Shipping Law

Robert Grime

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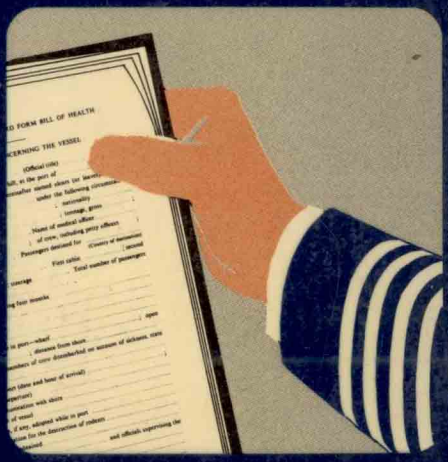

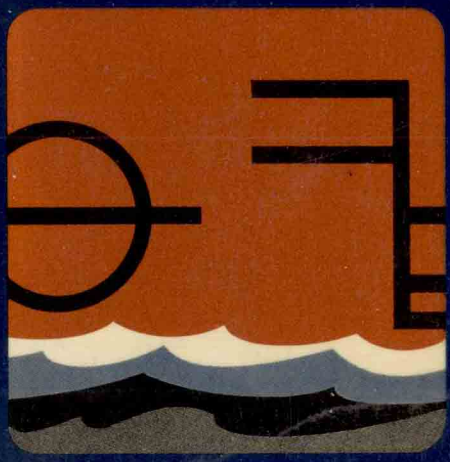

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SHIPPING LAW

BY

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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 inseperable 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.

CONTENTS

	PAGE
Preface	v
Table of Cases	xi
Table of Statutes	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. Divison 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

Index 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
Albionic, 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
Liddlesdale, 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. 93 147
Midland Silicones *v.* Scruttons [1962] A.C. 446 106
Minnehaha, The (1861) Lush. 335 ..... 201, 203, 204
Miraflores, The and the Abadesa [1967] 1 A.C. 826 174
Mitchell Cotts *v.* Steel Bros. [1916] 2 K.B. 610 90
Monica S., The [1968] P. 741 40
Moran Galloway *v.* Uzielli [1905] 2 K.B. 555 235
Muller *v.* Trinity House [1925] 1 K.B. 166 142

Naamlooze Vennootschap Vredobert *v.* European Shipping Co. Ltd. (1926) Ll. L. Rep. 210 36
Nishina Trading *v.* Chiyoda Fire and Marine [1969] 2 Q.B. 449 245
Nora, The [1956] 1 Lloyd's Rep. 617 132
Norwhale, The [1975] Q.B. 589 11
Nowy Sacz, The [1977] 2 Lloyd's Rep. 91 125

Oppen *v.* Aetna Insurance Co. (1973) 485 F. 2nd. 252 224
Ortranto, The (1931) 136

P. Caland, The [1893] A.C. 207 ..... 127, 128
Palace Shipping Co. Ltd. *v.* Caine [1907] A.C. 386 51
Panamanian Oriental S.S. Co. *v.* Wright [1971] 1 W.L.R. 882 247
Panther and the Ericbank, The [1957] P. 143 ..... 159, 160, 161, 173
Parlement Belge, The (1880) 5 P.D. 197 14
Pearn *v.* Sargent [1973] 2 Lloyd's Rep. 141 147
Philippine Admiral, The (1975) 119 S.J. 865 ..... 14, 16
——; Philippine Admiral (Owners) *v.* Wallem Shipping (Hong Kong) [1976] 2 W.L.R. 214 121
Pigott (J. H.) & Son *v.* Docks and Inland Waterways Executive [1953] 1 Q.B. 338 147
Piper *v.* Royal Exchange (1932) 44 Lloyd's L.Rep. 103 234
Polurrian S.S. *v.* Young [1915] 1 K.B. 922, (C.A.) 253
Polzeath, The [1916] P. 241 ..... 20, 24
Portreath, The [1923] P. 155 190

Rasden *v.* Pope (1868) 37
Ready Mixed Concrete (South East) Ltd. *v.* Minister of Pensions [1968] 2 Q.B. 497 152
Reardon Smith Line *v.* Ministry of Agriculture [1963] A.C. 691 89
Refrigerant, The [1925] P. 130 202
Richardson *v.* Rowntree [1894] A.C. 217 114
Rickards *v.* Forestal Land Timber and Railways Co. Ltd. [1942] A.C. 50 ... 246
Riverstone Meat *v.* Lancashire Shipping [1961] A.C. 807 103
Rylands *v.* Fletcher (1868) L.R. 3 H.L. 330 ..... 184, 218

