

SHIPPING LAW

BY

ROBERT P. GRIME, B.A., B.C.L.

CONCISE COLLEGE TEXTS

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PREFACE

The law relating to ships and their operation is not and never has been simple. Some parts of it are very ancient, for maritime law gave us some of the earliest parts of our commercial law, such as insurance or carriage of goods. On the other hand, not only has the shipping industry had to face the problems common to many businesses in the twentieth century, such as changed assumptions about employment, but there have been other developments, some of them technical, which have had a particular impact—containers or pollution, for example. Although the response of the law has not been as swift as everyone might have liked, yet there is today a substantial body of fast-growing new law in the area. So anyone who approaches shipping law is faced, at one and the same time, with the refined minutiae and the precision which characterise old-established legal principle and with the newly-minted and often crude additions which seem inseparable from municipal implementation of modern international convention.

Shipping law is a development of the mediaeval law merchant system, designed for the use of busy men of affairs rather than specialist lawyers. Today, like much other commercial or industrial law, shipping law has still to be understood and practised by practical men and women, many of whom would never describe themselves as lawyers. In such circumstances, short introductions to complex matters, dangerous though they may be, have a distinct part to play. It is hoped that this book will play such a part.

September 1978

R.P.G.

内部参考 批判使用

说 明

应法学界和广大法律工作者的要求，我们选印了一批港台出版的法律图书。由于法律本身有鲜明的阶级性，书内有些内容与无产阶级专政针锋相对，为利于教学、研究单立参考，我们未予删减，仅对政法单位发行，供研究使用。

CONTENTS

	PAGE
<i>Preface</i>	v
<i>Table of Cases</i>	xi
<i>Table of Statutes</i>	xv
 1. MARITIME LAW AND ENGLISH LAW	1
1. Origins of Maritime Law	1
2. The English Court System	2
3. Precedent	7
4. Arbitration	9
5. General Characteristics of Maritime Law	10
6. Admiralty Jurisdiction	13
7. Other Special Jurisdictions	17
 2. THE PUBLIC CONTROL OF SHIPPING AND NAVIGATION	18
1. The System of Registration	18
2. Safety	24
 3. SHIPS	30
1. Dealing in Ships	30
2. Selling Ships	31
3. Security Transactions	37
4. Liens	39
 4. THE MASTER AND THE CREW	41
1. Introduction	41
2. The Seaman's Contract of Service	43
3. Rights and Duties	49
4. Wages	52
5. Discrimination	54
6. Discipline	56
7. Safety, Accommodation and Welfare	62
8. Manning and Certification	65
9. Trade Disputes	69
10. Termination, Redundancy and Unfair Dismissal	71
11. The Master	74
12. Logs	76
 5. CARRIAGE OF GOODS BY SEA	78
1. Contracts and Documents	78
2. Charterparties and Bills of Lading	80

	PAGE
3. Voyage Charterparties	83
4. The Time Taken in Loading and Discharge	90
5. Time Charter Parties	95
6. Bills of Lading	99
7. Exclusion and Limitation of Liability	101
8. General Average	108
9. Carriage of Passengers	112
 6. THE NAVIGATION OF SHIPS AND SAFETY AT SEA	 118
1. The Collision Regulations	118
2. Lights and Shapes	125
3. Restricted Visibility	131
4. Steering and Sailing Rules	134
5. Notice to Mariners	139
6. Traffic Separation Schemes	140
7. Pilots and Pilotage	141
8. Lighthouses and Other Aids to Navigation	144
9. Harbours, Docks and Piers	145
 7. COLLISIONS AND LIABILITY FOR DAMAGE	 149
1. Introduction	149
2. Negligence: Who is Liable?	150
3. Negligence: The Standard of Care	161
4. Negligence: Inevitable Accident and Excusable Mistakes	165
5. Negligence Causing Loss	167
6. Division of Loss	170
7. Illrecoverable Losses: Remoteness of Damage and Economic Loss	175
8. Limitation of Liability	178
9. Other Liability	184
 8. SALVAGE, TOWAGE AND WRECK	 185
1. Salvage	185
2. Towage	201
3. Wreck	207
 9. MARINE POLLUTION CONTROL	 210
1. Oil Pollution	210
2. Dumping at Sea	216
3. Liability for Oil Pollution	218

