

## MARITIME DISASTERS

### "TAKING THE DRAMA OUT OF A CRISIS" - THE LAWYER'S ROLE

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#### 1. INTRODUCTION

In the early hours of Sunday morning on 20th August 1989 the pleasurecraft "MARCHIONESS" and the suction dredger "BOWBELLE" were both heading down river on the River Thames against a strong spring tide. The two vessels collided between Southwark bridge and Cannon Street railway bridge. The Master of the "MARCHIONESS", and 50 passengers, tragically lost their lives. Eighty survivors were rescued following a massive search and rescue operation mounted by the Thames Division of the Metropolitan Police.

The collision came at the end of a two year period marred by major transport disasters in the United Kingdom - the "HERALD OF FREE ENTERPRISE", the Lockerbie air crash, the King's Cross Underground fire, the British Midlands air crash, and the Clapham Rail crash. The response of the media and the authorities was immediate. Within days Police had taken thousands of statements from anyone remotely connected with the disaster. The media attention was intense.

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A collision with strikingly similar features occurred in Sydney Harbour in 1927 when the SS "TAHITI" collided with and sank the harbour ferry "GREYCLIFF" with the loss of 40 lives. The "TAHITI" had been overtaking the "GREYCLIFF", with the two vessels' courses slightly converging. Just before the collision the "GREYCLIFF" sheered to port across the larger vessel's bows. It was impossible to determine whether this was caused by an initial light contact or by interaction or by a combination of both. An important conclusion of the Inquiry into the collision was that there were structural impediments to the maintenance of a lookout astern on the ferry.

The advent of the modern mass media has meant that vivid images of the consequences of any disaster are brought into our homes. Plaintiffs' lawyers in the United States, Britain and Australia have learnt the power of collective action and the effective use to which the media can be put in running an often extra-legal campaign against Defendants. It has become increasingly necessary for transport operators and their insurers to develop contingency plans in order to respond to casualties. A range of proceedings, enquiries and investigations are likely to be launched following a casualty, most of important of which are possible criminal investigations into the conduct of individuals or corporations. In effectively dealing with these problems, traditional maritime lawyers must learn some new skills.

This paper will look at some of the issues likely to arise in the aftermath of a disaster and examine the lawyer's role in managing the ensuing investigations, enquiries and media attention. The paper will attempt to deal with the position in English law and practice and will look at the problems primarily from a Shipowner's perspective.

2. MEDIA/PUBLIC RELATIONS

"In each crisis there is a window of opportunity that lasts for a few hours or days. During that window, a company must show that it is taking the crisis seriously and addressing it." (John Paluszek, the immediate past President of the Public Relations Society of America).

There is no doubt that adverse publicity can have an immediate and dramatic effect on the transport operator's business, particularly if it is involved in moving passengers. Bookings on Pan Am declined sharply after the Lockerbie air crash and even a year after the disaster the company reported that its bookings were down by 10%.

The effective handling of the press has two elements : firstly, a spokesman on behalf of the company must be accessible and forthcoming to the press, while preserving the interests of the company and its insurers, and, secondly, every effort must be made to avoid the public gaining the perception the company is taking a legalistic approach in dealing with the victims and adopting delaying tactics.

In public relations terms, the response of British Midland Airways following the Kegworth air crash was exemplary. The Chairman of British Midland appeared on television within hours of the crash and, while refusing to prejudge the cause of the accident, expressed concern for the victims and praised the efforts of the rescue services. It is not surprising that the Chairman had a background in public relations.

It is very common for lawyers to be asked to take on the role of company spokesman. This probably occurs for a number of reasons. Often it is very difficult for a non-lawyer to grasp legal issues sufficiently quickly to be able to explain them accurately to the press. A

further reason could be that if individuals in the company are likely to become the focus of a police investigation, it is probably better for those individuals to remain out of the public eye. A lawyer's natural inclination is to make no comment. This can often be disastrous in public relations terms. Having said that, it is unlikely to be in a Shipowner's interest to take a proactive role with the press.

A pattern of tactics have been developed by prominent Plaintiffs' lawyers in the USA and the United Kingdom who have close connections with the media. These include :

- (1) Making repeated calls for charges to be laid against the company or individuals (or threatening private prosecutions).
- (2) Calling for flat rate payments to all victims, regardless of the merits of each individual claim. This is often coupled with refusing to identify the Plaintiffs represented by the Group or providing any adequate information from which the value of individual claims can be assessed.
- (3) Identifying and approaching political figures who may see it in their interests to take up the cause of the victims of the disaster.

If the Shipowner is a publicly listed company, or part of a public group of companies, it is becoming common for individuals to buy shares in the company in order to have the right to attend the company's annual general meeting and put questions directly to the directors of the company.

One of a Defendant's lawyer's main objectives should be to avoid delay. A thorough investigation should be carried out immediately to enable a view to be taken on liability and, where appropriate, concessions should be made early. There is no point in defending the indefensible.

In the "MARCHIONESS" case, the Owners of both vessels made a joint and several concession that Claimants would not be put to proof of negligence against the Owners within six weeks of the collision. It still took several months before the Plaintiffs' solicitors would identify their clients other than by number and even now not one fully documented claim has been presented. Ironically, it is apparently perceived by some lawyers that in settling claims the advantages of a large constituency of Claimants in influencing the media is lost.

The public relations aspect of a disaster requires careful management. Press releases, written in consultation with the company's other advisers where possible must be prepared in advance of each significant stage in the proceedings. It can be anticipated that every event in the proceedings will be attended by press interest: the opening of the Inquest and the appearances in Court, the decision by the DPP whether or not to lay charges, and the release of any recommendations or reports into the incident.

### 3. INVESTIGATIONS

A disaster may be the subject of investigation in at least four different contexts : Police investigations, Department of Transport investigations, a Coroner's inquest (if there has been loss of life), and limitation and liability proceedings.

#### (a) Police Investigation

Immediately following the "MARCHIONESS" casualty, the Master and Second Mate of the "BOWBELLE" were arrested by the Police and all the crew were detained until samples of blood were taken. Section 62 of the Police and Criminal Evidence Act 1984 (UK) ("PACE") allows "intimate samples", including blood, to be taken in certain circumstances. A person may refuse to give an intimate sample but, by refusing to consent to the taking of a sample without good cause, a Court or jury can draw adverse inferences in determining whether that person is guilty of an offence (Section 62(10) PACE). Statements were taken from all the crew of the "BOWBELLE", including the Master, by the Police. The Master has now been charged with an offence under Section 32 of the Merchant Shipping Act 1988. The statements given by him and the crew form a critical part of the prosecution's case against him.

A lawyer dealing with a maritime disaster involving the possible commission of an offence must have some knowledge of criminal law and procedure and be able to seek specialist assistance quickly. A lawyer who is appointed to represent Owners' interests will not be in a position to represent the Master or any other individual who may be charged with an offence. Indeed, if there is any serious possibility of the company itself having committed an offence, the interests of the company and its insurers

may diverge and insurance coverage may be prejudiced. It may be necessary to make contact with other lawyers with a variety of specialities in the immediate aftermath of a collision.

In the United Kingdom, the Police have wide powers to enter premises and seize documents. Simply by obtaining a warrant on the basis there are reasonable grounds to believe a serious arrestable offence has been committed, a very wide search for, and seizure of, relevant material can be undertaken (Sections 8-19 PACE). Contact should be made with the Police at an early stage. It is usually preferable to co-operate in providing documents to avoid indiscriminate seizure of material.

Witnesses are, of course, under no obligation to answer questions put to them by investigating police officers. A very difficult issue is the extent to which a lawyer, retained by the company, can tender advice to senior executives of the company as to the extent to which they are obliged to co-operate with the Police. The Owners of the "HERALD OF FREE ENTERPRISE", together with the directors and senior employees, have been committed for trial on charges of manslaughter. The prosecution is running the novel argument that the "directing mind and will" of a corporation for the purposes of the alleged commission of a crime, can be found not only in the board of directors, but in any senior executive of the company down to and including the Master of a vessel. If this argument were to succeed, it is clear the evidence of any senior executive could be admitted against the company. Are lawyers entitled to tender advice directly to senior executives concerning the level of co-operation which should be given the Police?

(b) Department of Transport Investigations

In the United Kingdom, following the "HERALD OF FREE ENTERPRISE" disaster, the Department of Trade established a Marine Accident Investigation Branch to investigate and report on collisions. The Inspector of the MAIB is required to report to the Secretary of State who may publish the report if he thinks it fit and shall do so if :

- (a) It appears to him that to do so will improve the safety of life at sea and help to prevent accidents in the future; or
- (b) It relates to a serious casualty to a UK ship; unless in his opinion there is good reason to the contrary.

Inspectors have the powers conferred upon them by the provisions of the Merchant Shipping (Accident Investigation) Regulations 1989 and Section 27 of the Merchant Shipping Act 1979. An Inspector has power to require witnesses to attend before him and give evidence. He also has wide powers to require the Owners and Master to provide such information as he considers necessary to conduct his investigations.

In the United Kingdom, even though an MAIB investigation is in hand, it is still open to the Secretary of State at any time to order a formal investigation, (a "Wreck Enquiry") under Section 56 of the Merchant Shipping Act. An MAIB investigation, and any public inquiry, has a wide responsibility to investigate the causes of a maritime disaster. The issues in any form of Department of

Transport enquiry are not defined and it is very difficult to exercise any control over the direction an inquiry may take.

The most immediate concern is the extent to which evidence given to an inquiry is admissible in the proceedings and whether the findings of the Inspector have any evidential weight. The pilot who conned the "MIKHAIL LERMONTOV" when she was lost in Marlborough Sounds gave evidence to a preliminary investigation into the sinking. A transcript of the proceedings was publicly released and, subsequently, became a crucial piece of evidence against the harbour authority, who employed the pilot, in proceedings in Australia.

Although a Court of Enquiry is not "a Court of competent jurisdiction" to create issue estoppel by its finding there is judicial opinion that evidential use can be made of the reports of Wreck Commissioners (THE "SPEEDLINK VANGUARD" AND THE "EUROPEAN GATEWAY" [1986] 2 LLR 265). Witness evidence recorded in a transcript for a public enquiry would be admissible under Section 4(1) of the Civil Evidence Act 1968 which deals with the admissibility of statements made and a document forming part of a record. It is arguable the report itself is a "record" and would be admissible at least insofar as it records evidence and admissions.

In Re Armvent Limited [1975] 3 All ER 441 Templeman J. held that the report of an Inspector, appointed by the Secretary of State for Trade, into the affairs of a company was admissible in a winding up petition as prima facie evidence to determine whether a winding up order should be made. The Inspector had concluded the company was closely engaged in managing assets which were the proceeds of crime and the company had ceased trading and

there was no prospect of its trade being revived. No-one was prepared to challenge the Inspector's report by testifying it was wrong. In those circumstances, Templeman J held that the report of a person exercising a statutory fact finding function was admissible and a Court may act on it.

Section 27(7) of the Merchant Shipping Act provides that the evidence given by a witness will not be admissible in proceedings against person. However, there is no reason why the evidence could not be used as an admission against the witness' employer - assuming it can be established that the witness had the requisite authority to make admissions against the employer. A witness is not entitled to claim privilege against self-incrimination to avoid answering an Inspector's questions (THE "EUROPEAN GATEWAY"). This could give rise to an unusual situation. A witness could give evidence to an Inspector which could subsequently be relied on to support a conviction of the company for a criminal offence.

In some cases a claim of public interest immunity has succeeded in preventing evidence given before an investigation being used in subsequent proceedings. The essence of a claim of public interest immunity is that evidence is given in circumstances of confidentiality with a view to the investigator reaching a just and true decision (see MAKANJUOLA -v- THE COMMISSIONER OF METROPOLITAN POLICE - "The Times" 31st March 1989). A claim of public interest immunity is dealt with in two stages : first, the Court must consider whether the claim is made out (a Court is itself under a duty to take the point where it detects the need for such immunity to be claimed; the claim may be supported by a Minister's Certificate); second, the Court must consider whether there was a greater public interest in requiring

disclosure of the documents. The recent decision of Mr. Justice Popplewell in BARRATT -v- THE MINISTER OF DEFENCE ("The Times" 24th January 1990) clearly indicates that a Court will not necessarily accept the argument that a witness' candour before a Board of Inquiry would be affected by the possibility that the report might become admissible in subsequent civil proceedings. In that case, Popplewell J. ordered that the Ministry of Defence to disclose to a deceased airman's widow a report of an investigation into the airman's death.

(c) Coroner's Inquest

The office of Coroner is one of the oldest known to English law. Coroners exercise an ancient duty to investigate into any sudden or unnatural death. The modern function of a Coroner in the United Kingdom is prescribed by Rule 36 of the Coroners' Rules 1984 which provides that an Inquest shall be directed solely to ascertaining who the deceased was and how, when and where the deceased came by his death. The "how" can lead to a very wide investigation of the circumstances of the casualty. A Coroner has a well recognised function in the United Kingdom to make recommendations to avoid similar circumstances arising which led to the deceased's death.

Recently, a practice has developed where a Coroner would wait until the appropriate investigating body released its report before convening a formal Inquest. The Coroner would often call the Inspector as his first witness to give evidence to the jury of the circumstances of the death. However, following the "HERALD OF FREE ENTERPRISE", Coroners have become reluctant to convene an Inquest until the Police indicate whether charges are to be laid (similarly, the Inspectors are reluctant to release their report). Charges were not laid against the

company and senior executives of the Owners of the "HERALD OF FREE ENTERPRISE" until after the jury returned a verdict of unlawful killing. This in itself was sometime after the public inquiry. Evidence had been given by those who now stand charged at two public inquiries before charges were laid.

Rule 9(2) of the Merchant Shipping (Accident and Investigation) Regulations now provides that where the report of any investigation indicates a breach of the law and that the prosecution of the suspected offenders should be considered, the report shall not be published until either the prosecution has been concluded or it has been decided not to prosecute.

In the "MARCHIONESS" case an unusual situation developed. The Coroner adjourned the Inquest on more than a dozen occasions waiting for the Police to indicate whether charges would be laid, or for the MAIB report to be released. Although it seems the MAIB report was prepared in draft at quite an early stage, the Inspector did not wish to release it until the Police had indicated whether charges would be laid. The Police for their part seemed to be waiting for the Inquest to start. The families of those who have died in accidental circumstances often have an understandable need for a formal pronouncement of how their relative came to meet his death. It was a wholly unsatisfactory situation for the Inquest to be held up by bureaucratic inactivity.