St. Blane, The [1974] 1 Lloyd's Rep. 557 196
Saloman *v.* Saloman & Co. Ltd. [1897] A.C. 22 20
Samuel (P.) & Co. *v.* Dumas [1924] A.C. 431 244
Sandefjord, The [1953] 2 Lloyd's Rep. 557 191
Sarpen, The [1916] P. 306 193
Sarpedon (Cargo ex) (1877) 3 P.D. 28 187
Satanita, The [1897] A.C. 59 179
Saxonia, The (1862) 15 Moo.P.C.C.C. 262 121
Schiller (Cargo Ex) (1877) 2 P.D. 145 188
Scott *v.* London and St. Katherine's Dock Co. (1865) 3 H. & C. 596 165
Seaman *v.* Fonereau (1743) 2 Stra. 1183 238
Secretary of State for Employment *v.* ASLEF (No. 2) [1972] 2 Q.B. 455 51
Seine, The (1859) Sw. 411 154
Shirlaw *v.* Southern Foundries Ltd. [1939] 2 K.B. 206 50
Sobeiski, The [1949] P. 313 171

Societe Nouvelle d'Armement *v.* Spillers & Bakers [1917] 1 K.B. 865 109
Socrates and the Champion, The [1923] P. 162 ..... 159, 173
Southport (Mayor of) *v.* Morriss [1893] 1 Q.B. 359 21
Spartan Steel Alloys *v.* Martin & Co. [1973] Q.B. 27 177
Strang Steel and Co. *v.* Scott (1889) 14 App.Cas. 601 ..... 111, 187
Suisse Atlantique Societe d'Armement Maritime S.A. *v.* N.V. Rotterdamsche Kolen Centrale [1967] 1 A.C. 361 ..... 86, 107

Thames and Mersey Marine Insurance Co. *v.* Gunford Ship Co. Ltd. [1911] A.C. 529 239
Tojo Maru, The [1972] A.C. 242 ..... 179, 197, 200
Torrey Canyon, The [1969] 2 Lloyd's Rep. 591 214
Towerfield, The (1951) 94 S.J. 517 ..... 147, 148
Tramp Shipping *v.* Greenwich Marine [1975] 2 All E.R. 989 94
Troilus (Cargo Owners), The *v.* The Glenogle (Owners, Master & Crew) [1951] A.C. 820 189
Tropaioforos, The [1960] 2 Lloyd's Rep. 469 244
Truculent (H.M.S.) *v.* The Divina (Owners) [1952] P. 1 182

Undaunted, The (1886) 11 P.D. 46 203

Valesia, The [1927] P. 115 199
Virginian Dollar, The (1926) 25 Ll. L. Rep. 227 166
Vlassopoulos *v.* British and Foreign Marine Insurance [1929] K.B. 287 110
Volute, The [1922] 1 A.C. 129 170

Wagon Mound, The [1961] A.C. 388 175
—— (No. 2) [1967] 1 A.C. 617 ..... 176, 219
Watson *v.* Fireman's Fund [1922] 2 K.B. 355 110
Webster *v.* de Tastet (1797) 7 Term Rep. 157 232
Westbourne, The (1889) 14 P.D. 132 203
West Cock, The [1911] P. 208 202
Winona, The (1944) 77 Ll. L. Rep. 156 167
Workington Harbour Board *v.* The Towerfield (Owners) [1951] A.C. 112 ... 155
World Harmony, The [1967] P. 341 177

