



Omsorgsplikt och god sed i avtal om shipmanagement

av

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Akademisk avhandling

Avhandling för juris doktorsexamen i rättsvetenskap,
som kommer att försvaras offentligt
torsdagen den 4 oktober 2018 kl. 10.00,
Hörsal M, Örebro universitet

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Abstract

Jeanette Andersson (2018): Omsorgsplikt och god sed i avtal om shipmanagement. Örebro Studies in Law 8.

Under Swedish law a service provider's performance is pervaded by a duty of care (Swe: *omsorgsplikt*). The study deals with the meaning and significance of the duty of care in a ship management contract under which a shipmanager undertakes to carry out one or several management services in respect of the vessel as agents for and on behalf of a shipowner. The study is mainly focused on the shipmanager's duty of care and duty to perform the management services in accordance with sound ship management practice as set out in the standard ship management agreement SHIPMAN 2009.

The first aim of the study is to analyze and systematize the shipmanager's duty of care in a ship management agreement. The second aim of the study is to analyze what it means to provide management services in accordance with sound ship management practice. Thirdly, the shipmanager's duty of care is examined in relation to a service provider's general duty of care in long term commercial relationships. To achieve these aims, a number of research questions are examined, namely:

Regarding the meaning and extent of a shipmanager's duty of care: What is the relevance and meaning of a service provider's duties to act in accordance with the mandate and in the interest of the client, to follow the client's directions, to perform the service professionally, to act with care when choosing a counterparty to the prospective contract, to take good care of the client's property, and to give account for the services?

Regarding the question of sound ship management practice: How does the shipmanager's duty of care differ from the duty to perform the management services in accordance with sound ship management? Which duties to act with care and in accordance with sound ship management practice could be required from the shipmanager as regards specific ship management processes such as the vessel operating budget, the vessel operating report, and the use of safety and quality management systems.

In addition, the sanctions and legal consequences of a breach of the duty of care are analyzed briefly.

The study is based on a problem- and interestoriented methodological approach with teleological considerations and weighing of different interests. Also, the study of the meaning and significance of the shipmanager's duty of care includes certain internal as well as external comparative elements. A number of different theories of the duty of care are examined and analyzed.

The conclusions of the study are summarised in Chapter 8. One general conclusion is that the shipmanager's duty of care and duty to perform the management services in accordance with sound ship management practice could be viewed and serve as a management control function towards the interests of the contractual promise, the contractual relationship as well as the interest of sustainability respectively.

Keywords: shipmanagement, duty of care, sound ship management practice, SHIPMAN 2009, ISM-code and ISPS-code, vessel operating budget, best endeavours, sustainability.

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