Reihe A – Heft 20

The Remedying of Defects under Shipbuilding Contracts in Scandinavian Law

Vortrag von Frode Ringdal

vor dem Deutschen Verein für Internationales Seerecht

am 15. Mai 1973

HAMBURG 1974

The Remedying of Defects under Shipbuilding Contracts in Scandinavian Law*

The very interesting analysis of German law just given by Dr. Fischer contains a number of elements equally applicable in Scandinavian law. In fact a fairly extensive international *uniformity* has been developed through contract practice in respect of the shipbuilder's liability for defects. Thus, many practical solutions are similar throughout the trade, although the legal constructions and the applicable background law, differ – to the extent that the legal systems of the various nations differ.

I. THE NATURE OF SHIPBUILDING CONTRACTS

In order to determine what rules apply where a contract is silent, a few words must be said about *the legal nature* of the shipbuilding contract. Wüstendörfer has described it as „ein Mitteltypus eigener Art zwischen Kauf- und Werkvertrag". That is a fitting description also for the present position in Scandinavian doctrine. A uniform Sale of Goods Act was enacted in all four Scandinavian countries at the turn of the century – in Norway in 1907 – which in Article 2 makes the act applicable also to Werkvertrag. Similar provisions can be found in the British Sale of Goods Act 1893, Section 5, and the American uniform Commercial Code, Section 205, whereas in French and Italian law Werkvertrag is not covered by sale of goods provisions.

Nevertheless it is justified to state that Article 2 of our Sale of Goods Act has been *superseded by subsequent custom of the trade* and by the established contract practice, because quite clearly the act is not suitable to shipbuilding contracts. When the act was adopted in 1907 it represented an adequate instrument for covering the more uncomplex daily business transactions of that time. But even then it was held that contracts for the building of houses and similar constructions should no be covered by the act. Nobody thought of vessels. To-day everybody agrees that the construction, sale and delivery of a vessel ist of such a magnitude, complexity, duration and of such unique features that special rules have to apply.

* Der Vortrag wurde in einer gemeinsamen Vortragsveranstaltung im Anschluß an den in Heft 19 gedruckten Vortrag von Dr. Vincent Fischer-Zernin über „Die Haftung der Werft aus dem Schiffbauvortrag für Mängel des Schiffes" gehalten.

In Scandinavia as in most other countries there is contractual freedom to a large extent. Statutory provisions are not mandatorily but discretionarily applicable. In such circumstance there is ample room for a special practice and for customs of the trade to develop, and also for Scandinavia it is fair to state with Wüstendörfer that in respect of shipbuilding contracts "das Gesetzesrecht ist in manchen Punkten durch typische Vertragsabreden ausgeschaltet, so daß das Recht der Rechtswirklichkeit ein anderes ist".

You may wonder why I place emphasis on this somewhat theoretical legal construction. It is because it has practical consequences for the topic under discussion, for instance for the question of "Nachbesserung". Should the Sale of Goods Act apply mandatorily, the shipbuilder would have a very limited opportunity to avoid liability by rectifying a defect, and the purchaser would have no right at all to require necessary repairs to be made. The principal remedy under the act is to grant compensation or a reduction of price and to disallow "Nachbesserung". The exact opposite solution is the one chosen by the shipping community for shipbuilding contracts.

II. UNIFORMITY OF CONTRACTS

As we now look to the contracts most commonly in use throughout the world and try to make a rough comparison two features will readily be noticed. Where a defect is found to exist the remedies available to the parties are fairly uniform and they follow the pattern developed for German law by Dr. Fischer. But when it comes to establishing the criteria for what constitutes a defect there is no great uniformity, but a wide variety of definitions and requirements and exceptions.

One would have thought that there would exist internationally – or at least nationally – accepted standard contracts. Surprisingly enough that is only true to a very limited extent. As far as I know only Norway and Sweden have standard contracts in the form of "approved documents", meaning that the contract has been negotiated and agreed between the Shipowners' Association on the one side and The National Association of Shipbuilders on the other side. In Denmark there is no standard form applicable and the yards are using their individual contracts which nevertheless are basically similar to the two standard forms mentioned.

In *England* the Shipbuilding Conference 1950 prepared a "Model Form of Shipbuilding Contract for British Owners". However, the British shipyards were not willing to accept that form completely, and have worked out individual contracts. There are no generally accepted contract types in England.