Eventually, the Coroner decided to convene the Inquest in two distinct stages : firstly, mini Inquests into the circumstances of each individual death, and, secondly, the larger circumstances of why the accident occurred. The Inquest started in March this year, and by the time Part 2 was about to commence, the Director of Public

Prosecutions indicated that charges would be laid against the Master, Captain Henderson, for an alleged offence under Section 32 of the Merchant Shipping Act 1980 for failing to keep a proper lookout by all available means. Those representing the families of the deceased urged the Coroner to continue with Part 2 of the Inquest. A request was made by the DPP under Section 20(1)(b) of the Coroners' (Amendment) Act 1926 which provides that the Coroner shall, in the absence of a reason to the contrary, adjourn the Inquest until after the conclusion of criminal proceedings. The Inquest is now adjourned.

A practice has developed for the Police to make the evidence they have collected available to the Coroner on a confidential basis and it is from this material that the Coroner makes a decision as to witnesses to be called. Rule 22 of the Coroners' Rules provides that no witness shall be obliged to answer any question tending to incriminate himself. However, it is not difficult to imagine circumstances in which a witness answers a question which does not seem to incriminate him but it in turn may lead to a chain of enquiry which could expose the witness. It is for this reason, that the Coroner's Inquest must be handled with the utmost care and it is extremely unwise to allow any witness to give evidence until a thorough investigation has been completed so that an informed opinion as to whether the witness is likely to incriminate himself can be reached. It was our experience that evidence touching on issues of both civil and criminal liability was given at Part 1 of the Inquest even though some attempt was made to restrict the scope of the questioning.

It is now quite common for a transcript to be taken of evidence given at an Inquest. There clearly is a danger that there may be an attempt to use the evidence given before the Inquest in other proceedings.

(d) Investigations by Other Parties

Order 75 Rule 28 of the Supreme Court Rules allows the Court, on the application of any party, to make orders for the inspection by any party or witness of vessels or other property for the purpose of obtaining full information or evidence in connection with any issue in the action. Inevitably, a request will be made by those representing other parties to inspect the ship immediately after the collision. A disturbing practice has developed in the United Kingdom for high profile Plaintiff firms to contact the Defendants seeking access for surveyors to the vessel without being able to identify who their clients are. A Defendant's lawyer must be careful to establish that a request for access is made by a firm actually representing another party.

Generally, however, there is nothing to be gained from a Defendant's point of view in being obstructive to requests to examine the vessel by the other parties.

In some ways, the most difficult aspect to control is the giving of discovery in liability or limitation proceedings. It is likely that a well resourced investigation by Claimants will be more thorough and searching than even a Police investigation or a Department of Transport investigation. Both the Police and the Department of Transport work under cost and time constraints and if public pressure abates, there is some prospect that difficult and speculative investigations

will not be carried out. Moreover, a solicitor is under a personal responsibility to make sure that full and frank disclosure is made on discovery.

When representing Shipowners a system for the collection and preservation of all documents which may conceivably be relevant must be established immediately. Careful consideration should be given to establishing the appropriate chains of communication so that legal professional privilege is maintained over documents. This is particularly important if internal disciplinary procedures have to be adopted. Any documents generated during an internal investigation of the incident, if lawyers are not involved, will certainly be discoverable.

4. LIMITATION OF LIABILITY AND CRIMINAL OFFENCES

It may seem a little unusual to link the issues of the limitation of a Shipowners' liability and possible criminal offences that may be brought against individuals or a shipowning company. However, any challenge to a Shipowner's right to limit has serious implications for both insurance coverage and the possibility of charges being laid.

(a) Limitation of Liability

The 1976 Convention on Limitation of Liability for Maritime Claims is given effect in the United Kingdom by the Merchant Shipping Act 1979. Under Article 4 of the 1976 Convention, a Shipowner will only lose the right to limit its liability if it is proved that "the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result". The onus is now on those who challenge the right to limit to

discharge the burden of proof. This is a material alteration from the position under the 1957 Limitation Convention where the Shipowner was under an obligation to show that the loss occurred without his "actual fault or privity".

If a Shipowner has engaged in conduct barring its right to limit (and the test in Article 4 is met) there may be a degree of criminality in the company's actions which would support a charge of manslaughter (if there has been loss of life).

The words "personal act or omission" probably achieve a similar effect as the words "actual fault" used in the 1957 Convention. An analysis of the decisions concerning the 1957 Limitation Convention suggests that a shipowning company would have "actual fault" for an incident in the following circumstances :

- (a) Where the fault is brought home to the Board of Directors.
- (b) Where the fault is that of the "alter ego" of the company - who may not be a board member (LENNARDS CARRYING COMPANY v. ASIATIC PETROLEUM COMPANY LIMITED [1915] AC 705).
- (c) Where the fault is that of a person, partnership or company to whom management has been wholly delegated. (The decision in THE "CHARLOTTE" [1921] 9 LLR 341 supports this view.)

The faults of others, who are not the alter ego of the company, would not bar the right to limit unless there was an improper delegation of responsibility or the delegate was insufficiently supervised. (THE "LADY

GWENDOLEN" [1965] 2 All ER 283, THE "GARDEN CITY" [1982] 2 LLR 382, and THE "MARION" [1983] 2 LLR 156 (CA); [1984] 2 LLR 1(HL).)

The words "personal act or omission" have probably more tightly identified the conduct which may bar the right to limit with the conduct of the legal person itself. That is, the occasions where fault outside the boardroom will be held to be the fault of the company may be fewer and it is likely that the circumstances in which a delegation of the function of management of navigation will give rise to "personal" liability of the company will be limited.

The use of the words "such loss" in Article 4 suggests that damage of the kind actually incurred in a disaster must be the damage which was intended or foreseen. It would follow that a person who acted in even unreasonable ignorance of a risk of a type of loss would not be deprived of the right to limit. The Court of Appeal reached this conclusion in GOLDMAN v. THAI INTERNATIONAL AIRLINES [1983] 3 All ER 693 when considering Article 25 of the Warsaw Convention on Carriage by Air which is in similar terms to the 1976 Convention.

The introduction of the alternative concepts of intent or recklessness in Article 4 of the 1976 Convention places a heavy burden on a party seeking to establish that a Shipowner is barred from limiting its liability.

The loss of the right to limit can have dramatic consequences. If collision liabilities are insured under a time policy, Section 39(5) of the Marine Insurance Act 1906 may allow the insurers to repudiate liability. Section 39(5) provides that an insurer is not liable for any loss attributable to unseaworthiness where the ship was sent to sea in an unseaworthy state with the privity

of the Assured (THE "EURYSTHENES" [1976] 3 All ER 243). It is hard to see how a Shipowner guilty of a personal act or omission committed with intention or recklessness in respect of the management of his ships would not also be "privy" to the vessel's unseaworthiness.

(b) Criminal Offences

The alter ego analysis was attacked by Lord Reid in TESCO SUPERMARKETS v. NATTRASS [1972] AC 153 which is the leading modern authority on the criminal liability of corporations. Lord Reid stated that "the person who speaks and acts as the company is not the alter. He is identified with the company". Accordingly, it is necessary to establish whether the natural person or persons have the status and authority to make their acts in law the acts of the company itself. To this extent, criminal law has resisted the concept of an alter ego, who is not a board member, committing an act which may impose criminal liability on a company.

In THE "HERALD OF FREE ENTERPRISE", the Coroner initially found that as a matter of law the company could not be guilty of manslaughter. An application was taken to the Divisional Court for judicial review and the Court found tentatively that a company could be guilty of manslaughter. Before the application was heard the Coroner changed his view and concluded that in any event there was insufficient evidence to sustain a conviction in that case. As we mentioned earlier, during the committal of the senior executives of the Owners of the "HERALD OF FREE ENTERPRISE" the prosecution put the proposition that the directing mind and will of a company for the purposes of manslaughter can be found outside the Board of Directors and in the senior executives down to and

including the Master. This would be a dramatic departure from the present law and have serious implications for any shipowning company.

There are a wide variety of lesser offences which may be brought against those engaged in the navigation or management of vessels arising out of a maritime incident. Sections 30 - 32 of the Merchant Shipping Act 1988 specifies a range of offences in respect of dangerously unsafe ships, unsafe operation of ships, and conduct engaged in in the navigation of a ship. Quite serious penalties can be imposed and often there is no real requirement of criminality. This is so when an offence is framed in terms of the breach of or neglect of a duty. It may well be that in future prosecuting authorities will pursue lesser offences to satisfy the body of public opinion which calls for punishment of those involved in a disaster.

c) Procedural Problems

In March this year, probably for publicity's sake, a number of Claimants arrested sister ships of the "MARCHIONESS" and the "BOWBELLE". In our opinion, there was no real legal advantage in arresting the vessels as the Owners and Insurers of both vessels were resident in the UK and there had already been discussions between the solicitors concerning security if it was to be an issue. It seemed to us that it may have been intended to engage in a campaign of periodically arresting the vessels of the Owners of the "BOWBELLE". It was necessary to test the provisions of the 1976 Convention relating to bars against arrest and determine whether a caveat against arrest can be filed on the basis that a limitation fund has been constituted. (The Admiralty Rules have not been changed to reflect the changes brought about by the Convention.)

Article 5 of the 1957 Limitation Convention had sought to protect a Shipowner from arrest of its vessels when a limitation fund had been constituted. Article 5 had been rendered virtually ineffective by the decision of Brandon J. in "WLADYSLAW LAKIETEK" [1978] 2 LLR 520. The Court had required the limiting Shipowner to prove its right to limit, or put up security for the full value of the claim, before a vessel could be released from arrest.

Article 13 of the 1976 Limitation Convention now provides that where a limitation fund is constituted, any person having a claim against the fund shall be barred from exercising any right against any other assets of the person on behalf of whom the fund has been constituted. The effect of Article 13 was tested before Mr. Justice Sheen in an application that the Owners of the "BOWBELLE" were entitled to file a caveat against arrest on the basis of the constitution of the fund. Sheen J. was drawn to the conclusion that Article 13 provides a complete bar against any action being taken against the assets of Shipowner if a limitation fund has been constituted (THE "BOWBELLE" [1990] 1 LLR 532). If a limitation fund is constituted, a Shipowner is not obliged to provide security for the full value of the claims.

Some of the issues relating to the operation of the 1976 Convention yet to be resolved are :

- (a) The evidence needed to support an application for a limitation decree. Arguably, a limiting Shipowner need only to prove the relevant tonnage of the vessel and the appropriate figure for conversion of the Special Drawing Rights. However, the Admiralty Rules still reflect the position under the 1957 Convention and require a Shipowner to adduce evidence

that he was not privy to the cause of the incident and give the Court a wide power to order discovery if the application for a decree is opposed.

- (b) Whether a limitation fund need be constituted in cash. The 1976 Convention seems to envisage that a fund can be constituted by some other form of security - such as a bail bond, bank guarantee, or even a P & I Club letter of guarantee.

5. CONCLUSION

In 1915 the "LUSITANIA" was torpedoed by a German submarine and sank with the loss of 1,201 lives. Claims of slightly over US\$5 million were lodged and there were allegations of defective design, poor stability and suggestions that the vessel was carrying contraband and munitions of war. The Owners of the vessel successfully limited their liability to £147 16s 8d - the value of the life boats which were all that were left of the wreck, and the claimants had to meet their own costs. If a similar result were achieved by a Shipowner today, the public would be outraged. While the legal issues in maritime disasters have remained largely the same over the past seventy years, the environment in which a maritime lawyer must work has changed markedly. A flexible multi-disciplinary approach is now essential.



SCHEDULE TO EXTRACTS OF LEGISLATION

<u>No.</u>	<u>Description</u>	<u>Page</u>
1.	Police & Criminal Evidence Act 1984 (UK)  (a) Part 2 - Powers of Entry Search and Seizure  (b) Intimate Samples	
2.	Extracts from the Convention on Limitation of Liability for Maritime Claims (given effect by the Merchant Shipping Act 1979 (UK))	
3.	Coroners' (Amendment) Act 1926  (a) Adjournment of Inquests in certain circumstances	
4.	The Coroners' Rules 1984  (a) Conduct of Inquests	
5.	Merchant Shipping Act 1988  (a) Safety of Navigation etc.	
6.	The Merchant Shipping (Accident and Investigation) Regulations	
7.	Extracts from Order 75 of the Supreme Court Rules	

(3) In this Part of this Act "statutory undertakers" means persons authorised by any enactment to carry on any railway, light railway, road transport, water transport, canal, inland navigation, dock or harbour undertaking.

#### NOTES

**Commencement.** Sub-ss (2)(b), (3) above were brought into force on 1 January 1985 by the Police and Criminal Evidence Act 1984 (Commencement No 1) Order 1984, SI 1984/2002, and the remainder of this section was brought into force on 1 January 1986 by the Police and Criminal Evidence Act 1984 (Commencement No 3) Order 1985, SI 1985/1934 (both made under s 121(1) post).

**Shall also cease to have effect.** As to the repeal of enactments in consequence of Pts I to V (ss 1-65) of this Act (including enactments referred to in sub-s (2) above), see s 119(2), Sch 7, Pt I post.

**Constable.** See the note to s 1 ante.

**Stolen or unlawfully obtained goods.** Cf the note "Theft" to s 1 ante.

**This Part of this Act.** Ie Pt I (ss 1-7) of this Act.

**Persons.** Unless the contrary intention appears "person" includes a body of persons corporate or unincorporate; see the Interpretation Act 1978, s 5, Sch 1, Vol 41, title Statutes.

The enactments listed in sub-s (1) above are also repealed by s 119(2), Sch 7, Pt I post.

## PART II

### POWERS OF ENTRY, SEARCH AND SEIZURE

#### *Search warrants*

#### **8 Power of justice of the peace to authorise entry and search of premises**

(1) If on an application made by a constable a justice of the peace is satisfied that there are reasonable grounds for believing—

- (a) that a serious arrestable offence has been committed; and
- (b) that there is material on premises specified in the application which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence; and
- (c) that the material is likely to be relevant evidence; and
- (d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material; and
- (e) that any of the conditions specified in subsection (3) below applies.

he may issue a warrant authorising a constable to enter and search the premises.

(2) A constable may seize and retain anything for which a search has been authorised under subsection (1) above.

(3) The conditions mentioned in subsection (1)(e) above are—

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;
- (c) that entry to the premises will not be granted unless a warrant is produced;
- (d) that the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.

(4) In this Act "relevant evidence", in relation to an offence, means anything that would be admissible in evidence at a trial for the offence.

