

Applicable Law In Harbor Towing Operations In Turkey

"Harbor towage" is an operation where tugs assist vessels in their berthing to or departure from ports by towing, lashing, or pushing the same. Our assureds mostly incorporate the UK STANDARD CONDITIONS FOR TOWAGE in their towage contracts, which provides the tug owner the most extensive protection, with a presumption that they hold themselves irresponsible for almost any damage that may occur during towage. However, this may not always be the case.



The legal character of towage agreements is debated under Turkish law, yet the predominant opinion is that they are an agency contract. On the other hand, although towage services are performed under private law contracts, the operations in question closely concern the safety of life, property, navigation, and environment at sea. Due to their close relation to public interest, such services are subjected to detailed legal regulations.

The Ports Regulation dated 31.10.2012 provides the minimum number of tugs that the vessels berthing or departing from ports shall hire based on their gross tonnage. The Regulation on Pilotage and Tug Services dated 08.01.2020 requires that pilotage and towage services shall be carried out by the institutions that are granted an operation license by the Administration in areas specified by the Administration (Ministry of Transport and Infrastructure).

The liability regime of the parties is regulated in Articles 3 and 4 of the UK STANDARD CONDITIONS FOR TOWAGE in a manner to protect the interests of the tug owner to the highest degree. Since the said articles regulate liabilities for damages incurred only during towage operations, it is important to determine the period of the towage service before examining the liability regime. The moment at which the towage commences and terminates is regulated in Article 1.

As per Article 1/b/iv, the towage commences at the moment when one of the following two events occur, whichever is the sooner: 1) when the tug is able to receive orders direct from the Hirer's vessel or 2) when the towing line has been passed to or by the tug. The towage service shall be deemed to have commenced upon the occurrence of one of the two events in question and the liabilities of the parties shall be determined within the scope of Articles 3 and 4 from this moment onwards.

As per Article 3, whilst towing, the master and crew of the tug shall be deemed as the servants of the Hirer and under the control of the Hirer. Subsequently, the Hirer shall be liable for any damage caused, any negligence and omissions by such persons. Through this clause, all liability arising from the acts or omissions of the tug owner's servants engaged in the towing is transferred to the Hirer. In other words, the tug is not to be held liable for the damages sustained by the tow because of the fault of the tug's servants.



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Article 4 provides that, subject to paragraphs (c) and (e), the tug shall not be liable for any damage done by or to the tug, or for any damage done by or to the Hirer's vessel. Following paragraphs (a) and (b) are regulated the exceptions to such extensive exemptions in favor of the tug owner. Paragraph (c) renders the tug liable in certain circumstances, paragraph (e) imposes liability for death and personal injury, para. (d) deals with delay and consequential loss.

However, the cases where the UK STANDARD CONDITIONS FOR TOWAGE are incorporated into the contract and the contract is subject to Turkish Law are of special concern because in such cases, the terms contrary to the imperative rules of Turkish law shall be deemed invalid. As non-liability agreements are mandatorily regulated under Turkish law in Articles 115 and 116 of the Turkish Code of Obligations (TCO) No. 6098.

Since harbor towage services are carried out with a license granted by the administration, the towage agreements are evaluated within the scope of Articles 115 and 116 of the TCO. As per Article 115/last paragraph of the TCO, "If a service, profession or craft requiring expertise can only be carried out with the permission granted by law or by the competent authorities, any prior agreement that the obliged party will not be liable for their slight negligence (i.e culpa) is absolutely null and void". Similarly, pursuant to Article 116/last paragraph of the TCO, "If a service, profession or craft requiring expertise can only be carried out with the permission granted by law or by the competent authorities, any prior agreement that the obliged party will not be liable for the acts of servants is absolutely null and void."

Pursuant to these regulations, the distinction between gross negligence and culpa has been abolished, and in any case, the terms of the contract that exempt the tug owner from liability are deemed strictly null and void. As a result, the tug owner may be liable for the damage incurred within the framework of such provisions.