In 1967 four shipyards in Germany, England, The Netherlands and Italy formed a shipyard group – the Dorchester Club – which prepared a standard shipbuilding contract – *The Dorchester Contract*. As far as I understand that contract has been used by the yards for tankers ordered by some oft the major oil companies. But I do not know if the contract has attained a wider application than that.

Based on the Dorchester Contract the Association of *West European Shipbuilders* (AWES) in 1972 prepared a new standard contract intended to be used by West European shipbuilders. As the work has just recently been completed I do not know whether or to what extent it has been used.

As far as *Japan* is concerned there is no standard contract in use, but the individual shipyard contracts show considerable similarities, particularly in respect of liability for defects. The Japanese contracts are very detailed

III. "MANGELBEGRIFF" AND THE NATURE OF GUARANTEE CLAUSES

Before going into the specifics of the Norwegian/Swedish standard forms I must burden you with some additional general observations. As I understand it, Section *636 of BGB* provides that the object to be produced must not have qualities – that is to read defects – which tend to reduce its value or usefulness compared to what is customary for that type of product, or to what has been expressly agreed or implied in the contract. In a way, that provision contains a general definition of what constitutes a defect. There is no such general *statutory* provision in Scandinavian law, nor in Anglo-American law for that matter. But in Scandinavia we also apply a general concept of defect which is quite similar to yours. May be you would call our concept *"ein abstrakter Mangelbegriff"* – as distinct from the individual *"Mangelbegriff"*, which is based on the exhaustive description in the contract of what shall be the qualities of the product, and by antithetic interpretation decides what will constitute a defect. The construction has a bearing on the understanding of what is the real content of *guarantee clauses* in the shipbuilding contracts. In Anglo-American law where only the contract can give guidance as to what will constitute a defect, the contracts have express warranties or – failing them – implied warranties – defining certain functional criteria that the product shall meet as well as the consequences of the criteria not being met. Defects not covered by the warranties will leave the owner with no remedy.

In Scandinavian law the "abstrakter Mangelbegriff" is accompanied by general rules of law on cancellation, on price reduction and on compensation for breach of contract where defects are found to exist. In that situation it seems legally meaningless to have the shipyard "guarantee" the proper fulfilment of the contract generally or in more specific respects. If you have assumed an obligation it makes it no stronger to add that you also guarantee that you will fulfil it. The function of a guarantee clause then under our system – will be either be to extend the liability and the remedies available to the purchaser beyond what would otherwise apply, or to limit the liability that would otherwise arise. In the Norwegian/Swedish shipbuilding contracts the principal function of the guarantee clause is to limit the shipyards' liability. By inserting a six months guarantee clause for machinery the period of liability is really reduced relative to what it would otherwise have been. And by limiting to an undertaking of "Nachbesserung" it is really taking away from the purchaser remedies which he would otherwise have had such as a claim for compensation. It *could* be, however, that by making the duty to remedy the defects unconditional such guarantee clauses extend the scope of liability somewhat in as much as the obligation is independent of any proof of negligence.

IV. THE THREE CATEGORIES OF DEFECTS

Let me now try to be a bit more specific and make some comments on the type of defects for which the shipyards undertake liability. Traditionally, the duty to remedy has been confined to defects in certain machinery parts only, resulting from *faulty materials* or *poor workmanship*. But the last 20 years have shown a remarkable development in this field with an extended scope of liability also in respect of hull defects. The rapid technological development compelled such an extension. That happened in stages. At first it was found necessary to include the hull defects in the customary liability clauses. The development of the large tankers had revealed structural strength problems which proved very expensive to cope with. As a next step that development

compelled a consideration of liability for *faulty design*. Ten years ago there were only a few tankers of the size of a hundred thousand tons deadweight. To-day there are more than 250 tankers of more than 200,000 tons deadweight, and much larger tankers are under construction. Highly complicated and specialized vessels have been developed, and theoretical calculations based on extensive use of computers have replaced the individual skill of earlier days designers. Thus, the design problems are technically much more serious to-day than before.

Whereas the defective materials, and parts affected by poor workmanship, may ordinarily be replaced at a moderate cost, the "Nachbesserung" of a faulty design defect may be extremely expensive if at all possible. Thus also the financial problems are of a more serious nature than before.