(5) The power to issue a warrant conferred by this section is in addition to any such power otherwise conferred.

## NOTES

**Commencement.** This section and ss 9–22 post were brought into force on 1 January 1986 by the Police and Criminal Evidence Act 1984 (Commencement No 3) Order 1985, SI 1985/1934, made under s 121(1) post.

**Sub-s (1): On an application.** Applications are to be made *ex parte*, and must be supported by an information in writing; see s 15(3) post. S 15(2) post, specifies the information to be given in support of the application.

**Constable.** See the note to s 1 ante.

**Justice of the peace.** A justice of the peace may be either a lay justice or a stipendiary magistrate. The main provisions relating to justices of the peace (including stipendiary magistrates), covering such matters as appointment, removal and organisation, will be found in the Justices of the Peace Act 1979, Vol 27, title Magistrates, and the office and jurisdiction of justices are considered generally in 29 Halsbury's Laws (4th edn) paras 201 et seq.

**Warrant.** As to information to be included in the warrant, see s 15(6) post. A warrant may authorise an entry on one occasion only; see s 15(5) post.

**Sub-s (2): Seize and retain.** As to seizure and retention, see also ss 19–22 post (and note, in particular, the extension of sub-s (2) above by s 20 post), and 11 Halsbury's Laws (4th edn) paras 126–135.

See also the note "Codes of practice" below.

**Sub-s (3): Practicable.** See the note to s 3 ante.

**Person.** See the note "Persons" to s 7 ante.

**Sub-s (5): Any such power otherwise conferred.** As to the issue of search warrants under common law powers, see 11 Halsbury's Laws (4th edn) para 124; and as to their issue under statutes, see para 125. As to right of entry, generally, see paras 122 et seq. For a comprehensive summary of powers of entry, and powers to issue search warrants, see "The Investigation and Prosecution of Criminal Offences in England and Wales: the Law and Procedure" (Royal Commission on Criminal Procedure 1981, Cmnd 8092-1), paras 28–41 and Appendix 5.

**Safeguards on the issue of warrants; execution of warrants.** An entry on, or search of, premises under a warrant is unlawful unless the provisions of ss 15, 16 post, are complied with; see s 15(1) post.

**Use of reasonable force.** See s 117 post.

**Application to Armed Forces and Customs and Excise.** See ss 113, 114 post.

**Codes of practice.** Codes of practice in connection with, *inter alia*, the searches of persons or premises and the seizure of property found by police officers during searches, are to be issued by the Secretary of State; see s 66 post.

**Definitions.** For "excluded material", see s 11(1) post; for "items subject to legal privilege", see s 10 post; for "premises", see s 23 post; for "serious arrestable offence", see s 116 post; for "special procedure material", see s 14 post. Note as to "relevant evidence", sub-s (4) above.

## 9 Special provisions as to access

(1) A constable may obtain access to excluded material or special procedure material for the purposes of a criminal investigation by making an application under Schedule 1 below and in accordance with that Schedule.

(2) Any Act (including a local Act) passed before this Act under which a search of premises for the purposes of a criminal investigation could be authorised by the issue of a warrant to a constable shall cease to have effect so far as it relates to the authorisation of searches—

- (a) for items subject to legal privilege; or
- (b) for excluded material; or
- (c) for special procedure material consisting of documents or records other than documents.

## NOTES

**Commencement.** See the note to s 8 ante.

**General Note.** As to the application of sub-s (2) above, see the Official Secrets Act 1989, s 11(3) post.

**Constable.** See the note to s 1 ante.

**Excluded material.** For an example of "excluded material" for which a judge may make an order for production or access, see *R v Crown Court at Bristol, ex p Bristol Press and Picture Agency Ltd* (1986) 85 Cr App Rep 190.

**An application.** The police are entitled at any stage in the investigation of a criminal offence to apply for an order under sub-s (1) above and Sch 1 post allowing them access to special procedure material. The only parties to such an application are the police and the person or institution in whose custody the special procedure material is thought to be, and the police are not required to give notice of the application to any

person suspected of or charged with the offence or to serve a copy of the application on him; see *R v Crown Court at Leicester, ex p DPP* [1987] 3 All ER 654, [1987] 1 WLR 1371.

As to the validity of an application where information as to the documents or material sought and the nature of the offence being investigated is omitted from the notice of application, see *R v Crown Court at Manchester, ex p Taylor* [1988] 2 All ER 769, [1988] 1 WLR 705.

**Any Act . . . under which a search of premises . . . could be authorised, etc.** Cf the note "Any such power otherwise conferred" to s 8 ante. See, further, the Copyright, Designs and Patents Act 1988, ss 109(1), (2), 200(1), (2), Vol 11, title Copyright.

**Passed before this Act.** This Act was passed, ie received the Royal Assent, on 31 October 1984.

**Use of reasonable force; safeguards on the issue of warrants; codes of practice; application to Armed Forces and Customs and Excise.** See the notes to s 8 ante.

**Seizure and retention.** Note Sch 1, para 13 post, and see ss 19–22 post.

**Definitions.** By virtue of s 118(1) post; for "document", see the Civil Evidence Act 1968, s 10(1), Vol 17, title Evidence; for "excluded material", see s 11(1) post; for "items subject to legal privilege", see s 10 post; for "special procedure material", see s 14 post; for "premises", see s 23 post.

## 10 Meaning of "items subject to legal privilege"

(1) Subject to subsection (2) below, in this Act "items subject to legal privilege" means—

- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) items enclosed with or referred to in such communications and made—
  - (i) in connection with the giving of legal advice; or
  - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them.

(2) Items held with the intention of furthering a criminal purpose are not items subject to legal privilege.

### NOTES

**Commencement.** See the note to s 8 ante.

**General Note.** See *R v Crown Court at Inner London Sessions, ex p Baines & Baines* [1987] 3 All ER 1025, [1988] 2 WLR 549 (records of a conveyancing transaction, as opposed to correspondence between solicitor and client regarding conveyance, not privileged under this section).

On the true construction of sub-s (2) above items which would otherwise come within the definition of "items subject to legal professional privilege" contained in sub-s (1) are excluded from that definition if they are held with the intention of furthering a criminal purpose; see *R v Central Criminal Court, ex p Francis & Francis* [1988] 3 All ER 775, [1988] 3 WLR 989, HL.

**Person.** See the note "Persons" to s 7 ante.

**Possession.** It is thought that the word "possession" must be construed in a popular and not in a narrow sense; both in the commercial world and in connection with the criminal law "possession" has been given a broad interpretation covering something more than actual physical possession, including cases where, eg, a man has the right on demand to recover goods from a bailee (*Webb v Baker* [1916] 2 KB 753, 83 LJKB 36; *Oliver v Goodger* [1944] 2 All ER 481; *Towers & Co Ltd v Gray* [1961] 2 QB 351, [1961] 2 All ER 68).

**Intention.** See the note "Intended" to s 1 ante.

## 11 Meaning of "excluded material"

(1) Subject to the following provisions of this section, in this Act "excluded material" means—

**Use of reasonable force.** See the note to s 16 ante.

**Definitions.** For "items subject to legal privilege", see s 10 ante; for "premises", see s 23 post; for "arrestable offence", see s 24(1) post; as to when a person is in police detention, see s 118(2) post.

### *Seizure etc*

#### 19 General power of seizure etc

(1) The powers conferred by subsections (2), (3) and (4) below are exercisable by a constable who is lawfully on any premises.

(2) The constable may seize anything which is on the premises if he has reasonable grounds for believing—

- (a) that it has been obtained in consequence of the commission of an offence; and
- (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) The constable may seize anything which is on the premises if he has reasonable grounds for believing—

- (a) that it is evidence in relation to an offence which he is investigating or any other offence; and
- (b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.

(4) The constable may require any information which is contained in a computer and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible if he has reasonable grounds for believing—

- (a) that—
  - (i) it is evidence in relation to an offence which he is investigating or any other offence; or
  - (ii) it has been obtained in consequence of the commission of an offence; and
- (b) that it is necessary to do so in order to prevent it being concealed, lost, tampered with or destroyed.

(5) The powers conferred by this section are in addition to any power otherwise conferred.

(6) No power of seizure conferred on a constable under any enactment (including an enactment contained in an Act passed after this Act) is to be taken to authorise the seizure of an item which the constable exercising the power has reasonable grounds for believing to be subject to legal privilege.

#### NOTES

**Commencement.** See the note to s 8 ante.

**Sub-s (1): Constable.** Cf the note to s 1 ante.

**Sub-s (2): Reasonable grounds for believing.** See the note "Reasonable grounds for suspecting" to s 1 ante.

**Sub-s (6): Act passed after this Act.** This Act was passed, ie received the Royal Assent, on 31 October 1984.

**Application to Armed Forces and Customs and Excise.** See ss 113, 114 post.

**Use of reasonable force.** See the note to s 16 ante.

**Codes of practice.** See the note to s 8 ante.

**Saving.** Any power of seizure conferred by the Prevention of Terrorism (Temporary Provisions) Act 1989, Sch 7 post is without prejudice to the powers conferred by this section; see para 10(1) of that Schedule.

**Definitions.** For "items subject to legal privilege", see s 10 ante; for "premises", see s 23 post.

## 20 Extension of powers of seizure to computerised information

(1) Every power of seizure which is conferred by an enactment to which this section applies on a constable who has entered premises in the exercise of a power conferred by an enactment shall be construed as including a power to require any information contained in a computer and accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible.

(2) This section applies—

- (a) to any enactment contained in an Act passed before this Act;
- (b) to sections 8 and 18 above;
- (c) to paragraph 13 of Schedule 1 to this Act; and
- (d) to any enactment contained in an Act passed after this Act.

### NOTES

**Commencement.** See the note to s 8 ante.

**Constable.** See the note to s 1 ante.

**Premises.** For meaning, see s 23 post.

**Act passed before (after) this Act.** This Act was passed, ie received the Royal Assent, on 31 October 1984.

## 21 Access and copying

(1) A constable who seizes anything in the exercise of a power conferred by any enactment, including an enactment contained in an Act passed after this Act, shall, if so requested by a person showing himself—

- (a) to be the occupier of premises on which it was seized; or
- (b) to have had custody or control of it immediately before the seizure,

provide that person with a record of what he seized.

(2) The officer shall provide the record within a reasonable time from the making of the request for it.

(3) Subject to subsection (8) below, if a request for permission to be granted access to anything which—

- (a) has been seized by a constable; and
- (b) is retained by the police for the purpose of investigating an offence,

is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized or by someone acting on behalf of such a person, the officer shall allow the person who made the request access to it under the supervision of a constable.

(4) Subject to subsection (8) below, if a request for a photograph or copy of any such thing is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized, or by someone acting on behalf of such a person, the officer shall—

- (a) allow the person who made the request access to it under the supervision of a constable for the purpose of photographing or copying it; or
- (b) photograph or copy it, or cause it to be photographed or copied.

(5) A constable may also photograph or copy, or have photographed or copied, anything which he has power to seize, without a request being made under subsection (4) above.

(6) Where anything is photographed or copied under subsection (4)(b) above, the photograph or copy shall be supplied to the person who made the request.

(7) The photograph or copy shall be so supplied within a reasonable time from the making of the request.

(8) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the officer in charge of the investigation for the purposes of which it was seized has reasonable grounds for believing that to do so would prejudice—

- (a) that investigation;
- (b) the investigation of an offence other than the offence for the purposes of investigating which the thing was seized; or
- (c) any criminal proceedings which may be brought as a result of—
  - (i) the investigation of which he is in charge; or
  - (ii) any such investigation as is mentioned in paragraph (b) above.

## NOTES

**Commencement.** See the note to s 8 ante.

**Sub-s (1): Constable.** See the note to s 1 ante.

**Act passed after this Act.** This Act was passed, ie received the Royal Assent, on 31 October 1984.

**Occupier.** See the note to s 16 ante.

**Premises.** For meaning, see s 23 post.

**Sub-s (2): Within a reasonable time.** Where anything is to be done within a "reasonable time", the question what is a reasonable time depends on the circumstances of the particular case and is therefore a question of fact; see *Burton v Griffiths* (1843) 11 M & W 817; and see also *Hick v Raymond and Reid* [1893] AC 22 at 29, [1891-4] All ER Rep 491 at 493, HL, per Lord Herschell LC.

**Sub-s (3): Investigating an offence.** For the purposes of this section and s 22 post, an investigation into drug trafficking is treated as if it were an investigation of or in connection with an offence, and material produced in pursuance of an order under the Drug Trafficking Offences Act 1986, s 27(2)(a) post, is treated as if it were material seized by a constable; see s 29(1) of that Act post. Similar provision is made in relation to a terrorist investigation and material produced in pursuance of an order under the Prevention of Terrorism (Temporary Provisions) Act 1989, Sch 7, para 3 or 8; see s 17 of, and Sch 7, para 10 to, that Act post.

**Sub-s (8): Reasonable grounds for believing.** Cf the note "Reasonable grounds for suspecting" to s 1 ante.

## 22 Retention

(1) Subject to subsection (4) below, anything which has been seized by a constable or taken away by a constable following a requirement made by virtue of section 19 or 20 above may be retained so long as is necessary in all the circumstances.

(2) Without prejudice to the generality of subsection (1) above—

- (a) anything seized for the purposes of a criminal investigation may be retained, except as provided by subsection (4) below—
  - (i) for use as evidence at a trial for an offence; or
  - (ii) for forensic examination or for investigation in connection with an offence; and
- (b) anything may be retained in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.

(3) Nothing seized on the ground that it may be used—

- (a) to cause physical injury to any person;
- (b) to damage property;
- (c) to interfere with evidence; or
- (d) to assist in escape from police detention or lawful custody,

may be retained when the person from whom it was seized is no longer in police detention or the custody of a court or is in the custody of a court but has been released on bail.

(4) Nothing may be retained for either of the purposes mentioned in subsection (2)(a) above if a photograph or copy would be sufficient for that purpose.

(5) Nothing in this section affects any power of a court to make an order under section 1 of the Police (Property) Act 1897.

#### NOTES

**Commencement.** See the note to s 8 ante.

**Sub-s (1): Constable.** See the note to s 1 ante.

**Sub-s (2): Criminal investigation.** See the note "Investigating an offence" to s 21 ante.

**Reasonable grounds for believing.** Cf the note "Reasonable grounds for suspecting" to s 1 ante.

**Sub-s (3): Police detention.** For meaning, see s 118(2) post.

**Police (Property) Act 1897, s 1.** See Vol 33, title Police.

### Supplementary

#### 23 Meaning of "premises" etc

In this Act—

"premises" includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any offshore installation; and
- (c) any tent or movable structure; and

"offshore installation" has the meaning given to it by section 1 of the Mineral Workings (Offshore Installations) Act 1971.