	PAGE
10. MARINE INSURANCE	227
1. Introduction	227
2. Indemnity and Insurable Interest	232
3. Utmost Good Faith	237
4. Types of Policy	241
5. Perils Insured Against	243
6. Losses	251
7. Rights of Insurers	254
8. Assignment of Policies	255
9. Mutual Insurance	255
<i>Index</i>	257

TABLE OF CASES

Adler v. Dickson [1954] 1 Q.B. 158	115, 150, 151, 153, 159
Adriatic and the Wellington, The (1914) 30 T.L.R. 699	157
Aeneas, The [1935] P. 128	163
Aitchison v. Lohre (1879) 4 App.Cas. 755	249
Albion, The [1953] 1 W.L.R. 1026	120, 128, 130
Albion, The [1942] P. 81	190, 191
Alcoa Rambler, The [1949] A.C. 236	137
Alletta, The [1974] 1 Lloyd's Rep. 40	182
Annie Hay, The [1968] 2 W.L.R. 353	11, 184
Apollon, The [1971] 1 Lloyd's Rep. 476	206
Athel Line v. London and Liverpool Insurance [1944] K.B. 87	111
Austin Friars v. Spillers and Bakers (1915) [1915] 3 K.B. 586	101
Beaumont-Thomas v. Blue Star Line [1939] 3 All E.R. 127	115
Beaverford (Owners of the) v. Owners of the Kafiristan [1938] A.C. 136	196
Berkshire, The [1974] 1 Lloyd's Rep. 185	97
Behnke v. Bede Shipping [1927] 1 K.B. 649	31
Blackburn v. Haslam (1888) 21 Q.B.D. 144	240
Blackburn, Low & Co. v. Vigors (1887) 12 App.Cas. 531	240
Bold Buccleugh, The (1851) 7 Moo.P.C. 267	40
Bolivia (Republic of) v. Indemnity Mutual Marine Assurance Co. [1909] 1 K.B. 785	238
Bona, The [1895] P. 125	109
Boy Andrew, The (Owners) v. The St. Rognvald (Owners) [1948] A.C. 140	170
Bramley Moore, The [1964] P. 200	181
Bywell Castle, The (1879) 4 P.D. 219	167
Calliope, The [1970] P. 172	168, 174
Camellia, The (1884) 9 P.D. 27	195
Camilla Cotton Oil Co. v. Granadex [1975] 1 Lloyd's Rep. 470	10
Canada Rice Mills v. Union Marine and General Insurance [1941] A.C. 55	245
Cap Palos, The [1921] P. 458	206, 207
Century Insurance Co. v. N. Ireland Transport Board [1942] A.C. 509	154
Cheerful, The (1885) 11 P.D. 3	195
Cheshire (J.) v. Vaughan Bros. [1920] 3 K.B. 240	232
Cosh v. Larsen [1971] 1 Lloyd's Rep. 557	212
Cutter v. Powell (1795) 6 T.R. 320	45
Dagmar, The [1968] 2 Lloyd's Rep. 563	95
Darrah, The [1976] 2 All E.R. 963	93
Davis v. Mann (1842) 10 M. & W. 546	169
De Vaux v. Salvador (1836) 4 Ad. & El. 420	249
Devonshire (Owners), The v. The Barge Leslie (Owners) [1912] A.C. 634	157, 161
Dickson & Co. v. Devitt (1916) 86 L.J.K.B. 315	232
Dimitrios N. Bogiazides, The (1930)	189
Donoghue v. Stevenson [1932] A.C. 562	150
Druid, The (1842) 1 Wm.Rob. 391	154
Drumlanrig, The [1911] A.C. 16	172
Dunelm, The (1884) 9 P.D. 164	122
Elwick, The (1923)	131
Empire Jamaica, The [1956] 2 Lloyd's Rep. 119	182
— [1957] A.C. 386	68
Esso Brussels, The [1973] 2 Lloyd's Rep. 73	121, 125
Esso Petroleum v. Southport Corporation [1956] A.C. 218	165, 219
Eurymedon, The [1974] 1 Lloyd's Rep. 534	196