One might wonder why the problem of the faulty design has only recently acquired prominence and why in the older days design defects were not treated along with the accepted defects in material and workmanship. The reason is basically historical. In the older days the constructions were simple as were the contracts. And thus the design aspects were not put in focus untill the very large tankers brought tremendous losses to their owners as it proved necessary to remedy structural weaknesses of a design nature.

The position today is that the contracts show *three different patterns* as regards liability for faulty design. The *Swedish standard form*, by an addendum from 1969 which is frequently included in the contract, puts liability for faulty design on the shipyard to the same extent that such liability is accepted for faulty material or poor workmanship. An in-between solution has been adopted in the *Norwegian standard contract*. Liability for faulty design is accepted along with materials and workmanship, but not if discovered after delivery and if the affected part had been approved by the classification society or by public authorities. In still other contracts, such as for instance in the *Japanese*, liability for faulty design is generally not accepted. In fact the Japanese contracts usually stipulate that no liability is accepted for defects "other than the ones specified above". That means that liability for faulty design has been excluded.

At the time when most contracts were silent on the faulty design problems, discussions were initiated on whether or not *such faults* should be classified under the headings "*faulty materials or poor workmanship*". There is no Scandinavian court decision which ever considered that question. However, there is a very interesting British decision reported in (1971) Lloyd's Law Reports Vol. II 505 in the case of *Gotaverken vs. Westminster Corporation of Monrovia*. Under the standard Gotaverken contract, without the Addendum for faulty design, a vessel had been delivered with leaking hatch covers. There was nothing wrong with the materials used or with the workmanship executed, but the British court still held the shipyard liable for what really amounted to a faulty design, on the ground that the ship was of no great use to her owners in the condition in which the shipyard had delivered her.

I do not think that the problems of liability for faulty design have been finally settled. The in-between solution introduced in the Norwegian standard contract has not been found acceptable by Norwegian owners. As a result the Shipowners' Association in 1969 withdrew its recognition of the standard contract so that it is no longer an "agreed document". Interesting as it might be to analyse the pros & cons for placing the design risk on the one or the other of the two parties, I must now leave the topic of what constitutes defects and go on to say something about the remedies, and first of all about "Nachbesserung".

V. REMEDIES AVAILABLE TO THE OWNER

Most contracts distinguish between defects discovered prior to delivery and defects discovered after delivery. They also make a distinction between what I will call "clear-cut" defects such as shortcomings in speed, deadweight capacity and fuel consumption, and what I will call the more debatable defects such as shortcomings in workmanship and quality of materials. As the relevance of these distinctions is based on the contract terms, I shall limit my discussion to the provisions of he Norwegian standard form.

1. As far as the "clear-cut" defects are concerned – the reduction in deadweight capacity, in speed or the increase in fuel consumption – the principal – and normally the only – remedy is payment to the owner of liquidated damages or penalty as agreed. That is often a practical and convenient compromise solution. The rectification of a speed or deadweight deficiency may entail such extensive rebuilding and modification that the expense involved may be out of proportion to the nuisance of the defect to the owner. The system of the contract is that minor deficiencies shall entail no consequence, more serious deficiencies up to a certain level shall bring the penalty provisions into play, and deficiencies in excess of that level shall entitle the owner to cancel the contract and have his money back. There is some disagreement and no settlement of the question whether or not the owner under the terms of the relevant clauses may also demand that a reasonable "Nachbesserung" be attempted before he settles for an inadequate compension. The prevailing opinion is that also in respect of these defects the yard must – within reason – do its best to meet the stipulated quality requirements. Suppose that there is a speed reduction of one knot on a 200.000 tons tanker. Should the owner have to live with that reduction throughout the lifetime of the vessel – say 20 years, the financial consequences could be substantial and far exceed whatever compensation is payable under the penalty clause.

2. As far as defective materials or workmanship is concerned under clause 12 of the Norwegian contract the shipyard has an absolute duty to rectify them. Such defects which are discovered during the construction, must be remedied before delivery. If that results in a delay, the shipyard must carry the consequences by paying penalty as otherwise provided for in the contract. However, if the defects are discovered after delivery of the vessel, the duty of the shipyard is primarily limited to replace the defective part. The owner cannot claim compensation for the time necessary to do the job nor for consequential damage. In other words, prior to delivery the shipyard carries all risks in connection with a defect. After delivery the "Nachbesserung" risk is that of the shipyard, but all other risks are for the account of the owner. The duty to rectify the defect is absolute and exists irrespective of whether or not the shipyard can be blamed in any way.

