaritime.org/about-us/.

(34) For more information on the history of the maritime limitation of liability, see Madeline Burke, 'Duck and Cover: The Gross Attempts of Limiting Liability in the Titanic, Deepwater Horizon, and Table Rock Lake Accidents' (2019) Journal of Maritime Law & Commerce, Vol. 50, No. 4, 379-405,

(35) Convention on Limitation of Liability for Maritime Claims, Nov. 19, 1976, 1456 U.N.T.S. 221.

(36) Leslie J. Buglass, 'Limitation of Liability from a Marine Insurance Viewpoint', 53 Tul. L. Rev. 1364, 1368 (1978).

(37) Edward T. Hayes, 'In the Wake of the M/V Bright Field: A Call for Abandoning the Shipowner's Limitation of Liability Act', 44 Loy. L. Rev 135, 136 (1998).

(38) Leslie J. Buglass, 'Limitation of Liability from a Marine Insurance Viewpoint', 53 Tul. L. Rev. 1364,1368 (1978), 1394.

principle, are abstracted and there is a need for more details to eliminate potential disagreements between the parties to the contract of carriage. In addition, to the flaws and oversights in the limitation rules in QML, there is a contradiction in its limitation of liability provisions. This issue will be discussed as follows.

B. The QML oversights in regulating limitation of shipowner's liability

The QML established rules on the cases where the shipowner does not benefit from the liability limitation rules, the rules of calculating the limits of the liability, and determining the persons who may benefit from this limitation. The main rule was established by article (68) of the QML, which states that: 'The shipowner may limit his liability to the extent indicated in Article (71) with respect to obligations arising from any of the following reasons: (a) The death or injury of any person on board the ship with *the intent to transport him*'(39).

Undoubtedly, article (68) provided abstracted rules of liability limitation. As the liability limitation is considered a departure from the general principles of civil liability, they must be regulated in clear terms leaving no room for construction. Ambiguity increases disputes and might be interpreted against the benefit of the party who established it.

First, article (68) permitted the shipowner to limit his liability for injuries to any individual on board the ship '*with the intent to transport him*'. Why did the law rely in this article on such vague phrase '*intent to'* rather than on the existence of the carriage contract? Using such wording and relying on intentions, which are difficult to be proved in many cases, would create confusion when applying article (68) of the QML.

The confusion also arises by referring to the passenger as any individual on board the Vessel with the intent to '*transport him'*. Why did the QML use this phrase instead of using the term 'passenger'?(40) The author recommends that this article is re-written and a section that provides definitions is implemented by the QML in order to eliminate future confusion and disputes. In particular, it is important to define the passenger to clarify the scope of the liability of the carrier arising in relation to the passengers' carriage contracts.

(39) for more details of the liability limitation of the shipowner, see Zaineddin S A, Botosh H M and Al-Marzouqi M M, *An Illustration of the Qatari Maritime Law* (1st edn, Qatar University, 2020), 163-169.

(40) See for example the definition of the passenger by Article (2/e) of SOLAS as 'every person other than: (i) The master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship; and (ii) A child under one year of age.

Besides, the QML did not specify at which stage the shipowner could limit his liability. Is it before or after the incident or the claim? The situation became imprecise when reading article 70 together with article (68). Article (70) provides that: '[T]he shipowner *may not limit* his liability in the following cases…' The wording of this article is imprecise and vague. The article may imply that the shipowner may limit his liability post casualty, i.e. after the occurrence of the incident rather than at the time of entering into the carriage contract. Article (70) is better worded by stating that 'the shipowner will *lose his right to adhere to the limitation*'.

Further, the QML does define the form of the right to liability limitation. Is it implemented by a clause in the carriage contract? Does it have to be in writing? Is the shipowner required to inform the passenger of the limitation before or at the time of agreeing on the carriage contract in order to enable the passenger to decide whether to insure his journey? All these questions and oversights in relation to the limitation of liability must be clarified by an amendment to the QML.

C. The contradiction in the QML's rules of liability limitation

The QML allowed the shipowner to benefit from the liability limitation for passengers' injuries and death(41). In addition, article (74) of the QML extends applying the rules of limitation of liability to charterers and other maritime personnel. On the other hand, the carrier is prohibited from limiting his liability in cases of death or injury to the passenger according to article (179) of the QML. Moreover, the QML renders any agreement to limit the liability of the carrier for injury and death of the passengers' to be null and void. The question that arises here is whether the provision in article (179) will apply if the carrier is the shipowner or the charterer.