Finix, The [1975] 2 Lloyd's Rep. 415	93
Fontevivo, The [1975] 1 Lloyd's Rep. 339	94
Forfarshire, The [1908] P. 339	206
Fritz Thyssen, The [1967] 3 W.L.R. 990	188
Frosta, The [1973] 2 Lloyd's Rep. 348	128
Furness Withy v. Duder [1936] 2 K.B. 461	249
Gas Float Whitton, The [1897] A.C. 337	21
— (No. 2) [1896] P. 42	186
Genimar, The [1977] 2 Lloyd's Rep. 17	122, 141
Gilbert v. Trinity House (1886) 17 Q.B.D. 795	145
Gorliz, The (1917) 119 L.T. 123	191
Guernsey Coast, The (1950) 83 Lloyd, L.R. 483	194
Gunnar Knudson, The [1962] P. 151	133, 134
Gusty, The and the Daniel M. [1940] P. 159	188, 193
Hai Hsuan, The [1958] 1 Lloyd's Rep. 351	246
Hain S.S. v. Tate and Lyle [1936] 2 All E.R. 587	87
Hang Fung Shipping v. Mullion and Co. [1966] 1 Lloyd's Rep. 511	85
Harlow, The [1922] P. 175	21, 186
Heranger (S.S.) (Owners) v. S.S. Diamond (Owners) [1939] A.C. 94	163, 164
Highland Loch, The [1912] A.C. 312	166, 167
Hong Kong Fir Shipping v. Kawasaki Kisen Kaisha [1962] 2 Q.B. 26	84, 95
Hook v. Cunard [1953] 1 All E.R. 1021	57
Horlock v. Beal [1916] 1 A.C. 486	71
Humbergate, The [1952] 1 Lloyd's Rep. 261	140
Huntingdon, The [1974] 1 Lloyd's Rep. 520	211, 213
Irvin v. Hine [1949] 2 All E.R. 1089	252, 253
Johanna Oldendorff, The [1974] A.C. 479	92
Kate, The (1936) 54 Lloyd L.R. 120	169
Khedive, The (1880) 5 App.Cas. 876	175
Killeena, The (1881) 6 P.D. 193	194
Kung v. Franklin (1858) 1 F. & F. 361	113
Kirknes, The [1957] P. 51	179
Koursk, The [1924] P. 140	161, 173
Lady Gwendolen, The [1965] P. 294	119, 132, 183
Leolga Compania de Navigacion v. John Glynn and Son [1953] 2 All E.R. 322	88
Liddesdale, The [1900] A.C. 190	75
Liesbosch Dredger, The (Owners) v. The Edison (Owners) [1933] A.C. 449	176, 177
Macaura v. Northern Insurance Co. [1925] A.C. 619	235, 236
Macgregor Laird, The [1953] 2 Lloyd's Rep. 259	173
McMillan v. Crouch [1972] 1 W.L.R. 1102	143
Maid of Kent, The [1974] 1 Lloyd's Rep. 434	168
Manchester Regiment, The [1938] P. 117	124
Mardorf Peach v. Attica Sea Carriers [1977] A.C. 850	96
Marechal Suchet, The [1911] P. 1	189, 202
Maretha Envoy, The [1977] 3 W.L.R. 126	92
Margaret, The (1881) 6 P.D. 76	167
Margarine Union GmbH v. Cambay Prince S.S. Co. [1967] 2 Lloyd's Rep. 315	177
Medina, The (1876) 2 P.D. 5	187, 199
Melanie, The v. The San Onofre [1925] A.C. 246	193, 195
Merchant Prince, The [1892] P. 179	164, 165