3. These basic provisions will give rise to a number of special problems in Norway as well as in Germany. I shall say something about what will constitute a satisfactory "Nachbesserung" – what will be the consequences if the remedy untertaken is not satisfactory – how many attempts and what period of time will the shipyard be allowed – are the liability exemptions of the contract freely applicable or can they be set aside by the courts?

4. Very few contracts – including the Norwegian standard form – contain provisions on what will constitute a satisfactory "Nachbesserung", nor do they determine the consequences of failure to correct a defect. No statutory provisions apply in such instances, and we have to rely on an analysis of the yard's duties on a more theoretical basis.

a) The starting point is that a defect must be remedied in such a way that the vessel will satisfy the criteria laid down in the contract and the contract specifications. If the yard shall be allowed to remedy a defect by deviating from the specification, for instance by replacing a defective part with another one with different qualities, there must be a clear basis in the contract for doing so.

b) It is not permissible to eliminate a defect by introducing anotherone. Vibrations in the hull may be eliminated by blocking the engines so as to reduce the number of revolutions available, or a too high exhaust temperature may be eliminated by taking out a smaller effect from the engines. That is not acceptable.

c) If qualities have been built into the vessel in excess of what the contract provides for, can the yard eliminate a defect by reducing the extra quality down to the one provided for? In other words, is the owner entitled to keep a built in extra advantage or can the yard utilize it to make the ship satisfactory in other respects? Let me give an example. A structural weakness in one part of the hull may be remedied by welding steel bars in the area. But additional weight of steel installed will reduce the deadweight capacity. If there is already a deadweight reserve in the ship, some Norwegian authors hold that the owner is entitled to that extra advantage and that the yard cannot take it away. Other authors maintain that the owner can claim no more than what has been stipulated in the contract and that the yard has the right to utilize the extra deadweight capacity available. A Swedish arbitration award from 1968, ND 1968 page 311 considered the reverse situation. In order to increase the deadweight capacity the yard reduced the steel weight of the hull. However, no clear cut decision was rendered by the tribunal.

d) It has been widely discussed whether – in remedying a defect – the yard must make use of new and advanced techniques which will improve the quality of the ship beyond the requirements of the specifications. Suppose that a main engine is not giving the full effect contracted for. Suppose also that a vastly improved but much more expensive cooling system has been marketed since the engine was ordered and which would easily give the desired effect. Can the owner demand such a unit installed at the yard's expense? The answer must be, I think, that if the new unit is necessary for the engine to be able to reach the agreed effect, the yard must do so. But can the effect be attained by conventional means, that will suffice. All that the owner can claim is a contractual ship based on the standards existing at the time when the contract was made. In other words, it is necessary to distinguish between "Besserung" and „Nachbesserung". More complicated problems arise if after the contract was signed but before the defect was rectified the classification society has imposed revised and stricter rules. Again – I think – we must distinguish a bit. New rules imposed by the classification society during the construction of the vessel must be complied with. And if a defect must be remedied after delivery and new rules have been adopted affecting the repair, the yard must follow the new rule. But if – after delivery of the vessel – the classification society adopts new rules to take effect on all vessels trading, modifications necessitated from that will be for the owner's account. A good example is the experience gained with the rapidly growing tankers. The larger vessels were found to have structural weaknesses, and in 1967 the Norwegian Veritas imposed strengthening requirements on 102 tankers then trading. The additional expense was enormous, but had to be borne by the owners.

e) For some quality features such as deadweight, speed and consumption the contracts ordinarily give the shipyards a leeway – an "about" clause. I think that it is commonly

accepted that if the deadweight capacity or the speed are too low, it will suffice for the yard to bring the quality up to the lower level of the leeway range inasmuch as the leeway invariably will have been put there for the benefit of the yard.

f) A defective part may affect and damage other parts of the vessel. Will the duty to rectify extend to the defective part only, or also to other sound parts damaged by it? That is in the end a question of the wording of the individual contract. Some contracts say that the yard shall "replace without any cost whatever". That must be construed to mean that all damaged parts must be rectified. A similar conclusion seems obvious if the contract has been worded so that the yard "shall make good all defects" or perform "all work necessary to remedy such defect".