#### NOTES

**Commencement.** This section was brought into force on 1 January 1985 by the Police and Criminal Evidence Act 1984 (Commencement No 1) Order 1984, SI 1984/2002, made under s 121(1) post.

**Vessel.** For meaning, see s 118(1) post.

**Mineral Workings (Offshore Installations) Act 1971, s 1.** See Vol 29, title Mines, Minerals and Quarries.

### PART III

#### ARREST

#### 24 Arrest without warrant for arrestable offences

(1) The powers of summary arrest conferred by the following subsections shall apply—

- (a) to offences for which the sentence is fixed by law;
- (b) to offences for which a person of 21 years of age or over (not previously convicted) may be sentenced to imprisonment for a term of five years (or might be so sentenced but for the restrictions imposed by section 33 of the Magistrates' Courts Act 1980); and
- (c) to the offences to which subsection (2) below applies,

and in this Act "arrestable offence" means any such offence.

(2) The offences to which this subsection applies are—

- (a) offences for which a person may be arrested under the customs and excise Acts, as defined in section 1(1) of the Customs and Excise Management Act 1979;

**Sub-s (4): Reasonable grounds for suspecting (believing).** See the corresponding note to s 1 ante.

**Sub-s (7): Practicable.** See the note to s 3 ante.

**Sub-s (8): Custody record.** See ss 37(4), 38(3) ante.

**Destruction of fingerprints.** As to the destruction of fingerprints in certain circumstances, see s 64 post.

**Power to arrest for fingerprinting.** For a power to arrest without warrant for fingerprinting, see s 27 ante.

**Related provisions; application to Armed Forces and Customs and Excise.** See the notes to s 53 ante.

**Definitions.** As to "appropriate consent", "fingerprints" and "the terrorism provisions", see s 65 post; for "recordable offence", see s 118(1) post; as to when a person is in police detention, see s 118(2) post.

**Immigration Act 1971, Sch 2, para 18(2).** See Vol 31, title Nationality and Immigration.

**Prevention of Terrorism (Temporary Provisions) Act 1989, s 15(10), Sch 5, para 7(6).** See this title post.

## 62 Intimate samples

(1) An intimate sample may be taken from a person in police detention only—

- (a) if a police officer of at least the rank of superintendent authorises it to be taken; and
- (b) if the appropriate consent is given.

(2) An officer may only give an authorisation if he has reasonable grounds—

- (a) for suspecting the involvement of the person from whom the sample is to be taken in a serious arrestable offence; and
- (b) for believing that the sample will tend to confirm or disprove his involvement.

(3) An officer may give an authorisation under subsection (1) above orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(4) The appropriate consent must be given in writing.

(5) Where—

- (a) an authorisation has been given; and
- (b) it is proposed that an intimate sample shall be taken in pursuance of the authorisation,

an officer shall inform the person from whom the sample is to be taken—

- (i) of the giving of the authorisation; and
- (ii) of the grounds for giving it.

(6) The duty imposed by subsection (5)(ii) above includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.

(7) If an intimate sample is taken from a person—

- (a) the authorisation by virtue of which it was taken;
- (b) the grounds for giving the authorisation; and
- (c) the fact that the appropriate consent was given,

shall be recorded as soon as is practicable after the sample is taken.

(8) If an intimate sample is taken from a person detained at a police station, the matters required to be recorded by subsection (7) above shall be recorded in his custody record.

(9) An intimate sample, other than a sample of urine or saliva, may only be taken from a person by a registered medical practitioner.

(10) Where the appropriate consent to the taking of an intimate sample from a person was refused without good cause, in any proceedings against that person for an offence—

- (a) the court, in determining—
  - (i) whether to commit that person for trial; or

- (ii) whether there is a case to answer; and
- (b) the court or jury, in determining whether that person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper; and the refusal may, on the basis of such inferences, be treated as, or as capable of amounting to, corroboration of any evidence against the person in relation to which the refusal is material.

(11) Nothing in this section affects [sections 4 to 11 of the Road Traffic Act 1988].

#### NOTES

The words in square brackets in sub-s (11) were substituted by the Road Traffic (Consequential Provisions) Act 1988, s 4, Sch 3, para 27(4).

**Commencement.** See the note to s 53 ante.

**Sub-s (2): Reasonable grounds for suspecting (believing).** See the corresponding note to s 1 ante.

**Sub-s (3): Writing; practicable.** See the notes to s 3 ante.

**Sub-s (8): Custody record.** See ss 37(4), 38(3) ante.

**Sub-s (9): Registered medical practitioner.** See the note to s 55 ante.

**Further provisions.** As to the taking of non-intimate samples, see s 63 post; and as to the destruction of samples, see s 64 post.

**Related provisions; application to Armed Forces and Customs and Excise.** See the notes to s 53 ante.

**Definitions.** For "appropriate consent" and "intimate sample", see s 65 post; for "serious arrestable offence", see s 116 post; as to when a person is in police detention, see s 118(2) post.

**Road Traffic Act 1988, ss 4-11.** See Vol 38, title Road Traffic.

### 63 Other samples

(1) Except as provided by this section, a non-intimate sample may not be taken from a person without the appropriate consent.

(2) Consent to the taking of a non-intimate sample must be given in writing.

(3) A non-intimate sample may be taken from a person without the appropriate consent if—

(a) he is in police detention or is being held in custody by the police on the authority of a court; and

(b) an officer of at least the rank of superintendent authorises it to be taken without the appropriate consent.

(4) An officer may only give an authorisation under subsection (3) above if he has reasonable grounds—

(a) for suspecting the involvement of the person from whom the sample is to be taken in a serious arrestable offence; and

(b) for believing that the sample will tend to confirm or disprove his involvement.

(5) An officer may give an authorisation under subsection (3) above orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(6) Where—

(a) an authorisation has been given; and

(b) it is proposed that a non-intimate sample shall be taken in pursuance of the authorisation,

an officer shall inform the person from whom the sample is to be taken—

(i) of the giving of the authorisation; and

(ii) of the grounds for giving it.

(7) The duty imposed by subsection (6)(ii) above includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.

(4)



Coroners, England  
and Wales

# Statutes in Force

*Official Revised Edition*

## Coroners (Amendment)

### Act 1926

*(16 and 17 Geo. 5 c. 59)*

*Revised to 1st February 1978*

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## CORONERS (AMENDMENT) ACT 1926 (c. 59)

Ss. 17-20

which one of the coroners has jurisdiction, and may also give directions for the subsequent removal of any body to any place within the jurisdiction from which it was removed, and for the adjustment of the expenses of and in connection with the inquests on the bodies removed, and the inquests shall be held and the bodies shall be removed and the expenses shall be defrayed in accordance with those directions.

Inquest where  
body destroyed  
or  
irrecoverable.

18. Where a coroner has reason to believe that a death has occurred in or near the area within which he has jurisdiction in such circumstances that an inquest ought to be held, and that owing to the destruction of the body by fire or otherwise or to the fact that the body is lying in a place from which it cannot be recovered, an inquest cannot be held except by virtue of the provisions of this section, he may report the facts to the Secretary of State, and the Secretary of State may, if he considers it desirable so to do, direct an inquest to be held touching the death, and an inquest shall be held accordingly by the coroner making the report or such other coroner as the Secretary of State may direct, and the law relating to coroners and coroners' inquests shall apply with such modifications as may be necessary in consequence of the inquest being held otherwise than on or after view of a body lying within the coroner's jurisdiction.

Effect of 50 &  
51 Vict. c. 71,  
s. 6,  
1887 c. 71.

19. For the removal of doubts it is hereby declared, without prejudice to the generality of the provisions of section six of the Coroners Act 1887 that the powers of the High Court under that section extend to and may be exercised in any case where the Court is satisfied that by reason of the discovery of new facts or evidence it is necessary or desirable in the interests of justice that an inquisition on an inquest previously held concerning a death should be quashed, and that another inquest should be held.

Adjournment of  
inquest in cases  
of murder,  
manslaughter,  
infanticide or  
aiding etc.  
suicide, or at  
request of  
D.P.P.

[120.—(1) If on an inquest touching a death the coroner before the conclusion of the inquest—

- (a) is informed by the clerk of a magistrates' court in pursuance of subsection (8) below that some person has been charged before a magistrates' court with—
- (i) the murder, manslaughter or infanticide of the deceased; or
  - (ii) an offence under section 1 of the Road Traffic Act 1972 committed by causing the death of the deceased; or
  - (iii) an offence under section 2(1) of the Suicide Act 1961 consisting of aiding, abetting, counselling or procuring the suicide of the deceased; or

1972 c. 20.

1961 c. 60.

<sup>1</sup>S. 20 substituted by Criminal Law Act 1977 (c. 45), Sch. 10

## CORONERS (AMENDMENT) ACT 1926 (c. 59)

S.20

(b) is informed by the Director of Public Prosecutions that some person has been charged before examining justices with an offence (whether or not involving the death of a person other than the deceased) alleged to have been committed in circumstances connected with the death of the deceased, not being an offence within paragraph (a)(i), (ii) or (iii) above, and is requested by the Director to adjourn the inquest,

then, subject to subsection (2) below, the coroner shall, in the absence of reason to the contrary, adjourn the inquest until after the conclusion of the relevant criminal proceedings and, if a jury has been summoned, may, if he thinks fit, discharge them.

(2) The coroner—

(a) need not adjourn the inquest in a case within subsection (1)(a) above if, before he has done so, the Director of Public Prosecutions notifies him that adjournment is unnecessary; and

(b) may in any case resume the adjourned inquest before the conclusion of the relevant criminal proceedings if notified by the Director that it is open to him to do so.

(3) After the conclusion of the relevant criminal proceedings, or on being notified as mentioned in subsection (2)(b) above before their conclusion, the coroner may, subject to the following provisions of this section, resume the adjourned inquest if in his opinion there is sufficient cause to do so.

(4) Where a coroner adjourns an inquest in compliance with subsection (1) above, he shall furnish the registrar of deaths with a certificate under his hand stating the particulars which under the Births and Deaths Registration Act 1953 are required to be registered concerning the death, so far as they have been ascertained at the date of the certificate; and the registrar shall enter the death and particulars in the form and manner prescribed by regulations under that Act. 1953 c. 20.

(5) Where a coroner does not resume an inquest which he has adjourned in compliance with subsection (1) above, he shall (without prejudice to subsection (4) above) furnish the registrar of deaths with a certificate under his hand stating the result of the relevant criminal proceedings.

(6) Where a coroner resumes an inquest which has been adjourned in compliance with subsection (1) above and for that purpose summons a jury (but not where he resumes without a jury, or with the same jury as before the adjournment), he shall proceed in all respects as if the inquest had not previously been begun, and, subject to subsection (7) below, the provisions of this Act shall apply

**CORONERS (AMENDMENT) ACT 1926 (c. 59)**

S.20

accordingly as if the resumed inquest were a fresh inquest, except that it shall not be obligatory on him to view the body.

(7) Where a coroner resumes an inquest which has been adjourned in compliance with subsection (1) above—

- (a) the finding of the inquest as to the cause of death must not be inconsistent with the outcome of the relevant criminal proceedings;
- (b) the coroner shall, after the termination of the inquest, furnish the registrar of deaths with a certificate under his hand stating the result of the relevant criminal proceedings; and
- (c) the provisions of paragraph (3) of section 18 of the Coroners Act 1887 and section 23(1) of the Births and Deaths Registration Act 1953 (duty of coroner to send registrar certificate containing information as to death and finding of inquest) shall not apply in relation to that inquest.

1887 c. 71.  
1953 c. 20.

(8) Where a person is charged before a magistrates' court with murder, manslaughter or infanticide or an offence under section 1 of the Road Traffic Act 1972 (causing death by reckless driving) or an offence under section 2(1) of the Suicide Act 1961 consisting of aiding, abetting, counselling or procuring the suicide of another, the clerk of the court shall inform the coroner who is responsible for holding an inquest upon the body of the making of the charge and of the result of the proceedings before that court.

1972 c. 20.  
1961 c. 60.

(9) Where a person charged with murder, manslaughter or infanticide or an offence under section 1 of the Road Traffic Act 1972 (causing death by reckless driving) or an offence under section 2(1) of the Suicide Act 1961 consisting of aiding, abetting, counselling or procuring the suicide of another, is committed for trial to the Crown Court, the appropriate officer of the Crown Court at the place where the person charged is tried shall inform the coroner of the result of the proceedings before that court.

(10) Where the Director of Public Prosecutions has in pursuance of paragraph (b) of subsection (1) above requested a coroner to adjourn an inquest, then, whether or not the inquest is adjourned as a result, the Director shall inform the coroner of the result of the proceedings before the magistrates' court in the case of the person charged as mentioned in that paragraph and, if that person is committed for trial to the Crown Court, shall inform the coroner of the result of the proceedings before that court.

(11) In this section "the relevant criminal proceedings" means the proceedings before examining justices and before any court to which the person charged is committed for trial.]



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STATUTORY INSTRUMENTS

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1984 No. 552

**CORONERS**

**The Coroners Rules 1984**

*Made* - - - - - 9th April 1984  
*Coming into Operation* 1st July 1984

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## PART V

### BURIAL ORDERS

#### *Issue of burial order*

14. An order of a coroner authorising the burial of a body shall not be issued unless the coroner has held, or has decided to hold, an inquest touching the death.

#### *Burial order where certificate for disposal of body issued*

15. Where a coroner is satisfied that a certificate for the disposal of a body has been issued by a registrar, the coroner shall not issue an order authorising the burial of that body unless the certificate has been surrendered to him; and in such a case he shall on issuing the order transmit the certificate to the registrar and inform him of the issue of the order.

## PART VI

### INQUESTS

#### *Formality*

16. Every inquest shall be opened, adjourned and closed in a formal manner.

#### *Inquest in public*

17. Every inquest shall be held in public:

Provided that the coroner may direct that the public be excluded from an inquest or any part of an inquest if he considers that it would be in the interest of national security so to do.

#### *Days on which inquest not to be held*

18. An inquest shall not be held on Christmas Day, Good Friday, or a bank holiday unless the coroner thinks it requisite on grounds of urgency that an inquest should be held on such a day, and no inquest shall be held on a Sunday.