Mersey Docks and Harbour Board v. Coggins and Griffiths [1947] A.C. 1	151, 153
Mersey Docks Trustees v. Gibbs (1866) L.R. 1 H.L.	93
Midland Silicones v. Scruttons [1962] A.C.	446
Minnehaha, The (1861) Lush.	335
Miraflores, The and the Abadesa [1967] 1 A.C.	826
Mitchell Cotts v. Steel Bros. [1916] 2 K.B.	610
Monica S., The [1968] P.	741
Moran Galloway v. Uzielli [1905] 2 K.B.	555
Muller v. Trinity House [1925] 1 K.B.	166
Naamlooze Vennootschap Vredobert v. European Shipping Co. Ltd. (1926)	
Ll. L. Rep.	210
Nishina Trading v. Chiyoda Fire and Marine [1969] 2 Q.B.	449
Nora, The [1956] 1 Lloyd's Rep.	617
Norwhale, The [1975] Q.B.	589
Nowy Sacz, The [1977] 2 Lloyd's Rep.	91
Oppen v. Aetna Insurance Co. (1973) 485 F. 2nd.	252
Ortranto, The (1931)	
P. Caland, The [1893] A.C.	207
Palace Shipping Co. Ltd. v. Caine [1907] A.C.	386
Panamanian Oriental S.S. Co. v. Wright [1971] 1 W.L.R.	882
Panther and the Ericbank, The [1957] P.	143
Parlement Belge, The (1880) 5 P.D.	197
Pearn v. Sargent [1973] 2 Lloyd's Rep.	141
Philippine Admiral, The (1975) 119 S.J.	865
—; Philippine Admiral (Owners) v. Wallem Shipping (Hong Kong) [1976]	
2 W.L.R.	214
Pigott (J. H.) & Son v. Docks and Inland Waterways Executive [1953]	
1 Q.B.	338
Piper v. Royal Exchange (1932) 44 Lloyd's L. Rep.	103
Polurrian S.S. v. Young [1915] 1 K.B.	922, (C.A.)
Polzeath, The [1916] P.	241
Portreath, The [1923] P.	155
Rasden v. Pope (1868)	
Ready Mixed Concrete (South East) Ltd. v. Minister of Pensions [1968]	
2 Q.B.	497
Reardon Smith Line v. Ministry of Agriculture [1963] A.C.	691
Refrigerant, The [1925] P.	130
Richardson v. Rowntree [1894] A.C.	217
Rickards v. Forestal Land Timber and Railways Co. Ltd. [1942] A.C.	50
Riverstone Meat v. Lancashire Shipping [1961] A.C.	807
Rylands v. Fletcher (1868) L.R. 3 H.L.	330
St. Biane, The [1974] 1 Lloyd's Rep.	557
Saloman v. Saloman & Co. Ltd. [1897] A.C.	22
Samuel (P.) & Co. v. Dumas [1924] A.C.	431
Sandefjord, The [1953] 2 Lloyd's Rep.	557
Sarpen, The [1916] P.	306
Sarpedon (Cargo ex) (1877) 3 P.D.	28
Satanita, The [1897] A.C.	59
Saxonia, The (1862) 15 Moo. P.C.C.C.	262
Schiller (Cargo Ex) (1877) 2 P.D.	145
Scott v. London and St. Katherine's Dock Co. (1865) 3 H. & C.	596
Seaman v. Fonereau (1743) 2 Stra.	1183
Secretary of State for Employment v. ASLEF (No. 2) [1972] 2 Q.B.	455
Seine, The (1859) Sw.	411
Shirlaw v. Southern Foundries Ltd. [1939] 2 K.B.	206
Sobeiski, The [1949] P.	313