In other words, if the shipowner is acting in the capacity of the carrier, will the liability limitation rules in articles (68) and (74) apply to him or he will be prohibited from limiting his liability under article (179) of the QML? It is not clear why to discriminate between the shipowner and the carrier in this regard. Besides, this inconsistency creates confusion in the maritime industry and a reform to these rules is needed. Under the QTL, except for the carriage by air(42), no provisions were established regarding the liability

(41) Article (68) of the QML.

(42) Article (224) of the QTL regulated the liability limitation rules of air carrier's by providing that: 'In the carriage of passengers by air, ccompensation awarded against the air carrier in the case of carriage of passengers may not exceed an amount of one hundred and fifty thousand (150,000) Riyals for each passenger unless there is an express agreement to exceed this amount.' These limitations are unfairly

limitation principle regarding the carrier. It is worth noting that article (203) of the QTL prohibits the carrier from agreeing on exclusion terms of liability in the carriage contract. It provides that:

Any condition that exempts the carrier in whole or in part from liability for bodily injury to the passenger shall be null and void. Every condition that would obligate the passenger to pay any sums, in any capacity whatsoever, the purpose of which is to cover all, or part of carrier liability insurance expenses would be treated as if it is an exemption from the liability clause.

In a decision to the Qatari Court of Cassation(43), the court decided that the shipowner, who was acting in the capacity of maritime carrier, was prohibited from limiting its liability under article (68) of QML. The case involved the drowning of a passenger leading to his death when the ship sank. The court founded its conclusion on the fact that the documents presented to the court did not include an agreement between the parties on the limitation of the liability of the shipowner. As a result, the court determined that the shipowner was not entitled to the liability limitation.

The case also featured a personal fault on the side of the shipowner, and according to QLM article 70, the shipowner will be barred from minimizing his liability if the occurrence was caused by his personal fault. In its conclusion, the Cassation Court confirmed the courts of appeal judgement for the payment of 1 million riyals in damages for the decedents of the passenger. Several conclusions can be inferred from this decision. First, the court impliedly required that limiting the liability of the shipowner should be agreed upon between the parties in the carriage contract.

Besides, it seems that had such a limitation clause existed in the carriage contract, the court would have allowed the shipowner to limit his liability, even though he is acting in the capacity of the carrier. Of course, such allowance of limitation would defeat the purpose of article (179) in prohibiting the limitation of the carriers' liability and it would create uncertainty for the maritime passengers.

low for the passenger.

For comparison between these limitations and those in the related international conventions, see Nader M. Ibrahim, 'The Contract of Touristic Sea Travel - A comparative and analytical study from the perspective of Qatari law' (2020) International Review of Law/ Volume 2019- Issue 3, https://doi.org/10.29117/irl.2019.0083.

(43) Court of Cassation - Civil and Commercial Department - No.: 304 / 2015 (Qatar).

D. Abstracted rules of the shipowner's liability rules

The QML missed regulating several important issues related to the maritime carriage of passengers. Below, I will explain some of these issues.

An important issue is the necessity to provide maritime passengers with proper and understandable knowledge about the QML rules of carriers' liability in advance. This will allow the passengers to arrange in advance for insurance if they deem the QML liability rules are insufficient to protect their rights. Proper information may include, but not limited to, the liability rules and the statute of limitation.

In addition to that, introducing the system of compulsory insurance on the maritime carrier to cover its liability for the injuries to the passenger would also strengthen the passengers' rights as well as those of the carrier. Such a system would create an option for the passenger to file a claim against the carrier and a direct bath to the insurance provider. The QML may benefit from article *4bis* of the PAL2002, which provided detailed rules on compulsory insurance.

Another important issue the QML missed is the requirement for advance payment in cases of passengers' injury or death. This advance payment would help the passengers to meet their urgent and immediate needs. At the same time, it does not establish an acknowledgement of the liability of the carrier and it insurable. This system is implemented in some international instruments(44). For example, the EC Regulation No 392/2009 requires the performing carrier to provide an advance payment to the entitled party in the event that a shipping mishap results in the passenger's loss and they are injured or killed(45). This advance payment is non-refundable under the EC Regulation unless the loss resulted from the contributory fault of the passenger or where the recipient is not the party who is entitled to compensation for damages(46).