#### *Coroner to notify persons of inquest arrangements*

19. The coroner shall notify the date, hour and place of an inquest to—

- (a) the spouse or a near relative or personal representative of the deceased whose name and address are known to the coroner; and
- (b) any other person who—
  - (i) in the opinion of the coroner is within Rule 20(2); and
  - (ii) has asked the coroner to notify him of the aforesaid particulars of the inquest; and
  - (iii) has supplied the coroner with a telephone number or address for the purpose of so notifying him.

### *Entitlement to examine witnesses*

20.—(1) Without prejudice to any enactment with regard to the examination of witnesses at an inquest, any person who satisfies the coroner that he is within paragraph (2) shall be entitled to examine any witness at an inquest either in person or by counsel or solicitor:

Provided that—

- (a) the chief officer of police, unless interested otherwise than in that capacity, shall only be entitled to examine a witness by counsel or solicitor;
- (b) the coroner shall disallow any question which in his opinion is not relevant or is otherwise not a proper question.

(2) Each of the following persons shall have the rights conferred by paragraph (1):—

- (a) a parent, child, spouse and any personal representative of the deceased;
- (b) any beneficiary under a policy of insurance issued on the life of the deceased;
- (c) the insurer who issued such a policy of insurance;
- (d) any person whose act or omission or that of his agent or servant may in the opinion of the coroner have caused, or contributed to, the death of the deceased;
- (e) any person appointed by a trade union to which the deceased at the time of his death belonged, if the death of the deceased may have been caused by an injury received in the course of his employment or by an industrial disease;
- (f) an inspector appointed by, or a representative of, an enforcing authority, or any person appointed by a government department to attend the inquest;
- (g) the chief officer of police;
- (h) any other person who, in the opinion of the coroner, is a properly interested person.

### *Examination of witnesses*

21. Unless the coroner otherwise determines, a witness at an inquest shall be examined first by the coroner and, if the witness is represented at the inquest, lastly by his representative.

### *Self-incrimination*

22.—(1) No witness at an inquest shall be obliged to answer any question tending to incriminate himself.

(2) Where it appears to the coroner that a witness has been asked such a question, the coroner shall inform the witness that he may refuse to answer.

*Adjournment where inspector or representative of enforcing authority etc. is not present*

23.—(1) Where a coroner holds an inquest touching the death of a person which may have been caused by an accident or disease notice of which is required to be given to an enforcing authority, the coroner shall adjourn the inquest unless an inspector appointed by, or a representative of, the enforcing authority is present to watch the proceedings and shall, at least four days before holding the adjourned inquest, give to such inspector or representative notice of the date, hour and place of holding the adjourned inquest.

(2) Where a coroner holds an inquest touching the death of a person which may have been caused by an accident or disease notice of which is required to be given to an inspector appointed by an enforcing authority, the coroner shall adjourn the inquest unless the inspector or a representative of the inspector is present to watch the proceedings and shall, at least four days before holding the adjourned inquest, give to the inspector or representative notice of the date, hour and place of holding the adjourned inquest.

*Notice to person whose conduct is likely to be called in question*

24. Any person whose conduct is likely in the opinion of the coroner to be called in question at an inquest shall, if not duly summoned to give evidence at the inquest, be given reasonable notice of the date, hour and place at which the inquest will be held.

*Adjournment where person whose conduct is called in question is not present*

25. If the conduct of any person is called in question at an inquest on grounds which the coroner thinks substantial and which relate to any matter referred to in Rule 36 and if that person is not present at the inquest and has not been duly summoned to attend or otherwise given notice of the holding of the inquest, the inquest shall be adjourned to enable him to be present, if he so desires.

*Request by chief officer of police for adjournment*

26.—(1) If the chief officer of police requests a coroner to adjourn an inquest on the ground that a person may be charged with an offence within paragraph (3), the coroner shall adjourn the inquest for twenty-eight days or for such longer period as he may think fit.

(2) At any time before the date fixed for the holding of the adjourned inquest, the chief officer of police may ask the coroner for a further adjournment and the coroner may comply with his request.

(3) The offences within this paragraph are murder, manslaughter or infanticide of the deceased, an offence under section 1 of the Road Traffic Act 1972(a) committed by causing the death of the deceased and an offence under section 2(1) of the Suicide Act 1961(b) consisting of aiding, abetting, counselling or procuring the suicide of the deceased.

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(a) 1972 c. 20; section 1 was substituted by the Criminal Law Act 1977 (c. 45), section 50.  
(b) 1961 c. 60.

*Request by Director of Public Prosecutions for adjournment*

27.—(1) If the Director of Public Prosecutions requests a coroner to adjourn an inquest on the ground that a person may be charged with an offence (whether or not involving the death of a person other than the deceased) committed in circumstances connected with the death of the deceased, not being an offence within Rule 26(3), the coroner shall adjourn the inquest for twenty-eight days or for such longer period as he may think fit.

(2) At any time before the date fixed for the holding of the adjourned inquest, the Director of Public Prosecutions may ask the coroner for a further adjournment and the coroner may comply with his request.

*Coroner to adjourn in certain other cases*

28.—(1) If during the course of an inquest evidence is given from which it appears to the coroner that the death of the deceased is likely to be due to an offence within Rule 26(3) and that a person might be charged with such an offence, then the coroner, unless he has previously been notified by the Director of Public Prosecutions that adjournment is unnecessary, shall adjourn the inquest for fourteen days or for such longer period as he may think fit and send to the Director particulars of that evidence.

(2) At any time before the date fixed for the holding of the adjourned inquest, the Director of Public Prosecutions may ask the coroner for a further adjournment and the coroner may comply with his request.

*Coroner to furnish certificate after adjournment*

29. A certificate under the hand of a coroner stating the particulars which under the Registration Acts are required to be registered concerning a death which he furnishes to a registrar of deaths under section 20(4)(a) of the Act of 1926 shall be furnished within five days from the date on which the inquest is adjourned.

*Coroner's interim certificate of the fact of death*

30. When an inquest has been adjourned for any reason and section 20(4) of the Act of 1926 does not apply, the coroner shall on application supply to any person who, in the opinion of the coroner, is a properly interested person an interim certificate of the fact of death.

*Coroner to furnish certificate stating result of criminal proceedings*

31. A certificate under the hand of a coroner stating the result of the relevant criminal proceedings which he furnishes to a registrar of deaths under section 20(5) or section 20(7) of the Act of 1926 shall be furnished within twenty-eight days from the date on which he is notified of the result of the proceedings under section 20(9) or section 20(10) of that Act or, if the person charged with an offence before a magistrates' court as mentioned in section 20(8) of that Act is

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(a) Section 20 was substituted by the Criminal Law Act 1977, section 56 and Schedule 10, and was amended by the Coroners Act 1980, section 1 and Schedules 1 and 2.

not committed for trial to the Crown Court, within twenty-eight days from the date on which he is notified under the said section 20(8) of the result of the proceedings in the magistrates' court.

*Effect of institution of criminal proceedings*

32. Subject to section 20 of the Act of 1926, an inquest shall not be adjourned solely by reason of the institution of criminal proceedings arising out of the death of the deceased.

*Coroner to notify persons as to resumption of, and alteration of arrangements for, adjourned inquest*

33.—(1) If an inquest which has been adjourned in pursuance of section 20 of the Act of 1926 is not to be resumed, the coroner shall notify the persons within paragraph (4).

(2) If an inquest which has been adjourned as aforesaid is to be resumed, the coroner shall give reasonable notice of the date, hour and place at which the inquest will be resumed to the persons within paragraph (4).

(3) Where a coroner has fixed a date, hour and place for the holding of an inquest adjourned for any reason, he may, at any time before the date so fixed, alter the date, hour or place fixed and shall then give reasonable notice to the persons within paragraph (4).

(4) The persons within this paragraph are the members of the jury (if any), the witnesses, the chief officer of police, any person notified under Rule 19 or 24 and any other person appearing in person or represented at the inquest.

*Recognizance of witness or juror becoming void*

34. Where any witness or juror who has been bound over to attend at an adjourned inquest, whether without further notice or conditionally on receiving further notice, is notified by the coroner that his attendance at the adjourned inquest is not required or that the inquest will not be resumed, the recognizance entered into by him shall be void.

*Coroner to notify Crown Court officer of adjournment in certain cases*

35. Where a person charged with an offence within Rule 26(3) is committed for trial to the Crown Court, the coroner who has adjourned an inquest in pursuance of section 20 of the Act of 1926 shall inform the appropriate officer of the Crown Court at the place where the person charged is to be tried of such adjournment.

*Matters to be ascertained at inquest*

36.—(1) The proceedings and evidence at an inquest shall be directed solely to ascertaining the following matters, namely—

(a) who the deceased was;

(b) how, when and where the deceased came by his death;



# Merchant Shipping Act 1988

## CHAPTER 12

### ARRANGEMENT OF SECTIONS

#### PART I

##### REGISTRATION OF BRITISH SHIPS

###### *Preliminary*

Section

1. Effect of Part I and interpretation.
2. British ships.
3. Persons qualified to be owners of British ships.

###### *Registration under Part I of 1894 Act*

4. Entitlement to registration under Part I of 1894 Act.
5. Representative persons.
6. Refusal of registration.
7. Power of Secretary of State to direct removal from the register.
8. Offences relating to furnishing of information, and duty to comply with directions.
9. Duty of owner of registered ship to secure termination of any overseas registration.
10. Amendments of Part I of 1894 Act.

###### *Registration in overseas territories*

11. Regulation of registration in overseas territories by reference to categories of registries.

#### PART II

##### REGISTRATION OF BRITISH FISHING VESSELS

###### *Preliminary*

12. Interpretation of Part II, etc.

###### *New system of registration for fishing vessels*

13. Separate registration of fishing vessels.

## PART III

(2) The Secretary of State may make such payments as he thinks fit in connection with the training and certification of members of the Merchant Navy Reserve (including payments to persons undergoing such training and payments in connection with the re-validation of certificates).

(3) The Secretary of State shall not make any determination under subsection (1), or any payment under subsection (2), except with the consent of the Treasury.

(4) Where any person is called into service by virtue of regulations under section 28—

- (a) the provisions of the Reserve Forces (Safeguard of Employment) Act 1985 shall apply to that person as if any service rendered by him in pursuance of the call-out were whole-time service within the meaning of that Act; and 1985 c. 17.
- (b) any service so rendered shall be relevant service within the meaning of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951. 1951 c. 65.

*Safety of navigation, oil pollution etc.*

30.—(1) If, having regard to the nature of the service for which it is intended—

- (a) a ship in a port in the United Kingdom, or
- (b) a ship registered in the United Kingdom which is in any other port,

Owner and master liable in respect of dangerously unsafe ship.

is, by reason of any of the matters mentioned in subsection (3), not fit to go to sea without serious danger to human life, then, subject to subsections (5) and (6), the master and the owner of the ship shall each be guilty of an offence.

(2) Where, at the time when a ship is not fit to go to sea as mentioned in subsection (1), any responsibilities of the owner with respect to the particular matters by reason of which the ship is not fit to go to sea have been assumed (whether wholly or in part) by any person or persons other than the owner, and have been so assumed by that person or (as the case may be) by each of those persons either—

- (a) directly, under the terms of a charter-party or management agreement made with the owner, or
- (b) indirectly, under the terms of a series of charter-parties or management agreements,

the reference to the owner in subsection (1) shall be construed as including a reference to that other person or (as the case may be) to each of those other persons.

(3) The matters referred to in subsection (1) are—

- (a) the condition, or the unsuitability for its purpose, of—
  - (i) the ship or its machinery or equipment, or
  - (ii) any part of the ship or its machinery or equipment;
- (b) undermanning;
- (c) overloading or unsafe or improper loading;
- (d) any other matter relevant to the safety of the ship.

## PART III

(4) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a fine not exceeding £50,000;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(5) It shall be a defence in proceedings for an offence under this section to prove that at the time of the alleged offence—

- (a) arrangements had been made which were appropriate to ensure that before the ship went to sea it was made fit to do so without serious danger to human life by reason of the matters falling within subsection (3) which are specified in the charge (or, in Scotland, which are libelled in the complaint, petition or indictment); or
- (b) it was reasonable for such arrangements not to have been made.

(6) It shall also be a defence in proceedings for an offence under this section to prove—

- (a) that, under the terms of one or more charter-parties or management agreements entered into by the defendant, the relevant responsibilities, namely—

- (i) where the defendant is the owner, his responsibilities with respect to the matters referred to in subsection (5) (a), or

- (ii) where the defendant is liable to proceedings under this section by virtue of subsection (2), so much of those responsibilities as had been assumed by him as mentioned in that subsection,

had at the time of the alleged offence been wholly assumed by some other person or persons party thereto; and

- (b) that in all the circumstances of the case the defendant had taken such steps as it was reasonable for him to take, and exercised such diligence as it was reasonable for him to exercise, to secure the proper discharge of the relevant responsibilities during the period during which they had been assumed by some other person or persons as mentioned in paragraph (a);

and, in determining whether the defendant had done so, regard shall be had in particular to the matters mentioned in subsection (7).

(7) Those matters are—

- (a) whether prior to the time of the alleged offence the defendant was, or in all the circumstances ought reasonably to have been, aware of any deficiency in the discharge of the relevant responsibilities; and

- (b) the extent to which the defendant was or was not able, under the terms of any such charter-party or management agreement as is mentioned in subsection (6)(a)—

- (i) to terminate it, or

- (ii) to intervene in the management of the ship,

in the event of any such deficiency, and whether it was reasonable for the defendant to place himself in that position.

(8) No proceedings for an offence under this section shall be instituted—

- (a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
- (b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

(9) In this section—

“management agreement”, in relation to a ship, means any agreement (other than a charter-party or a contract of employment) under which the ship is managed, either wholly or in part, by a person other than the owner (whether on behalf of the owner or on behalf of some other person);

“relevant responsibilities” shall be construed in accordance with subsection (6);

and any reference in this section to going to sea shall, in a case where the service for which a ship is intended consists of going on voyages or excursions that do not involve going to sea, be construed as a reference to going on such a voyage or excursion.

(10) References in this section to responsibilities being assumed by a person under the terms of a charter-party or management agreement are references to their being so assumed by him whether or not he has entered into a further charter-party or management agreement providing for them to be assumed by some other person.

31.—(1) It shall be the duty of the owner of a ship to which this section applies to take all reasonable steps to secure that the ship is operated in a safe manner.

Owner liable for unsafe operation of ship.