<i>Societe Nouvelle d'Armement v. Spillers & Bakers</i> [1917] 1 K.B. 865	109
<i>Socrates and the Champion, The</i> [1923] P. 162	159, 173
<i>Southport (Mayor of) v. Morriss</i> [1893] 1 Q.B. 359	21
<i>Spartan Steel Alloys v. Martin & Co.</i> [1973] Q.B. 27	177
<i>Strang Steel and Co. v. Scott</i> (1889) 14 App.Cas. 601	111, 187
<i>Suisse Atlantique Societe d'Armement Maritime S.A. v. N.V. Rotterdam-</i> <i>sche Kolen Centrale</i> [1967] 1 A.C. 361	86, 107
<i>Thames and Mersey Marine Insurance Co. v. Gunford Ship Co. Ltd.</i> [1911] A.C. 529	239
<i>Tojo Maru, The</i> [1972] A.C. 242	179, 197, 200
<i>Torrey Canyon, The</i> [1969] 2 Lloyd's Rep. 591	214
<i>Towerfield, The</i> (1951) 94 S.J. 517	147, 148
<i>Trump Shipping v. Greenwich Marine</i> [1975] 2 All E.R. 989	94
<i>Troilus (Cargo Owners), The v. The Glenogle (Owners, Master & Crew)</i> [1951] A.C. 820	189
<i>Tropaioforos, The</i> [1960] 2 Lloyd's Rep. 469	244
<i>Truculent (H.M.S.) v. The Divina (Owners)</i> [1952] P. 1	182
<i>Undaunted, The</i> (1886) 11 P.D. 46	203
<i>Valesia, The</i> [1927] P. 115	199
<i>Virginian Dollar, The</i> (1926) 25 Ll. L. Rep. 227	166
<i>Vlassopoulos v. British and Foreign Marine Insurance</i> [1929] K.B. 287	110
<i>Volute, The</i> [1922] 1 A.C. 129	170
<i>Wagon Mound, The</i> [1961] A.C. 388	175
— (No. 2) [1967] 1 A.C. 617	176, 219
<i>Watson v. Fireman's Fund</i> [1922] 2 K.B. 355	110
<i>Webster v. de Tastet</i> (1797) 7 Term Rep. 157	232
<i>Westbourne, The</i> (1889) 14 P.D. 132	203
<i>West Cock, The</i> [1911] P. 208	202
<i>Winona, The</i> (1944) 77 Ll. L. Rep. 156	167
<i>Workington Harbour Board v. The Towerfield (Owners)</i> [1951] A.C. 112 ...	155
<i>World Harmony, The</i> [1967] P. 341	177
<i>Yorkshire Insurance v. Nisbet Shipping</i> [1962] 2 Q.B. 330	254