The QML also overlooked regulating the liability of the actual or performing carrier. It is not clear whether the liability rules the QML apply to both the contracting and the performing carrier. This issue was recognized by

(44) See for example, Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents, which the accession of the European Union to the Protocol of 2002 to the Athens Convention 1974. See also, in the carriage by air, the Montreal Convention for the unification of certain rules for international carriage by air 1999.

(45) Article (6) of the EC Regulation No. 392/2009.

(46) Article (6) of the EC Regulation No. 392/2009.

the amended Athens Convention (PAL2002)[47], which defined the carrier as 'a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by that person or by a performing carrier'[48]. Therefore, the PAL2002 extended the application of its provisions to cover the performing carrier enabling him to benefit from the liability limitation of the carrier and obliging him to adhere to the provision of the PAL2002.

One of the provisions that was missed in the QML is the right of the descendants in case of the passenger's death. Article (201) of the QTL recognised this situation by stating that whether a passenger passed away right away following an accident or after some time passed, their heirs will be able to sue the carrier for damages. It is a good recognition by the QTL to the cases where the death of the passenger does not occur directly after the accident and therefore extending the carrier's liability to death cases not occurred immediately after the accident. However, the QTL should have stressed on the requirement of causation in such cases where the claimant must prove that the accident was the cause of the death of the passenger.

IV. Conclusion

The QML rules governing the liability of the maritime carrier for death of the passenger or injuries have flaws and deviate from the modern provisions in the international conventions. The QML, for unclear reasons, allowed the liability limitation of the shipowner in such cases; however, it expressly precluded the carrier from limiting his liability in relation to the carriage of maritime passengers. It created a regime of strict liability on the carrier but left the regime of the shipowners' liability for the general principles of law to decide.

These provisions created conflicting rules in case the shipowner is acting in the capacity of the carrier and discriminating between them for no reason. The regime of unlimited liability in the contracts of maritime passengers' carriage would undermine the growth of the maritime industry and it would cause uncertainty and an increase in the insurance premiums. Accidental losses may be enormous, and big claims may force shipping companies into bankruptcy

(47) The protocol of 2002 to the Athens Convention relating to the carriage of passengers and their luggage by sea, 1974.

(48) Article (1) of the PAL2002 which also defined the performing carrier as 'a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage'.

if no liability limitation regime in adopted(49).

Therefore, it is recommended that the QML adopts a regime of limited liability in the carriage of passengers by sea. This step will align the QML with international conventions. In addition, the wording of article (68) of the QML, which limited the shipowner's liability, is confusing. Instead of using the term 'passenger', article 68 worded '*any person on board the ship with the intent to transport him'*. The terminology used in this article is confusing.

Furthermore, there are several oversights in the QML. For example, regulating the status of the performing carrier, the advanced payment in cases of passenger's injury or death, the requirement to provide the passenger when concluding the carriage contract with proper and understandable information about the carriers' liability rules and the establishment of a compulsory insurance scheme on the carrier became important provisions in the maritime carriage of passengers. The author recommends that the Qatari legislature review the current law to implement these rules.

Finally, it is recommended, also, that Qatar ratifies the PAL2002 and the LLMC. Such ratifications would achieve Qatar's objective of maintaining a close relationship with the IMO and the international society. The international character of the provisions of the international conventions and their application by many countries around the world and most importantly the regular revision of the limits of liability in these conventions are good reasons for Qatar to ratify them(50).

The practical benefits of such ratifications would increase the protection of maritime passengers, enhance certainty in the maritime industry and uniform the rules applicable to maritime carriage of passengers. An international approach advances the two primary goals of the international legal system by considering the interests of all stakeholders. It will preserve friendly relations between states and foster trade by establishing clear and consistently applied norms for the choice of law. These goals ought to serve as the international maritime law moving forward(51).

(49) Sunil Thacker Associates, 'Limitation of Liability in Maritime Matters' (STA Court Uncourt 2021, 12, 08).

(50) Several scholars are of this opinion. See for example, Nader M. Ibrahim, 'The Contract of Touristic Sea Travel - A comparative and analytical study from the perspective of Qatari law' (2020) International Review of Law/ Volume 2019- Issue 3 (https://doi.org/10.29117/irl.2019.0083).

(51) Anthony J. Colangelo, 'An International Approach to Maritime Conflict Of Laws', Arizona Law Review [VOL. 62:1073, 1094,

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