(2) This section applies to—

- (a) any ship registered in the United Kingdom; and
- (b) any ship which—

(i) is registered under the law of any country outside the United Kingdom, and

(ii) is within the seaward limits of the territorial sea of the United Kingdom while proceeding to or from a port in the United Kingdom,

unless the ship would not be so proceeding but for weather conditions or any other unavoidable circumstances.

(3) If the owner of a ship to which this section applies fails to discharge the duty imposed on him by subsection (1), he shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding £50,000;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(4) Where any such ship—

- (a) is chartered by demise, or

## PART III

- (b) is managed, either wholly or in part, by a person other than the owner under the terms of a management agreement within the meaning of section 30,

any reference to the owner of the ship in subsection (1) or (3) above shall be construed as including a reference—

- (i) to the charterer under the charter by demise, or
- (ii) to any such manager as is referred to in paragraph (b), or
- (iii) (if the ship is both chartered and managed as mentioned above) to both the charterer and any such manager,

and accordingly the reference in subsection (1) to the taking of all reasonable steps shall, in relation to the owner, the charterer or any such manager, be construed as a reference to the taking of all such steps as it is reasonable for him to take in the circumstances of the case.

(5) No proceedings for an offence under this section shall be instituted—

- (a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
- (b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

Conduct endangering ships, structures or individuals.  
1970 c. 36.

32. The following section shall be substituted for section 27 of the Merchant Shipping Act 1970—

“Conduct endangering ships, structures or individuals.

27.—(1) This section applies—

- (a) to the master of, or any seaman employed in, a ship registered in the United Kingdom; and
- (b) to the master of, or any seaman employed in, a ship which—
  - (i) is registered under the law of any country outside the United Kingdom, and
  - (ii) is in a port in the United Kingdom or within the seaward limits of the territorial sea of the United Kingdom while proceeding to or from any such port.

(2) If a person to whom this section applies, while on board his ship or in its immediate vicinity—

- (a) does any act which causes or is likely to cause—
  - (i) the loss or destruction of or serious damage to his ship or its machinery, navigational equipment or safety equipment, or
  - (ii) the loss or destruction of or serious damage to any other ship or any structure, or
  - (iii) the death of or serious injury to any person, or

(b) omits to do anything required—

(i) to preserve his ship or its machinery, navigational equipment or safety equipment from being lost, destroyed or seriously damaged, or

(ii) to preserve any person on board his ship from death or serious injury, or

(iii) to prevent his ship from causing the loss or destruction of or serious damage to any other ship or any structure, or the death of or serious injury to any person not on board his ship,

and either of the conditions specified in subsection (3) of this section is satisfied with respect to that act or omission, he shall (subject to subsections (6) and (7) of this section) be guilty of an offence.

(3) Those conditions are—

- (a) that the act or omission was deliberate or amounted to a breach or neglect of duty;
- (b) that the master or seaman in question was under the influence of drink or a drug at the time of the act or omission.

(4) If a person to whom this section applies—

- (a) discharges any of his duties, or performs any other function in relation to the operation of his ship or its machinery or equipment, in such a manner as to cause, or to be likely to cause, any such loss, destruction, death or injury as is mentioned in subsection (2)(a) of this section, or
- (b) fails to discharge any of his duties, or to perform any such function, properly to such an extent as to cause, or to be likely to cause, any of those things,

he shall (subject to subsections (6) and (7) of this section) be guilty of an offence.

(5) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(6) In proceedings for an offence under this section it shall be a defence to prove—

- (a) in the case of an offence under subsection (2) of this section where the act or omission alleged against the defendant constituted a breach or neglect of duty, that the defendant took all reasonable steps to discharge that duty;

## PART III

(b) in the case of an offence under subsection (4) of this section, that the defendant took all reasonable precautions and exercised all due diligence to avoid committing the offence; or

(c) in the case of an offence under either of those subsections—

(i) that he could have avoided committing the offence only by disobeying a lawful command, or

(ii) that in all the circumstances the loss, destruction, damage, death or injury in question, or (as the case may be) the likelihood of its being caused, either could not reasonably have been foreseen by the defendant or could not reasonably have been avoided by him.

(7) In the application of this section to any person falling within subsection (1)(b) of this section, subsections (2) and (4) shall have effect as if paragraphs (a)(i) and (b)(i) of subsection (2) were omitted; and no proceedings for an offence under this section shall be instituted against any such person—

(a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions;

(b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

(8) In this section—

“breach or neglect of duty”, except in relation to a master, includes any disobedience to a lawful command;

“duty”—

(a) in relation to a master or seaman, means any duty falling to be discharged by him in his capacity as such; and

(b) in relation to a master, includes his duty with respect to the good management of his ship and his duty with respect to the safety of operation of his ship, its machinery and equipment; and

“structure” means any fixed or movable structure (of whatever description) other than a ship.”

Investigation of  
marine accidents.

33.—(1) The Secretary of State shall, for the purpose of the investigation of any such accidents as are mentioned in subsection (2), appoint such number of persons as he may determine to be inspectors of marine accidents, and he shall appoint one of those persons to be Chief Inspector of Marine Accidents.

PART III

(2) The accidents referred to in subsection (1) are—

(a) any accident involving a ship or ship's boat where, at the time of the accident—

(i) the ship is registered in the United Kingdom, or

(ii) the ship, or (in the case of an accident involving a ship's boat) that boat, is within the seaward limits of the territorial sea of the United Kingdom; and

(b) such other accidents involving ships or ships' boats as the Secretary of State may determine.

(3) The Secretary of State may by regulations make such provision as he considers appropriate with respect to the investigation of any such accidents as are mentioned in subsection (2).

(4) Any such regulations may, in particular, make provision—

(a) with respect to the definition of "accident" for the purposes of this section and the regulations;

(b) imposing requirements as to the reporting of accidents;

(c) prohibiting, pending investigation, access to or interference with any ship or ship's boat involved in an accident;

(d) authorising any person, so far as may be necessary for the purpose of determining whether an investigation should be carried out, to have access to, examine, remove, test, take measures for the preservation of, or otherwise deal with, any such ship or boat or any other ship or ship's boat;

(e) specifying, with respect to the investigation of accidents, the functions of the Chief Inspector of Marine Accidents (which may include the function of determining whether, and if so by whom, particular accidents should be investigated), the functions of other inspectors of marine accidents, and the manner in which any such functions are to be discharged;

(f) for the appointment by the Chief Inspector of Marine Accidents, in such circumstances as may be specified in the regulations, of persons to carry out investigations under this section who are not inspectors of marine accidents;

(g) for the appointment by any Minister of the Crown of persons to review any findings or conclusions of a person carrying out an investigation under this section;

(h) for the procedure to be followed in connection with investigations or reviews under this section;

(i) for conferring on persons discharging functions under the regulations who are not inspectors of marine accidents all or any of the powers conferred on an inspector by section 27 of the Merchant Shipping Act 1979;

(j) for the submission to the Secretary of State, and the publication by him, of reports of investigations or reviews under this section;

(k) for the publication by the Chief Inspector of Marine Accidents of reports and other information relating to accidents.

## PART III

(5) Regulations under this section may provide for any provisions of the regulations to apply to any specified class or description of incidents or situations which involve, or occur on board, ships or ships' boats but are not accidents for the purposes of the regulations, being a class or description framed by reference to any of the following, namely—

- (a) the loss or destruction of or serious damage to any ship or structure,
- (b) the death of or serious injury to any person, or
- (c) environmental damage,

whether actually occurring or not, and (subject to such modifications as may be specified in the regulations) for those provisions to apply in relation to any such incidents or situations as they apply in relation to accidents.

(6) Regulations under this section may provide that a contravention of the regulations shall be an offence punishable on summary conviction by a fine not exceeding the statutory maximum and on conviction on indictment by a fine.

(7) The Chief Inspector of Marine Accidents, or (as the case may be) inspectors of marine accidents generally, shall discharge such functions in addition to those conferred by or under the preceding provisions of this section as the Secretary of State may determine.

(8) Any inspector of marine accidents shall, for the purpose of discharging any functions conferred on him by or under this section, have the powers conferred on an inspector by section 27 of the Merchant Shipping Act 1979.

1979 c. 39.

(9) Nothing in this section shall limit the powers of any authority under sections 530 to 537 of the 1894 Act (removal of wrecks).

(10) In this section—

- (a) references to an accident involving a ship or ship's boat include references to an accident occurring on board a ship or ship's boat (and any reference to a ship or ship's boat involved in an accident shall be construed accordingly); and
- (b) "ship's boat" includes a liferaft.

Liability and  
compensation for  
oil pollution  
damage.  
1971 c. 59.  
1974 c. 43.

34.—(1) The Merchant Shipping (Oil Pollution) Act 1971 ("the 1971 Act") and the Merchant Shipping Act 1974 ("the 1974 Act") shall be amended in accordance with Parts I and II of Schedule 4 to this Act (which contain amendments designed to implement provisions of the following Conventions, namely—

- (a) the International Convention on Civil Liability for Oil Pollution Damage 1984; and
- (b) the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1984).

(2) Her Majesty may by Order in Council make such provision as appears to Her Majesty to be appropriate in connection with the implementation of any transitional provisions contained in those Conventions; and any such Order may in particular provide, in relation to occurrences of any description specified in the Order—

- (a) for provisions of the 1971 Act or the 1974 Act to have effect —

## PART III

- (i) to such extent as is so specified, as if Schedule 4 to this Act were not in force, and
- (ii) to such extent as is so specified, as if that Schedule were in force;
- (b) for any such provisions to have effect (whether as amended by that Schedule or not) subject to such modifications as are so specified.

35.—(1) The Secretary of State may by regulations make, in relation to the transfer of cargo, stores, bunker fuel or ballast between ships while within the seaward limits of the territorial sea of the United Kingdom, such provision as he considers appropriate for preventing pollution, danger to health or to navigation, or hazards to the environment or to natural resources.

Regulation of transfers between ships in territorial waters.

(2) Regulations under this section may, in particular, do any of the following things, namely—

- (a) prohibit transfers of any specified description or prohibit transfers if, or unless, carried out in specified areas, circumstances or ways;
- (b) make provision about—
  - (i) the design of, and standards to be met by, ships and equipment,
  - (ii) the manning of ships, including the qualifications and experience to be possessed by persons of any specified description employed on board, and
  - (iii) the qualifications and experience to be possessed by persons (whether masters or not) controlling the carrying out of transfers or operations ancillary thereto;
- (c) provide for proposed transfers to be notified to and approved by persons appointed by the Secretary of State or another person, and for the supervision of transfers, and the inspection of ships and equipment, by persons so appointed;
- (d) provide—
  - (i) for the procedure to be followed in relation to the approval of transfers to be such as may be prescribed by any document specified in the regulations, and
  - (ii) for references in the regulations to any document so specified to operate as references to that document as revised or re-issued from time to time;
- (e) provide for the making and keeping of records about ships and equipment, the issuing of certificates, and the furnishing of information;
- (f) require the payment of fees determined with the approval of the Treasury;
- (g) provide for the granting by the Secretary of State or another person of exemptions from specified provisions of the regulations, on such terms (if any) as the Secretary of State or that other person may specify, and for altering or cancelling exemptions;

1989 No. 1172

**MERCHANT SHIPPING**

**The Merchant Shipping (Accident Investigation)  
Regulations 1989**

<i>Made</i> - - - -	<i>6th July 1989</i>
<i>Laid before Parliament</i>	<i>14th July 1989</i>
<i>Coming into force</i>	<i>7th August 1989</i>

The Secretary of State, in exercise of the powers conferred on him by sections 33 and 53 of the Merchant Shipping Act 1988(a) (hereinafter called "the Act"), and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

**Citation and Commencement**

1. These Regulations may be cited as the Merchant Shipping (Accident Investigation) Regulations 1989 and shall come into force on 7th August 1989.

**Interpretation**

2.—(1) For the purposes of these Regulations and of section 33 of the Act, "accident" means any contingency whereby:—

- (a) there is loss of life or major injury to any person on board, or any person is lost from, a ship or a ship's boat; or
- (b) a ship is lost or presumed to be lost, or is abandoned or materially damaged; or
- (c) a ship strands or is in collision; or
- (d) a ship is disabled; or
- (e) any material damage is caused by a ship.

(2) In these Regulations

"Chief Inspector" means the Chief Inspector of Marine Accidents appointed by the Secretary of State under section 33(1) of the Act, and any deputy Chief Inspector;

"disabled" means not under command for a period of more than 12 hours, or for any lesser period if, as a result, the vessel needs assistance to reach port;

"grounding" means making involuntary contact with the ground, except for touching briefly so that no damage is caused, and "goes aground" shall be construed accordingly;

"hazardous incident" means any incident or event, not being an accident as defined in regulation 2(1), by which the safety of a ship or any person on board is imperilled, or as a result of which serious damage to any ship or structure or damage to the environment might be caused;

"inspector" means an inspector of marine accidents appointed by the Secretary of State and in the context of the investigation of a particular accident includes any person appointed to investigate that accident under regulation 6 below;

“Inspector’s Inquiry” means an investigation ordered under regulation 6(2);  
“investigation” means any investigation carried out by an inspector, including but not limited to an Inspector’s Inquiry;

“major injury” has the same meaning as in the Merchant Shipping (Safety Officials and Reporting of Accidents and Dangerous Occurrences) Regulations 1982(a);

“pleasure craft” means a vessel primarily used for sport or recreation;

“serious casualty” means an accident to a ship causing loss of life, or total loss of a ship of more than 50 metres registered length;

“ship’s boat” includes a liferaft, painting punt and any boat normally carried by a ship;

“strands” means goes aground and cannot immediately re-float;

“United Kingdom ship” means a ship registered in the United Kingdom.

(3) Where a ship is managed by a person other than her owner (whether on behalf of the owner or some other person, or on his own behalf), a reference in these Regulations to the owner shall be construed as including a reference to that person.

#### **Application**

3.—(1) These Regulations, except regulations 5 and 7, shall apply to hazardous incidents in the same way as they apply to accidents, and the term “accident” shall be construed accordingly.

(2) These Regulations apply to accidents involving or occurring on board—

(a) any United Kingdom ship except that regulation 5 shall not apply to pleasure craft, or to lifeboats operated by the Royal National Lifeboat Institution; and

(b) any other ship within the United Kingdom or the territorial waters thereof, save that regulations 5 and 7 shall not apply to such a ship.

(3) An investigation may be held under regulation 6 into an accident involving or occurring on board a ship which is not a United Kingdom ship and which at the time of the accident was not within the United Kingdom or the territorial waters thereof, if the Secretary of State so determines.