TABLE OF STATUTES

1831	Truck Act (1 & 2 Will. 4, c. 37)	42	1894	Merchant Shipping Act— <i>cont.</i>	
1846	Steam Navigation Act (9 & 10 Vict. c. 100) ...	118		s. 424	121
1847	Harbours, Docks and Piers Clauses Act (10 & 11 Vict. c. 27) ...	110, 111, 125, 146		s. 425	17
	s. 33	146, 147		s. 446	89
	s. 83	146		(2)	89
	s. 52	147		s. 447	89
	s. 74	184		s. 449	89
	s. 76	148		s. 457 (1)	25
1850	Mercantile Marine Act (13 & 14 Vict. c. 93) ..	65		s. 459	25, 67
1854	Merchant Shipping Act (17 & 18 Vict. c. 104) Part II	56		s. 462	67
1855	Bills of Lading Act (18 & 19 Vict. c. 111)—			s. 502	107
	s. 1	100		s. 503	107
	s. 2	100		ss. 511–514	208
1865	Dockyard Port Regulations Act (28 & 29 Vict. c. 125)	125		s. 518	208
1875	Conspiracy and Protection of Property Act (38 & 39 Vict. c. 86) ..	70		s. 521	208
1878	Territorial Waters Jurisdiction Act (41 & 42 Vict. c. 73)	121		s. 535	208
1893	Sale of Goods Act (56 & 57 Vict. c. 71)	31, 34		s. 556	196
1894	Merchant Shipping Act (57 & 58 Vict. c. 60) ..	12, 21, 178, 188		s. 557 (1)	191
	s. 24	32		s. 560	207
	s. 72	19		s. 634	144
	s. 92	68		ss. 652–654	144
	s. 209 (1)	62		ss. 688–689	144
	s. 223	57		s. 742	45, 186
	s. 271	112		Sched. 1	37
	s. 281	112	1897	Merchant Shipping Act (60 & 61 Vict. c. 59) s. 1	67
	s. 283	112	1900	Merchant Shipping (Liability of Shipowners and Others) Act (63 & 64 Vict. c. 28) s. 2 (1)	148
	s. 287	113	1906	Marine Insurance Act (6 Edw. 7, c. 41)	229, 230
	s. 288	113		s. 1	232
	s. 418	120		s. 3	234
	(1)	118		s. 4	233
	(2)	121		s. 5	234
	s. 419	141		ss. 6–16	234
	(1)	118, 119		s. 8	234
	(2)	119		s. 9	235
	(3)	119		s. 11	233
	s. 420 (1)	130		s. 14 (1)	234
	s. 421 (2)	125		s. 15	255
	s. 422	187, 192		s. 17	237
				s. 18	238
				(2)	239
				s. 20 (1)	239, 240
				(3)	240
				(4)	239
				(5)	240
				s. 21	228
				s. 22	228
				s. 29	243
				s. 32	254
				s. 43	242

1906	Marine Insurance Act— <i>cont.</i>	1913	Pilotage Act— <i>cont.</i>
s. 44	242	s. 32	143
s. 46	242	s. 41	142
s. 51	255	s. 46	143
(1)	255	s. 48	143
(3)	255	s. 49	144
s. 52	231	s. 50	144
s. 53	231	1921	Merchant Shipping Act
s. 54	231	(11 & 12 Geo 5,	
s. 55	245	c. 28)	21, 180
(2)	244	1924	Carriage of Goods by Sea
(c)	245	Act (14 & 15 Geo 5,	
s. 60	252, 253	c. 22)	11, 12, 81, 102
s. 62 (3)	253	1925	Merchant Shipping
(4)	253	Act (15 & 16 Geo. 5,	
(5)	253	c. 42)	11, 12
(6)	253	1932	Merchant Shipping
s. 63 (1)	254	(Safety and Load	
(2)	254	Line Conventions)	
s. 65	249	Act (22 & 23 Geo 5,	
s. 66 (5)	249	c. 8)	12, 24
ss. 69–71	251	1935	Law Reform (Married
s. 76 (2)	251	Women and Joint	
s. 78 (4)	248, 249	Tortfeasors) Act (25	
s. 80 (1)	254	& 26 Geo. 5, c. 30)...	161,
(2)	254		172, 173
s. 81	254	s. 6 (1) (c)	160
s. 84 (3) (a)	237	1936	Pilotage Authorities
(f)	255	(Limitation of	
s. 85	255	Liability) Act (26	
Sched. 1	241	Geo 5 & 1 Edw. 8,	
Merchant Shipping Act		c. 36)	143, 154
(6 Edw. 7, c. 48)—		1940	Truck Act (3 & 4 Geo. 6,
s. 21	112	c. 38)	42
s. 51 (2)	19	Merchant Shipping	
s. 76	112	(Salvage) Act (3 & 4	
ss. 523–525	208	Geo. 6, c. 43)	191, 192
1909	Marine Insurance	s. 22	193
(Gambling Policies)		1943	Law Reform (Frustrated
Act (9 Edw. 7, c. 12)	233	Contracts) Act (6 & 7	
1911	Maritime Conventions	Geo. 6, c. 40)	114, 202
Act (1 & 2 Geo 5, c.		1945	Law Reform (Contribu-
57)	12, 162, 168, 170,	tory Negligence) Act	
	175	(8 & 9 Geo. 6, c. 28)	170,
s. 1	161, 171		172
(1) (a)	174	1948	Merchant Shipping Act
s. 2	172	(11 & 12 Geo. 6, c.	
s. 3	172	44)	
s. 4	119	s. 5	67
s. 6	187, 188, 193	British Nationality Act	
(2)	193	(11 & 12 Geo. 6, c.	
s. 8	40	56)	19
1913	Pilotage Act (2 & 3 Geo.	1949	Merchant Shipping
5, c. 31)	12, 154	(Safety Conventions)	
s. 7	141	Act (12, 13 & 14 Geo.	
ss 11–13	142	6, c. 43)	12
s. 15	142, 155	s. 22	139, 187
(1)	155	s. 29	25
s. 19	143	Civil Aviation Act (12, 13	
s. 26	143	& 14 Geo. 6, c. 67)	
s. 30	142	s. 51 (1)	187