The Norwegian contract is tricky in this respect. Article 12 No. 1 of the contract says that "the builder shall be liable for defects . . .", but then it goes on to say in § 12 No. 5 ". . . The builder shall not be liable for damage . . . after delivery . . . as a result of a defect for which the builders are liable . . .". The shipyards maintain that their duty only comprises what is necessary to have the defective part replaced, whereas the owners claim that "Nachbesserung" must cover all that is necessary to put the vessel back in functional shape. In their view the provision is unclear and thus its application should be restricted. We have no court decision on the issue. In a British decision from 1940 (1940) 67 Lloyd's Law Reports 62 KB, an exemption for "indirect or consequential damages" was interpreted in such a way that the owner was compensated for loss which was a direct consequence of the defect.

VI. TIME AVAILABLE FOR "NACHBESSERUNG"

Once we have determined what is required by the yard in rectifying the defects the crucial question is: How long time is available for doing the job and how many attempts are allowed if the first one is unsuccessful?

1. Neither Scandinavian nor other contracts that I know have any provisions answering the questions. Again we must resort to a general discussion. But it is really not possible to give a simple guideline.

The nature of the defect will be of significance. If it is serious the yard must be given ample time to find a solution and to experiment if necessary. If the defect is uncomplicated and can be remedied easily, the yard must act promptly and efficiently. It is also of some importance whether the vessel is able to continue trading with the defect until a suitable opportunity affords itself, or whether the voyage has to be disrupted for immediate repairs.

2. There seems to be unanimity that a shipyard doing its best must be allowed to try again if the first attempt is unsuccessful. It must also be given such time as is necessary to develop the proper remedy. If an attempt brings an improvement although not a complete cure, and it is expected that each new attempt will go one step further to eliminate the defect, the yard must have the right to continue. Suppose for instance that an experimental new engine, fails in the speed requirements by several knots. There may not be available a solution other than to try to upgrade the engine installed. That may take time and require numerous attempts. Depending on the circumstances the owner may or may not tolerate further experiments. But there certainly comes a time when he is entitled to stop and to cancel the contract.

3. Scandinavian court decisions give a somewhat mixed picture. In 1935 the Supreme Court of Norway held that where a fishoil processing machinery on board a vessel had a capacity of only one half of that contracted for, three unsuccessful attempts to meet the requirements over a period of nine months were too much, and the owner was granted the right to cancel the contract (See Retstidende 1935 s. 497). In another decision from 1965 a purchaser of an automobil was allowed to cancel when during a period of six months the seller had failed to repair a leakage satisfactorily. Three attempts had been made but apparently the seller had been negligent in his repair work. The courts in other Scandinavian countries have reached similar results although there are very few relevant decisions involving vessels. In a 1969 decision the Supreme Court of Denmark considered the problems of a gooseliver cooking stove with accompanying cooking kettles. The system had several defects which made it function erratically, and when half a year had elapsed with unsuccessful repairs the purchaser declared that he had enough. The Supreme Court agreed with him. In the same year the Supreme Court of Finland took the same position in respect of a washing machine.

British decisions follow a similar pattern. In a Court of Appeals decision, 1970 1 Lloyd's Rep., 1970, a car owner won the Court's approval of the view that when the workshop had made three unsuccessful repairs over a period of four months it had exhausted its rights to rectify the defect. As for vessels the problem was before the House of Lords in 1922, *Pollock vs. MacRae* 1922 12 Lloyd's Law Report 299. It seems that two attempts to put the main engine of a fishing vessel in order over a period of two months brought the builder in default of his contractual obligations. It appears to have been of some significance that the defect was such that the vessel could not be used at all. In another British decision from 1927 – *Admiralty Commissioner vs. Cox & King*, 1927 27 Lloyd's Law Report 223 – the Court of Appeals allowed a contract for two motorboats to be cancelled as the boats were deficient in speed. Repairs and alterations attempted during a period of two years had given no improvement.

The only clear conclusion to be drawn in Scandinavian law is that each case must be judged on its merits. But there most certainly is a limit to how many attempts and to how long time a shipyard will be allowed for repairs without being held in default. It will affect the decision whether or not the yard has shown due diligence in its "Nachbesserung" attempts. It should be added, however, that if the shipyard finally does succeed in its attempts, the court will probably accept the effort as contractual even if quite some time elapsed.

VII.

I now turn to the topic of what remedies are available to the shipowner if a satisfactory "Nachbesserung" *can not* be performed. There is little doubt that *in principle* the owner may cancel the contract when the vessel is non contractual in serious respects. As for other remedies – claims for reduction of price or for compensation – the position is far more complicated.