#### **Purpose of Investigation**

4. The fundamental purpose of investigating an accident under these Regulations is to determine its circumstances and the causes with the aim of improving the safety of life at sea and the avoidance of accidents in the future. It is not the purpose to apportion liability, nor, except so far as is necessary to achieve the fundamental purpose, to apportion blame.

#### **Duty to Report Accidents**

5.—(1) Except as provided in paragraph (2), when an accident occurs the master shall send a report to the Chief Inspector as soon as is practicable by the quickest means available, and in any case not later than 24 hours after the ship next arrives at a port.

(2) Where a ship is lost or presumed lost or is abandoned, then such a report shall be sent by the owner, the master, or a senior surviving officer as soon as is practicable by the quickest means available.

(3) A report made to a Marine Office of the Department of Transport or to HM Coastguard, or a report made under the Merchant Shipping (Safety Officials and Reporting of Accidents and Dangerous Occurrences) Regulations 1982, or the Fishing Vessels (Reporting of Accidents) Regulations 1985(b) shall be regarded as complying with regulation 5(1).

#### **Ordering of Investigation**

6.—(1) Any accident to which these Regulations apply may be investigated. Where an accident occurs, the Chief Inspector shall decide whether or not an investigation is required, and where a report has been received under regulation 5 shall cause the master

(a) S.I. 1982/R76, amended by S.I. 1984/93.

(b) S.I. 1985/R55.

or owner to be notified of his decision. He may before deciding cause to be obtained such further information as he considers necessary. The owner or master of the ship concerned shall upon being so required provide such further information to the best of his ability and knowledge.

(2) The Chief Inspector may order in view of the importance or seriousness of the accident that the investigation takes the form of an Inspector's Inquiry, to be carried out by one or more inspectors of marine accidents appointed under section 33(1) of the Act, or additionally or alternatively by such other person or persons whom he may appoint specifically for the purpose; and such other person or persons shall have the powers conferred on an inspector by section 27 of the Merchant Shipping Act 1979(a).

(3) Public notice that an Inspector's Inquiry has been ordered shall be given in such manner as the Chief Inspector may think fit, and shall invite any persons who so desire to make representations to the inspector in writing within a time to be specified in the notice.

#### **Preservation of Evidence**

7. The owner and master shall so far as is possible ensure that all charts, log books and other records and documents which might reasonably be considered pertinent to an accident reportable under regulation 5 shall be kept and no alteration shall be made to entries therein, and any equipment which might reasonably be considered pertinent to such an accident shall so far as is practicable be left undisturbed, until either—

- (a) notification is received from the Chief Inspector that no investigation is to take place; or
- (b) if notification is received that an investigation will take place, the Chief Inspector or the inspector carrying out the investigation indicates that he no longer requires them.

#### **Conduct of Investigations**

8.—(1) Subject to his powers under section 27 of the Merchant Shipping Act 1979 an inspector shall conduct an investigation at such times and places and in such manner as appear to him most conducive to achieving the fundamental purpose set out in regulation 4.

(2) An investigation may extend to cover all events and circumstances preceding the accident which in the opinion of the inspector may have been relevant to its cause or outcome, and also to cover the consequences of the accident and the inspector's powers shall apply accordingly.

(3) Every person required to attend before an inspector shall be allowed his reasonable expenses of attending.

(4) Upon completion of an investigation the inspector shall submit to the Chief Inspector his findings as to the facts of the accident and, where the facts cannot be certainly established, his opinion as to the most probable facts. He shall clearly distinguish between established facts and conjecture. He shall also submit his analysis and his conclusions together with such observations and recommendations as he thinks fit to make.

(5) At any time during the course of an investigation the Chief Inspector may determine that the investigation shall be discontinued, and in that event, no submission by the inspector need be made.

#### **Report of Inspector's Inquiry**

9.—(1) Subject to paragraph (4) below, where an Inspector's Inquiry has taken place, the Chief Inspector shall make a report to the Secretary of State (in the remainder of this regulation referred to as "the Report") which shall include the inspector's findings and his own observations thereon and any recommendations which he considers appropriate.

(a) 1979 c.39.

Subject to paragraphs (2) and (3) below, the Secretary of State, unless he orders a Formal Investigation under section 56 of the Merchant Shipping Act 1970(a), may publish the Report if he thinks fit and shall do so if—

- (a) it appears to him that to do so will improve the safety of life at sea and help to prevent accidents in the future; or
- (b) it relates to a serious casualty to a United Kingdom ship;

unless in his opinion there is good reason to the contrary.

(2) Where the Report or any investigation indicates that there may have been a breach of the law and that prosecution of the suspected offender should be considered, the Report shall not be published until either prosecution, including any appeal, has been concluded or it has been decided not to prosecute.

(3) Where an Inquiry under section 52 of the Merchant Shipping Act 1970 into the conduct of a Certificated Officer, or action by the Secretary of State under section 53 of that Act in respect of the holder of a certificate other than an officer's, is under consideration then the Report shall not be published until proceedings under either of the said sections have been completed or it has been decided not to pursue such proceedings.

(4) Except when a Formal Investigation has been ordered, or where paragraphs (2) or (3) above apply, if in the opinion of the Chief Inspector the reputation of any person is likely to be adversely affected by the Report then it shall not be submitted to the Secretary of State until—

- (a) that person (or if that person be deceased, then such person as appears to the Chief Inspector best to represent that person's interest) is served with a copy of the Report or that part of it which affects him; and
- (b) that person or his representative has been given a period of 28 days to make representations to the Chief Inspector either in person or in writing; and
- (c) the Chief Inspector has considered any such representations and has notified the person concerned or his representative of his conclusions on them, and of what changes, if any, he intends to make to the Report; and
- (d) the person or his representative has been given a further period of 28 days in which he may submit to the Chief Inspector an alternative text for any passages in the Report which remain in issue.

(5) The Chief Inspector shall on submitting the Report to the Secretary of State in addition shall refer to any service of the Report under paragraph (4) of this regulation and shall set out the substance of any representations made in response, together with his conclusions and a record of any action he has taken. He shall also quote in full any alternative texts submitted under paragraph (4)(d) above; and if the Secretary of State decides to publish the Report he shall publish any such texts with it as an Appendix, unless in his opinion there is good reason not to do so.

(6) The Chief Inspector shall forward any recommendations contained in the Report to those persons or bodies who in his opinion are most fitted to implement them.

(7) Notwithstanding the preceding paragraphs of this regulation, the Chief Inspector may at any time during the course of an investigation release information and recommendations if in his opinion it is necessary or desirable to do so in the interests of safety.

#### Summaries of Investigations

10.—(1) The Chief Inspector shall prepare and publish from time to time collective summaries of investigations.

(2) A summary report of any investigation may be published, and if not published shall be otherwise made available to any person requesting it who satisfies the Chief Inspector of his legitimate interest.

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(a) 1970 c.36: section 56 was amended by the Merchant Shipping Act 1988, Schedules 5 and 6.

### **Reopening of Investigation**

11. The Chief Inspector may cause any investigation to be reopened either generally or as to any part thereof, and shall do so—

- (a) if after the completion of the investigation in his opinion new and important evidence has been discovered, or
- (b) if for any other reason there is in his opinion ground for suspecting that a miscarriage of justice has occurred.

(2) Any investigation reopened shall be subject to and conducted in accordance with the provisions of these Regulations relating to such an investigation.

### **Extension of Time**

12. The Chief Inspector, in respect of the periods of 28 days prescribed in regulation 9(4)(b) and (d) shall have the power to extend the said periods, and shall not unreasonably refuse to do so, and this power may be exercised notwithstanding that the prescribed period has expired.

### **Penalties**

13.—(1) If a master, owner or officer fails without reasonable cause to report an accident as required by regulation 5, or if a master or owner so fails to provide information as required by regulation 6, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) If any person fails without reasonable cause to comply with regulation 7 above he shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

6th July 1989

*Paul Channon*  
Secretary of State for Transport

## RATIFICATIONS AND ACCESSIONS

Australia	30. 11. 83
Belgium	7. 9. 83
Poland	6. 7. 84
Portugal	30. 4. 82
Spain	14. 5. 82
United Kingdom	2. 3. 82

(United Kingdom denounced Protocol with effect from December 1, 1986).

## CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976

The States Parties to this Convention,

HAVING RECOGNISED the desirability of determining by agreement certain uniform rules relating to the limitation of liability for maritime claims;

HAVE DECIDED to conclude a Convention for this purpose and have thereto agreed as follows:

### CHAPTER I—THE RIGHT OF LIMITATION

#### *Art. 1—Persons entitled to limit liability*

1. Shipowners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Convention for claims set out in Art. 2.

2. The term shipowner shall mean the owner, charterer, manager and operator of a sea-going ship.

3. Salvor shall mean any person rendering services in direct connection with salvage operations. Salvage operations shall also include operations referred to in Art. 2, para. 1(d), (e) and (f).

4. If any claims set out in Art. 2 are made against any person for whose act, neglect or default the shipowner or salvor is responsible, such person shall be entitled to avail himself of the limitation of liability provided for in this Convention.

5. In this Convention the liability of a shipowner shall include liability in an action brought against the vessel herself.

6. An insurer of liability for claims subject to limitation in accordance with the rules of this Convention shall be entitled to the benefits of this Convention to the same extent as the assured himself.

7. The act of invoking limitation of liability shall not constitute an admission of liability.

#### *Art. 2—Claims subject to limitation*

1. Subject to Arts. 3 and 4 the following claims, whatever the basis of liability may be, shall be subject to limitation of liability:

(a) claims in respect of loss of life or personal injury or loss of or

- damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
- (b) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
  - (c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;
  - (d) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;
  - (e) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;
  - (f) claims of a person other than the person liable in respect of measures taken in order to avert or minimize loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.

2. Claims set out in para. 1 shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise. However, claims set out under para. 1(d), (e) and (f) shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

#### *Art. 3—Claims excepted from limitation*

The rules of this Convention shall not apply to:

- (a) claims for salvage or contribution in general average;
- (b) claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, dated Nov. 29, 1969 or of any amendment or Protocol thereto which is in force;
- (c) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;
- (d) claims against the shipowner of a nuclear ship for nuclear damage;
- (e) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the shipowner or salvor and such servants the shipowner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Art. 6.

#### *Art. 4—Conduct barring limitation*

A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

*Art. 10—Limitation of liability without constitution of a limitation fund*

1. Limitation of liability may be invoked notwithstanding that a limitation fund as mentioned in Art. 11 has not been constituted. However, a State Party may provide in its national law that, where an action is brought in its courts to enforce a claim subject to limitation, a person liable may only invoke the right to limit liability if a limitation fund has been constituted in accordance with the provisions of this Convention or is constituted when the right to limit liability is invoked.

2. If limitation of liability is invoked without the constitution of a limitation fund, the provisions of Art. 12 shall apply correspondingly.

3. Questions of procedure arising under the rules of this Article shall be decided in accordance with the national law of the State Party in which action is brought.

CHAPTER III—THE LIMITATION FUND

*Art. 11—Constitution of the fund*

1. Any person alleged to be liable may constitute a fund with the court or other competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such of the amounts set out in Arts. 6 and 7 as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

2. A fund may be constituted, either by depositing the sum, or by producing a guarantee acceptable under the legislation of the State Party where the fund is constituted and considered to be adequate by the court or other competent authority.

3. A fund constituted by one of the persons mentioned in para. 1(a), (b) or (c) or para. 2 of Art. 9 or his insurer shall be deemed constituted by all persons mentioned in para. 1(a), (b) or (c) or para. 2, respectively.

*Art. 12—Distribution of the fund*

1. Subject to the provisions of paras. 1, 2 and 3 of Art. 6 and of Art. 7, the fund shall be distributed among the claimants in proportion to their established claims against the fund.

2. If, before the fund is distributed, the person liable, or his insurer, has settled a claim against the fund such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

3. The right of subrogation provided for in para. 2 may also be exercised by persons other than those therein mentioned in respect of any amount of compensation which they may have paid, but only to the extent that such subrogation is permitted under the applicable national law.

4. Where the person liable or any other person establishes that he may be compelled to pay, at a later date, in whole or in part any such amount

of compensation with regard to which such person would have enjoyed a right of subrogation pursuant to paras. 2 and 3 had the compensation been paid before the fund was distributed, the court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

*Art. 13—Bar to other actions*

1. Where a limitation fund has been constituted in accordance with Art. 11, any person having made a claim against the fund shall be barred from exercising any right in respect of such claim against any other assets of a person by or on behalf of whom the fund has been constituted.

2. After a limitation fund has been constituted in accordance with Art. 11, any ship or other property, belonging to a person on behalf of whom the fund has been constituted, which has been arrested or attached within the jurisdiction of a State Party for a claim which may be raised against the fund, or any security given, may be released by order of the court or other competent authority of such State. However, such release shall always be ordered if the limitation fund has been constituted:

- (a) at the port where the occurrence took place, or, if it took place out of port, at the first port of call thereafter; or
- (b) at the port of disembarkation in respect of claims for loss of life or personal injury; or
- (c) at the port of discharge in respect of damage to cargo; or
- (d) in the State where the arrest is made.

3. The rules of paras. 1 and 2 shall apply only if the claimant may bring a claim against the limitation fund before the court administering that fund and the fund is actually available and freely transferable in respect of that claim.

*Art. 14—Governing law*

Subject to the provisions of this chapter the rules relating to the constitution and distribution of a limitation fund, and all rules of procedure in connection therewith, shall be governed by the law of the State Party in which the fund is constituted.

CHAPTER IV—SCOPE OF APPLICATION

*Article 15*

1. This Convention shall apply whenever a person referred to in Art. 1 seeks to limit his liability before the court of a State Party or seeks to procure the release of a ship or other property or the discharge of any security given within the jurisdiction of any such State. Nevertheless, each State Party may exclude wholly or partially from the application of this Convention any person referred to in Art. 1, who at the time when the rules of this Convention are invoked before the courts of that State does not have his habitual residence in a State Party, or does not have his principal place of business in a State Party or any ship in relation to which

**75/5/7** Form of affidavit—There are no prescribed or practice forms. It is suggested that in cases within r.5(9)(b) the following outline form or something like it should be used:

### OUTLINE FORM OF AFFIDAVIT

After the usual paragraphs stating the deponent's name, address and occupation, and showing his competence to depose of the facts, continue as follows:

3. The Plaintiff's claim is [state nature of claim] I am informed by [name and occupation of informant] and verily believe that the Plaintiff's claim has not been satisfied.
  4. The property to be arrested is the ship [name] of the port of [port of registry].
  5. The ship [name of ship to be arrested] is the ship [or is one of the ships] against which the action is brought and is [or is not] the ship in connection with which the claim in the action arose.
  6. In my belief the person who would be liable on the claim in an action in personam is [name]. The grounds of my said belief are [state them].
  7. In my belief [name] was when the cause of action arose the owner [or the charterer or in possession or in control [as the case may be] of the ship [name]. The grounds of my said belief are [state them].
  8. In my belief [name] was on the [date writ was issued] the beneficial owner of all the shares in the ship [name] [or was the charterer of the ship [name] under a charter by demise]. The grounds of my said belief are [state them].
- SWORN etc.