Yorkshire Insurance *v.* Nisbet Shipping [1962] 2 Q.B. 330 254

TABLE OF STATUTES

1831 Truck Act (1 & 2 Will. 4, c. 37) 42
1846 Steam Navigation Act (9 & 10 Vict. c. 100) ... 118
1847 Harbours, Docks and Piers Clauses Act (10 & 11 Vict. c. 27) ... 110, 111, 125, 146
s. 33 ..... 146, 147
s. 83 146
s. 52 147
s. 74 184
s. 76 148
1850 Mercantile Marine Act (13 & 14 Vict. c. 93) 65
1854 Merchant Shipping Act (17 & 18 Vict. c. 104) Part II 56
1855 Bills of Lading Act (18 & 19 Vict. c. 111)—
s. 1 100
s. 2 100
1865 Dockyard Port Regulations Act (28 & 29 Vict. c. 125)..... 125
1875 Conspiracy and Protection of Property Act (38 & 39 Vict. c. 86) 70
1878 Territorial Waters Jurisdiction Act (41 & 42 Vict. c. 73) 121
1893 Sale of Goods Act (56 & 57 Vict. c. 71) 31, 34
1894 Merchant Shipping Act (57 & 58 Vict. c. 60) 12, 21, 178, 188
s. 24 32
s. 72 19
s. 92 68
s. 209 (1) 62
s. 223 57
s. 271 112
s. 281 112
s. 283 112
s. 287 113
s. 288 113
s. 418 120
(1) 118
(2) 121
s. 419 141
(1) 118, 119
(2) 119
(3) 119
s. 420 (1) 130
s. 421 (2) 125
s. 422 .....187, 192
1894 Merchant Shipping Act—*cont.*
s. 424 121
s. 425 17
s. 446 89
(2) 89
s. 447 89
s. 449 89
s. 457 (1) 25
s. 459 ..... 25, 67
s. 462 67
s. 502 107
s. 503 107
ss. 511–514 208
s. 518 208
s. 521 208
s. 535 208
s. 556 196
s. 557 (1) 191
s. 560 207
s. 634 144
ss. 652–654..... 144
ss. 688–689 144
s. 742 ..... 45, 186
Sched. 1 37
1897 Merchant Shipping Act (60 & 61 Vict. c. 59)
s. 1 67
1900 Merchant Shipping (Liability of Shipowners and Others) Act (63 & 64 Vict. c. 28)
s. 2 (1) 148
1906 Marine Insurance Act (6 Edw. 7, c. 41) 229, 230
s. 1 232
s. 3 234
s. 4 233
s. 5 234
ss. 6–16 234
s. 8 234
s. 9 235
s. 11 233
s. 14 (1) 234
s. 15 255
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—*cont.*
s. 44 242
s. 46 242
s. 51 255
(1) 255
(3) 255
s. 52 231
s. 53 231
s. 54 231
s. 55 245
(2) 244
(*c*) 245
s. 60 .....252, 253
s. 62 (3) 253
(4) 253
(5) 253
(6) 253
s. 63 (1) 254
(2) 254
s. 65 249
s. 66 (5) 249
ss. 69–71 251
s. 76 (2) 251
s. 78 (4) 248, 249
s. 80 (1) 254
(2) 254
s. 81 254
s. 84 (3) (*a*) 237
(*f*) 255
s. 85 255
Sched. 1 241
Merchant Shipping Act (6 Edw. 7, c. 48)—
s. 21 112
s. 51 (2) 19
s. 76 112
ss. 523–525 208
1909 Marine Insurance (Gambling Policies) Act (9 Edw. 7, c. 12) 233
1911 Maritime Conventions Act (1 & 2 Geo 5, c. 57) 12, 162, 168, 170, 175
s. 1 ..... 161, 171
(1) (*a*) 174
s. 2 172
s. 3 172
s. 4 119
s. 6 ..... 187, 188, 193
(2) 193
s. 8 40
1913 Pilotage Act (2 & 3 Geo. 5, c. 31) 12, 154
s. 7 141
ss 11–13 142
s. 15 .....142, 155
(1) 155
s. 19 143
s. 26 143
s. 30 142
1913 Pilotage Act—*cont.*
s. 32 143
s. 41 142
s. 46 143
s. 48 143
s. 49 144
s. 50 144
1921 Merchant Shipping Act (11 & 12 Geo 5, c. 28) 21, 180
1924 Carriage of Goods by Sea Act (14 & 15 Geo 5, c. 22) 11, 12, 81, 102
1925 Merchant Shipping Act (15 & 16 Geo. 5, c. 42) 11, 12
1932 Merchant Shipping (Safety and Load Line Conventions) Act (22 & 23 Geo 5, c. 8) 12, 24
1935 Law Reform (Married Women and Joint Tortfeasors) Act (25 & 26 Geo. 5, c. 30)... 161, 172, 173
s. 6 (1) (*c*) 160
1936 Pilotage Authorities (Limitation of Liability) Act (26 Geo 5 & 1 Edw. 8, c. 36) 143, 154
1940 Truck Act (3 & 4 Geo. 6, c. 38) 42
Merchant Shipping (Salvage) Act (3 & 4 Geo. 6, c. 43) 191, 192
s. 22 193
1943 Law Reform (Frustrated Contracts) Act (6 & 7 Geo. 6, c. 40) 114, 202
1945 Law Reform (Contributory Negligence) Act (8 & 9 Geo. 6, c. 28) 170, 172
1948 Merchant Shipping Act (11 & 12 Geo. 6, c. 44)
s. 5 67
British Nationality Act (11 & 12 Geo. 6, c. 56) 19
1949 Merchant Shipping (Safety Conventions) Act (12, 13 & 14 Geo. 6, c. 43) 12
s. 22 .....139, 187
s. 29 25
Civil Aviation Act (12, 13 & 14 Geo. 6, c. 67)
s. 51 (1) 187