In discussing the remedies I shall assume that we have a contract which by express provision has limited the yard's liability to "Nachbesserung" and generally has excluded other claims. It is clear at least, that if the "Nachbesserung" is successful, no other claims can be made. But Scandinavian courts have not been willing to accept that in the case of an unsuccessful "Nachbesserung" the owner shall have to live with his sad destiny without being able to make alternative claims. Some times it has been held that the contract has not properly provided for the situation where the obligation

to remedy a defect has not been fulfilled. At other times the exceptions in the contract have been given a narrow and restricted interpretation in favour of the owner. And where that has been impossible because of express contract languague the courts have at times set liability exemption clauses aside as against reasonableness and more general principles of law. In English law liability exception clauses have been set aside under the doctrine of "fundamental breach" of contract. However, only the most serious defects have justified the application of that doctrine. In the famous case of the *Suisse Atlantique*, 1966 1 Lloyd's Report 529, the House of Lords construed the principle that an exception clause can only be set aside if it "would lead to an absurdity or because it would defeat the main object of the contract".

The fundamental breach doctrine is not applicable in Scandinavian law. However, the criterion of what is reasonable in the circumstance is coupled with a consideration of whether or not the remaining defect is a major one. The weighing of the relevant factors may turn out differently in respect of the various alternative remedies. Thus, in the case of the fishoil machinery installed on the Norwegian vessel, the Supreme Court allowed the owner to cancel, but did not accept his claim for compensation. In other instances cancellation has been rejected while at the same time a claim for price reduction or even for compensation has been accepted. I should like to say a few words about each of the remedies.

a) Cancellation of a vessel that at great expense has been planned and built over a long period of time is of a most serious consequence to the parties, and particularly to the yard. For that reason cancellation should be accepted only in the more extreme cases. The criterion is that the defect must be of o particularly serious nature – it must be "wesentlich" – which is a direct translation of the Scandinavian term "vesentlig". There is, however, a small distinction between Swedish law and Danish/Norwegian law in this respect. In Sweden only what is "wesentlich" to the owner is being considered, and it is not considered how the matter will affect the shipyard. In Denmark and Norway the effect on, and the consequences to, both parties are considered when deciding whether or not the defect is "wesentlich".

b) However, if for a moment we disregard the legal niceties you will readily appreciate that cancellation of a completed vessel is a remedy that will cause considerable practical difficulties to the owner should the shipyard oppose it. Frequently, the financing of the vessel has been arranged in such a way that promissory notes, mortgage deeds and other loan documents have been executed, delivered and assigned at the time when a cancellation may be justified. A financial restitution for the owner will be complicated and will take time. Thus, cancellation after delivery of the vessel to the owner will occur only in rare instances. The more practical situation is that the owner refuses to take delivery if he considers the vessel defective at the time of delivery. In Scandinavian law he may do so if the defect is "wesentlich" as I have already described.

Let us now see what the owner can do where the vessel has a permanent defect, but one that is not so "wesentlich" that he can cancel. He shall have to live with his problem, and that may be serious enough. In Scandinavia the courts have been quite inventive in coming to the owners' help. And – as I mentioned – even though the contract provisions have been designed to exclude the owner's claim for a price reduction or for compensation the courts have come around the provisions when they have felt it to be just.

Clause 18 of the Norwegian Act on Fair Practices and Competition etc., 26th June, 1953, provides that contract terms cannot be enforced if their effect will be "unreasonable"

for a contracting party or if they "clearly violate general public interests". And Section 3-1-2 of the Norwegian General Act on Torts, 13th June, 1969, provides that a contract clause limiting the liability of a tort feasor can be set aside if its application would be "clearly unreasonable". I hurry to add, though, that contract terms agreed in a standard shipbuilding contract – which in Norway have even been approved by the major organizations – can hardly be considered to be clearly unreasonable. The more practical method employed by the courts, has been to give the relevant contract clause a very restrictive interpretation, thereby concluding that it did not cover the case in point. There are court decisions in all Scandinavian countries to that effect, but the common denominator in all of them seems to be that the courts have felt it unjust if all remedies to the owners should be cut off.

On the other hand there are many court decisions where the owner's claim for price reduction or compensation have been rejected on the ground that the contract terms barred such claims. Again is seems that each case must be decided on its merits.