### Caveat against arrest (O.75, r.6)

**75/6** 6.—(1) A person who desires to prevent the arrest of any property must file in the registry a praecipe, in Form No. 5 in Appendix B, signed by him or his solicitor undertaking—

- (a) to acknowledge issue or service (as may be appropriate) of the writ in any action that may be begun against the property described in the praecipe, and
- (b) within 3 days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding an amount specified in the praecipe or to pay the amount so specified into court;

and on the filing of the praecipe a caveat against the issue of a warrant to arrest the property described in the praecipe shall be entered in the caveat book.

(2) The fact that there is a caveat against arrest in force shall not prevent the issue of a warrant to arrest the property to which the caveat relates.

R.S.C. (Revision) 1965, reproducing, unchanged O.75, r.6, of R.S.C. (Revision) 1962.

Amended by R.S.C. (Writ and Appearance) 1979 (S.I. 1979 No.1716).

**75/6/1** Rules closely related to this rule—See r.5(3) (search for caveats before issue of warrant); r.7 (remedy where property protected by caveat is arrested without good and sufficient reason); r.8(4) (duty to serve writ on caveator); r.16 (bail); r.21(1) (2) (failure of caveator to fulfil obligations). See also O.75, r.9.

**Para.(1) " . . . desires to prevent the arrest . . . "**—The entry of a caveat does not in fact prevent the issue or execution of a warrant of arrest (see para.(2) of this rule) but a person who causes property to be arrested despite the existence of a caveat and without good and sufficient reason may be ordered to pay damages. See O.75, r.7.

**75/6/2** Wrongful arrest—Whether a caveat has been entered or not, if property is arrested by reason of *mala fides* or *crassa negligentia*, damages may be recovered in Admiralty or, indeed, at common law (*The Walter D. Walllett* [1893] P. 202; *The Evangelismos* (1858) Swa. 378; *The Strathnaver* (1875) 1 App. Cas. 58; *The Cathcart* (1867) L.R. 1 A. & E. 314; *The Eudora* (1879) 4 P.D. 208). Damages may also be recovered where an arrest has been unduly continued (*The Cheshire Witch* (1858) Br. & Lush. 362; *The Margaret and Jane* (1869) L.R. 2 A. & E. 345). As to claims for damages where release has been delayed owing to a caveat against release and payment having been entered without good and sufficient reason, see O.75, r.14(2). See also O.75, r.7.

## ADMIRALTY PROCEEDINGS

*tion No. 7 (Vol.2, para.1328).* This must be done before noon on the working day preceding the date fixed. It is the duty of all parties to notify the Registry without delay of the settlement or withdrawal of an action which has been set down. See para. (4) of this rule.

### Stay of proceedings in collision, etc. actions until security given (O.75, r.27)

27. Where an action in rem, being an action to enforce any such claim 75/27 as is referred to in rule 2(1)(a), is begun and a cross action in rem arising out of the same collision or other occurrence as the first mentioned action is subsequently begun, or a counterclaim arising out of that occurrence is made in the first mentioned action, then—

- (a) if the ship in respect of or against which the first mentioned action is brought has been arrested or security given to prevent her arrest, but
- (b) the ship in respect of or against which the cross action is brought or the counterclaim made cannot be arrested and security has not been given to satisfy any judgment given in favour of the party bringing the cross action or making the counterclaim,

the Court may stay proceedings in the first mentioned action until security is given to satisfy any judgment given in favour of that party.

R.S.C. (Revision) 1965, reproducing, unchanged save for re-numbering, O.75, r.25 of R.S.C. (Revision) 1962, which replaced, with amendments, the Admiralty Court Act 1861, s.34. The rule is wider in scope than was the section.

**Scope of rule**—This rule applies only to the staying of an action or the earlier of two 75/27/1 actions. Where the plaintiff has given security it does not empower the Court to stay a counterclaim until the defendant gives security (*The Neptune* [1919] P.17).

“... counterclaim ... is made ...”—A counterclaim can be raised only by a proceeding recognised or directed by rules of court (*The Gniezno* [1968] P.418; [1967] 1 Lloyd's Rep. 441).

“... cannot be arrested ...”—For example, where the ship has been lost or is not within the jurisdiction.

“... judgment ...”—It seems that the amount of security required may include a sum in respect of costs.

### Inspection of ship, etc. (O.75, r.28)

28. Without prejudice to its powers under Order 29, rules 2 and 3, and 75/28 Order 35, rule 8, the Court may, on the application of any party, make an order for the inspection by the assessors (if the action is tried with assessors) or by any party or witness, of any ship or other property, whether real or personal, the inspection of which may be necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the action.

R.S.C. (Revision) 1965, reproducing unchanged save for numerical alterations, O.75, r.26 of R.S.C. (Revision) 1962.

The power conferred by this rule and its predecessors has not been frequently exercised. 75/28/1 For examples of its exercise see *The Magnet* (1874) L.R. 4 A. & E. 417; *The Cumberland Queen* (1921) 6 H.L.Rep. 280; *The Olympic and H.M.S. Hawke* [1913] P.214. It has been held that an order will not be made when the appellant has an opportunity of proving the facts by evidence in the ordinary way (*The Victor Covacevich* (1885) 10 P.D. 40).

As to orders for inspection under O.29, r.2 see the notes to that rule. As to inspection before the commencement of proceedings or of property not belonging to or in the possession of a party to the proceedings see O.29, r.7A and notes thereto.

As to taking samples from the bunkers of a ship where there is an action for short delivery of an oil cargo, see note on two unreported cases in Lloyd's Maritime and Commercial Law Quarterly, February 1985 p.10 and [1985] 3 C.L. 338a.

they apply to an action for a debt or damages, and rule 24(2) and (3) of this Order shall apply, with the necessary modifications, to the payment out of money paid into court under this rule.

Added by R.S.C. (Amendment) 1985 (S.I. 1985 No. 69). Amended by R.S.C. (Amendment No. 3) 1986 (S.I. 1986 No. 2289).

**Limitation action: summons for decree or directions (O.75, r.38)**

38.—(1) Within 7 days after the acknowledgment of issue or service of the writ by one of the defendants named therein by their names or, if none of them acknowledges issue or service, within 7 days after the time limited for acknowledging service the plaintiff, without serving a statement of claim must take out a summons returnable in chambers before the registrar or district registrar, as the case may be, asking for a decree limiting his liability or, in default of such a decree, for directions as to the further proceedings in the action.

(2) The summons must be supported by an affidavit or affidavits proving—

- (a) the plaintiff's case in the action, and
- (b) if none of the defendants named in the writ by their names has acknowledged service, service of the writ on at least one of the defendants so named.

(3) The affidavit in support of the summons must state—

- (a) the names of all the persons who, to the knowledge of the plaintiff, have claims against him in respect of the casualty to which the action relates, not being defendants to the action who are named in the writ by their names, and
- (b) the address of each of those persons, if known to the plaintiff.

(4) The summons and every affidavit in support thereof must, at least 7 clear days before the hearing of the summons, be served on any defendant who has acknowledged issue or service of the writ.

(5) On the hearing of the summons the registrar, if it appears to him that it is not disputed that the plaintiff has a right to limit his liability, shall make a decree limiting the plaintiff's liability and fix the amount to which the liability is to be limited.

(6) On the hearing of the summons, the registrar, if it appears to him that any defendant has not sufficient information to enable him to decide whether or not to dispute that the plaintiff has a right to limit his liability, shall give such directions as appear to him to be appropriate for enabling the defendant to obtain such information and shall adjourn the hearing.

(7) If on the hearing or resumed hearing of the summons the registrar does not make a decree limiting the plaintiff's liability, he shall give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of a summons for directions under Order 25 and, if he gives no such direction, a direction fixing the period within which any notice under Order 38, rule 21, must be served.

(8) Any defendant who, after the registrar has given directions under paragraph (7) ceases to dispute the plaintiff's right to limit his liability must forthwith file a notice to that effect in the registry or district registry, as the case may be, and serve a copy on the plaintiff and on any other defendant who has acknowledged issue or service of the writ.

(9) If every defendant who disputes the plaintiff's right to limit his liability serves a notice on the plaintiff under paragraph (8) the plaintiff may take out a summons returnable in chambers before the registrar or district registrar, as the case may be, asking for a decree limiting his liability; and

paragraphs (4) and (5) shall apply to a summons under this paragraph as they apply to a summons under paragraph (1).

R.S.C. (Revision) 1965, which, with the addition of paras.(8) and (9) reproduces, unchanged save for re-numbering, O.75, r.36 of R.S.C. (Revision) 1962, which reproduced, with amendments, the old O.55r, rr.6-9.

Amended by R.S.C. (Amendment) 1969 (S.I. 1969 No.1105) and R.S.C. (Writ and Appearance) 1979 (S.I. 1979 No.1716).

**75/38/1 Para. (5) "... not disputed ..."**—A bare assertion that the right to limit liability is disputed is sufficient to prevent a decree being made under this paragraph.

**Para. (6) "... directions ..."**—An order for discovery of specified classes of documents is usually made.

**Para. (7) "... directions ..."**—An order is usually made providing for pleadings, discovery and the issue of a summons for directions according to an agreed or, if necessary, imposed timetable.

**Para. (9)**—A new summons must be issued, the old one cannot be restored.

**Tonnage**—The limitation tonnage is usually proved in the case of a British registered ship by a certified copy of the Tonnage Certificate. As to the tonnage of ships of a foreign country which has adopted the British tonnage regulations, see Merchant Shipping Act 1894, ss.82 and 84 and Merchant Shipping Act 1906, ss.54 and 55. For a list of these countries see *British Shipping Laws*, Vol.11, under s.84 of the Merchant Shipping Act 1894. See also the Merchant Shipping (Tonnage) Regulations 1982 (S.I. 1982 No.841) which came into operation on July 18, 1982.

#### **Limitation action: proceedings under decree (O.75, r.39)**

**75/39 39.**—(1) Where the only defendants in a limitation action are those named in the writ by their names and all the persons so named have either been served with the writ or acknowledged the issue thereof, any decree in the action limiting the plaintiff's liability (whether made by a registrar or on the trial of the action)—

(a) need not be advertised, but

(b) shall only operate to protect the plaintiff in respect of claims by the persons so named or persons claiming through or under them.

(2) In any case not falling within paragraph (1), any decree in the action limiting the plaintiff's liability (whether made by a registrar or on the trial of the action)—

(a) shall be advertised by the plaintiff in such manner and within such time as may be provided by the decree;

(b) shall fix a time within which persons with claims against the plaintiff in respect of the casualty to which the action relates may file their claims, and, in cases to which rule 40 applies, take out a summons if they think fit, to set the order aside.

(3) The advertisement to be required under paragraph (2)(a) shall, unless for special reasons the registrar or judge thinks fit otherwise to provide, be a single advertisement in each of three newspapers specified in the decree, identifying the action, the casualty and the relation of the plaintiff thereto (whether as owner of a ship involved in the casualty or otherwise as the case may be), stating that the decree has been made and specifying the amounts fixed thereby as the limits of the plaintiff's liability and the time allowed thereby for the filing of claims and the taking out of summonses to set the decree aside.

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The plaintiff must within the time fixed under paragraph (2)(b) file in the registry or district registry, as the case may be, a copy of each newspaper in which the advertisement required under paragraph (2)(a) appears.

(4) The time to be allowed under paragraph (2)(b) shall, unless for special reasons the registrar or judge thinks fit otherwise to provide, be not less than 2 months from the latest date allowed for the appearance of the advertisements; and after the expiration of the time so allowed, no claim may be filed or summons taken out to set aside the decree except with the leave of the registrar.

(5) Save as aforesaid, on the making of any decree limiting the plaintiff's liability arising out of an occurrence the Court may distribute the limitation fund and may stay any proceedings relating to any claim arising out of that occurrence which are pending against the plaintiff.

R.S.C. (Revision) 1965, reproducing with only numerical alterations, R.S.C. (Revision) 1962, which reproduced, with amendments, the old O.55ii, r.10.

Amended by R.S.C. (Writ and Appearance) 1979 (S.I. 1979 No.1716). Further amended by R.S.C. (Amendment No.3) 1986 (S.I. 1986 No.2289).

**Para. (5)**—*Seemle*, it seems that in a distribution pursuant to this paragraph, the Court would order interest accrued on the limitation fund in Court to be apportioned *pro rata* to the distribution. 75/39/1

#### Limitation action: proceedings to set aside decree (O.75, r.40)

40.—(1) Where a decree limiting the plaintiff's liability (whether made by a registrar or on the trial of the action) fixes a time in accordance with rule 39(2) any person with a claim against the plaintiff in respect of the casualty to which the action relates, who— 75/40

(a) was not named by his name in the writ as a defendant to the action, or

(b) if so named, neither was served with the writ nor has acknowledged the issue thereof,

may, within that time, after acknowledging issue of the writ, take out a summons returnable in chambers before the registrar or district registrar, as the case may be, asking that the decree be set aside.

(2) The summons must be supported by an affidavit or affidavits showing that the defendant in question has a bona fide claim against the plaintiff in respect of the casualty in question and that he has sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given him by the decree.

(3) The summons and every affidavit in support thereof must, at least 7 clear days before the hearing of the summons, be served on the plaintiff and any defendant who has acknowledged issue or service of the writ.

(4) On the hearing of the summons the registrar, if he is satisfied that the defendant in question has a bona fide claim against the plaintiff and sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given him by the decree, shall set the decree aside and give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of a summons for directions under Order 25.

R.S.C. (Revision) 1965, reproducing with only numerical changes, R.S.C. (Revision) 1962, which reproduced, with amendments, the old O.55ii, r.11.

Amended by R.S.C. (Writ and Appearance) 1979 (S.I. 1979 No.1716).