1950 Arbitration Act (14 Geo. 6, c. 27)—
s. 4 10
s. 21 10
s. 26 10
1952 Marine and Aviation Insurance (War Risks) Act (15 & 16 Geo. 6 & 1 Eliz. 2, c. 57)..... 247
1955 Oil in Navigable Waters Act (3 & 4 Eliz. 2, c. 25) 12, 210, 215
1956 Administration of Justice Act (4 & 5 Eliz. 2, c. 46) 12, 15, 40, 149
s. 1 (4) (*a*) 13
s. 3 (4) (*b*) 16
Part 1 13
1958 Merchant Shipping (Liability of Shipowners and Others) Act (6 & 7 Eliz. 2, c. 62) ... 11, 12, 178
s. 3 (1) 181
(2) (*a*) 181
(*b*) 183
s. 4 180
1959 Wages Councils Act (7 & 8 Eliz. 2, c. 69)..... 42
1960 Payment of Wages Act (8 & 9 Eliz. 2, c. 37)... 42
1961 Factories Act (9 & 10 Eliz. 2, c. 34) 42
s. 126 64
1962 Transport Act (10 & 11 Eliz. 2, c. 46)—
s. 1 146
s. 3 146
s. 50 146
Sched. 9 146
1963 Offices, Shops and Railway Premises Act (c. 41) 42
1964 Continental Shelf Act (c. 29) 210
Harbours Act (c. 40)—
s. 9 146
ss. 11–12 146
ss. 14–18 146
ss. 20–25 146
s. 27 146
s. 31 146
s. 32 146
Merchant Shipping Act (c. 47) 24
s. 17 (1) 112
1965 Redundancy Payments Act (c. 63) 43
1966 Docks and Harbours Act (c. 28)
s. 40 146
Sea Fisheries Regulation Act (c. 38) 210
1967 Misrepresentation Act (c. 7) 34, 237
Merchant Shipping (Load Lines) Act (c. 27) ... 29
s. 25 112
Anchors and Chain Cables Act (c. 64) 28
1968 Hovercraft Act (c. 59)
s. 1 21
1969 Administration of Justice Act (c. 58) 7
1970 Administration of Justice Act (c. 31)
s. 2 5
Merchant Shipping Act (c. 36) 17, 41, 56, 112
s. 1 44
s. 7 (1) 53
(2) 54
(3) 54
(5) 53
s. 8 54
s. 9 (2) 71
s. 10 54
s. 11 53
s. 12 54
s. 13 53
s. 14 53
s. 15 54
s. 16 (1) 54
s. 17 53
s. 18 76
s. 20 (1) 62
s. 21 62
s. 22 62
s. 23 61
s. 24 63
s. 25 63
s. 26 63
s. 27 58
s. 28 58
s. 29 58
s. 30 ..... 58, 69
s. 34 59
s. 35 61
s. 37 59
s. 38 60
s. 39 61
s. 40 62
s. 41 61
s. 42 70
(2) 69
ss. 43–50 65
s. 43 ..... 63, 68
s. 46 68
ss. 62–64 63

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

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

which have no application anywhere else in the legal system. There is no separate system of maritime courts, but there is still an Admiralty Court within the Queen's Bench Division of the High Court which, as a matter of practice and convenience, handles most of the maritime cases and which applies the unusual rules and procedures that still exist. Again, by its very nature, maritime and shipping law must have a large part of its rules settled by international agreement. So international law has its role to play.

Nevertheless, maritime law in England is substantially the application of the ordinary principles of the law to the particular problems of ships and the sea. It is therefore necessary to begin any introductory book on the subject with a brief account of the English court system.

2. The English Court System

At the outset, two distinctions must be borne in mind. Courts may have *criminal* or *civil* jurisdiction. Occasionally they have both. Criminal matters are *prosecutions* whereby the State takes legal proceedings against a person or a company for breaking the criminal law. The criminal law is there to lay down the limits of behaviour expected of citizens. A successful prosecution leads to the punishment of the individual prosecuted, usually by fine or imprisonment. Civil matters, on the other hand, are generally *actions*, whereby one person or company takes legal proceedings against another person or company. The civil law seeks to regulate the relations between citizens, amongst other things. A person taking civil proceedings, usually the *plaintiff*, generally seeks a remedy from the court against the other, the *defendant*. Very often that remedy is *damages*, to compensate him for some harm or loss which he alleges was brought about by the defendant's breach of the civil law. But he may seek to recover a debt he alleges is owed to him, or he may wish to assert his right to some property. He may seek an *injunction*, a court order requiring the other side to cease doing something, or a simple *declaration* of his legal rights. There are many sorts of civil procedure, appropriate to the huge variety of the civil law.

Secondly, courts may be *appeal courts* or courts of *original jurisdiction*. A case begins in a court of original jurisdiction. Usually, a party to those proceedings who is dissatisfied with the result is given a right of appeal. This right may not be absolute: the grounds upon which an appeal may be taken may be limited or qualified in some way. Appeals are invariably taken to a different court. Sometimes courts have both original and appellate jurisdiction, but the functions are usually distinct.

In terms of the amount of work they do, *magistrates' courts* are