1950	Arbitration Act (14 Geo. 6, c. 27)—	1966	Docks and Harbour Act— <i>cont.</i>
	s. 4		s. 40
	s. 21		Sea Fisheries Regulation Act (c. 38)
	s. 26	1967	Misrepresentation Act (c. 7)
1952	Marine and Aviation Insurance (War Risks) Act (15 & 16 Geo. 6 & 1 Eliz. 2, c. 57).....		Merchant Shipping (Load Lines) Act (c. 27) ...
1955	Oil in Navigable Waters Act (3 & 4 Eliz. 2, c. 25)		s. 25
1956	Administration of Justice Act (4 & 5 Eliz. 2, c. 46)		Anchor and Chain Cables Act (c. 64)
	s. 1 (4) (a)	1968	Hovercraft Act (c. 59) s. 1
	s. 3 (4) (b)	1969	Administration of Justice Act (c. 58)
	Part 1	1970	Administration of Justice Act (c. 31) s. 2
1958	Merchant Shipping (Liability of Shipowners and Others) Act (6 & 7 Eliz. 2, c. 62) ...		Merchant Shipping Act (c. 36)
	s. 3 (1)		s. 1
	(2) (a)		s. 7 (1)
	(b)		(2)
	s. 4		(3)
1959	Wages Councils Act (7 & 8 Eliz. 2, c. 69).....		(5)
1960	Payment of Wages Act (8 & 9 Eliz. 2, c. 37)...		s. 8
1961	Factories Act (9 & 10 Eliz. 2, c. 34)		s. 9 (2)
	s. 126		s. 10
1962	Transport Act (10 & 11 Eliz. 2, c. 46)—		s. 11
	s. 1		s. 12
	s. 3		s. 13
	s. 50		s. 14
	Sched. 9		s. 15
1963	Offices, Shops and Railway Premises Act (c. 41)		s. 16 (1)
1964	Continental Shelf Act (c. 29)		s. 17
	Harbours Act (c. 40)—		s. 18
	s. 9		s. 20 (1)
	ss. 11–12		s. 21
	ss. 14–18		s. 22
	ss. 20–25		s. 23
	s. 27		s. 24
	s. 31		s. 25
	s. 32		s. 26
	Merchant Shipping Act (c. 47)		s. 27
	s. 17 (1)		s. 28
1965	Redundancy Payments Act (c. 63)		s. 29
1966	Docks and Harbours Act (c. 28)		s. 30
			s. 34
			s. 35
			s. 37
			s. 38
			s. 39
			s. 40
			s. 41
			s. 42
			(2)
			ss. 43–50
			s. 43
			s. 46
			ss. 62–64

1970	Merchant Shipping Act— <i>cont.</i>	1974	Health and Safety at Work Act— <i>cont.</i>
	s. 64 (1) (b) 63		s. 53 64
	s. 68 76		s. 84 64
	s. 77 57		Merchant Shipping Act
	s. 78 57		(c. 43) 225
	s. 79 57, 113		s. 19 58, 59
	s. 99 70		Part II 215
	s. 100 70		Trade Union and Labour
	Equal Pay Act (c. 41)..... 42, 54		Relations Act (c. 52)
	s. 10 55		ss. 13–17 70
	Harbours (Amendment)		s. 29 70
	Act (c. 53)	1975	Sex Discrimination Act
	s. 1 146		(c. 65) 42, 54, 55, 74
1971	Carriage of Goods by Sea		Employment Protection
	Act (c. 19) 81, 101,		Act (c. 71) 70
	102, 107	1976	Trade Union and Labour
	Courts Act (c. 23) 3, 9		Relations (Amend-
	Merchant Shipping (Oil		ment) Act (c. 7) 70, 73
	Pollution) Act (c. 59) 222		Race Relations Act
	s. 20 (2) 223		(c. 74) 54, 74
	Prevention of Oil Pollu-		s. 8 (3) 55
	tion Act (c. 60) 213,		s. 9 55
	214, 217	1977	Merchant Shipping
	s. 1 (1) 212		(Safety Conventions)
	s. 2 (1) 212		Act (c. 24) 26
	s. 5 212		Insurance Brokers (Regi-
	s. 11 211, 215		stration) Act (c. 46).... 230
	s. 12 215		Unfair Contract Terms
	s. 17 210		Act (c. 50) 114
	Mineral Workings (Off-		s. 1 206
	shore Installations)		s. 2 (1) 115
	Act (c. 61) 210		(3) 115
1973	Supply of Goods (Implied		s. 3 115
	Terms) Act (c. 13) ... 35, 36		s. 12 107
	Protection of Wrecks Act		Sched. 1, para. 3 107
	(c. 33) 208		s. 28 116
1974	Dumping at Sea Act (c.	1978	Employment Protection
	20) 216		(Consolidation) Act
	Health and Safety at		(c. 44) 42, 43, 70, 71
	Work Act (c. 37)..... 42		s. 1 45
	s. 2 (2) 65		s. 141 (5) 73
	(3) 65		s. 144 (3) 72
	s. 21 65		
	s. 22 65		

CHAPTER 1

MARITIME LAW AND ENGLISH LAW

1. ORIGINS OF MARITIME LAW

The legal problems posed by ships, shipping and the sea can never be quite the same as those posed by land transport. Not only is there an inevitable foreign element in many questions, since ships and cargoes, by nature, travel between countries, but the time between docking is spent on the high seas where there is no obvious applicable legal system.

This has always been so. From the beginning, when seafarers and foreign merchants brought their problems to the courts, they expected that they should be answered in a way which satisfied their peculiar needs. Over the centuries, ports and communities with connections with the sea built up customary rules which eventually spread beyond their boundaries, carried by the same merchants and shipowners whom the customs were designed to help. In the Mediterranean, the traditional Rhodian Sea Law, based upon the practice in the Island of Rhodes, was greatly used. In the north, the laws of Wisbey and the Hanse towns of Northern Germany were popular. Between the two came the Laws of Oleron, a small island off the mouth of the Charente in the Bay of Biscay. This last customary code soon dominated English practice and in the fifteenth century was written into the Black Book of the Admiralty, the basis of English maritime law.

Not only were there special laws, based upon the practice and custom of merchants and seafarers, there were usually special courts, with the necessary special experience, to carry them out. In England, to begin with, many places had their own maritime court. Any busy seaport or trading centre which found itself with legal problems would develop an appropriate court to deal with them. Later, however, the maritime aspects of this business were concentrated in the hands of the Lord High Admiral. He was the royal official primarily responsible for naval and maritime matters. Because of that, he always claimed the right to deal with crimes committed at sea, like piracy. It was a short step in the fifteenth century to extend that jurisdiction to cover civil claims as well. This was done and a central court, the High Court of Admiralty, was set up.

In modern times, England has one system of courts and one system of law. There is no separate system of maritime law, but there are still special rules which apply to ships and shipping problems