Criminal Responsibility in Shipping

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Between 1976 and 1981 he combined his claims handling role with acting as Secretary of the International Group of P&I Clubs. Between 1984 and 1993, Herry helped found and manage ITIC, which specializes in the insurance of ship agents, ship brokers and ship managers and was the first chairman of the management company.

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CRIMINAL RESPONSIBILITY IN SHIPPING

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It cannot have escaped anyone's notice that in the last three or four years, reports of major shipping casualties often contain references to criminal prosecution - either of the master or the shipping company - and often both. It is therefore timely to review the place of the criminal law in shipping casualties, as it would seem probable that this trend will develop and likely become more common.

I will soon show you a slide listing the names of some of the major shipping casualties of recent years that have involved criminal prosecutions. Of course, there have also been many less well-known ones. Most countries, including England and Australia, frame their penalties for marine pollution as criminal fines while in some countries the master who signs an incorrectly completed ship's manifest is technically committing a criminal act. Furthermore immigration laws now increasingly provide for criminal penalties. Of course the criminal law has always been available to deal with less savoury aspects of shipping such as smuggling and it goes without saying that crimes against the person such as assault and murder are dealt with at sea in much the same way as they would be on land. Indeed the UK Club's investigating team, Signum Services, deal with about one murder at sea a year.

The increasing use of the criminal law in shipping casualties

But it's not about these kind of crimes that I want to talk about today. It's about the increasing use of the criminal law in what have hitherto been regarded largely as civil matters – accidents at sea, collisions, fires, groundings and – significantly - various forms of environmental damage.

A couple of years ago, I visited the Maritime & Coastguard Agency (MCA) – the British equivalent of AMSA. The MCA are a combination of the former UK Maritime Safety Agency and the Coastguard and they administer the British flag, act as Port State Control and also handle emergency response / search & rescue for the coast of the British Isles.

The MCA's 'business plan' (another departure from the old ways) states:

> "Where vessels fail to comply with statutory requirements, sanctions may be imposed. These sanctions include warnings, prohibition and improvement notices, detention of the ship - and the ultimate sanction is prosecution.
>
> The *enforcement unit* is tasked to follow up significant breaches of merchant shipping legislation and will prosecute offenders when appropriate. Offences are varied and include pollution, safety and manning, breaches of the collision regulations and forged certificates."

The powers the MCA now has to pursue criminal sanctions have a long history, but is probably true to say that only since the 1988 Merchant Shipping Act have those powers been widely enough defined. And only in the past four or five years has the agency has been

willing actively to use them - though they told me that their policy is to act reasonably. They do not pursue, for instance, a "zero tolerance" policy.

On their web site (www.mcga.org.uk) they post a list of prosecutions of shipowners and ship's officers since 1999. There have been 35 prosecutions to date – about nine a year – not a huge number and illustrative both of the fairly relaxed attitude that exists towards minor maritime offences as well as of the high level of operational standards that exist around the British coast.

The main reason for the increasing use of criminal sanctions – as is often the case in shipping – is a single terrible incident, the sinking of the *Herald of Free Enterprise* in March 1987 with the loss of 188 lives. This and subsequent casualties have combined with a growing public awareness of and intolerance for accidents leading to death or damage to the environment.

In this paper, I will also deal with the increasing use of criminal prosecutions in the United States as well mentioning the position in Australia and New Zealand – which thankfully appear to be much more like the UK than America in this respect. Both the US and the UK are the maritime jurisdictions that influence most other countries in shipping matters – and in their approach to legal matters in particular - and of course trends in the United States have the potential to change the maritime landscape completely – as with the current focus on maritime security.

In the US, the criminalisation of maritime casualties has a similar central event to the UK - although an environmental rather than a human disaster - the grounding of the *Exxon Valdez* in March 1989. *The Exxon Valdez* has been described as a watershed event that changed the way the American people, government, environmentalists, media and the industry view and deal with oil pollution resulting from maritime accidents. In the US prior to that spill, shipping companies and ships' officers never dreamed they would the target of criminal penalties resulting from maritime accidents caused by errors in navigation or management. The criminal prosecution of Captain Hazelwood, of Exxon Shipping Company and Exxon Corporation changed that dramatically.

So – at last – here is the slide showing the major maritime casualties of recent years in which criminal prosecutions have been invoked. The earliest ones – the *Herald* and *the Exxon Valdez* – are at the top with the much less well-known *Irving Forest*, but the others are not

arranged in date sequence. The *Dashun* - a defining Chinese ferry tragedy - is shown here too. Some are still being pursued – the *Erika* case prominent among them. In the *Erika* the owner and the ship manager were been criminally charged with putting lives in danger and causing pollution. And the French examining magistrate is still pursuing a criminal prosecution against RINA, the *Erika's* class society and an executive of RINA for endangering life as well as trying to get the master back from India to stand trial.

History of UK Statutory Regulation and criminal sanctions

Now let us return to the UK and look at the history of criminal actions in shipping cases.

A few years ago, the master and first officer of the *Irving Forest*, following a collision with an oil rig in the North Sea, were imprisoned. The officer on watch was asleep at the time and, due to an excessive workload, had not slept for about three days. What was not widely reported was the comment of the judge, who intimated that he would have liked to have had the ship's managers before him to share the punishment. In this, I am sure you can see as I do, the spectre of future criminal prosecutions arising from accidents caused by fatigue. The combination of the ISM Code, STCW 95 and the ILO Convention on Hours of Work provide a benchmark against which it is may be possible (if it wasn't for almost universal "flogging" of the records on board) to establish that owners or managers have persistently ignored excessive work hours and allowed insufficient rest periods for ships' watch keepers.

In the UK, the criminal liability of the ship owner or manager for safety at sea is based on statute under the framework established over the past 150 years in the various Merchant Shipping Acts. It was not until the middle of the 19th Century that statutory control of ship safety began to evolve. Prior to that time such Acts only sought to protect the size of the merchant navy by requiring imports to be carried in British ships and on regulations relating to collection of customs duties. Early textbooks on maritime law, such as *Reeves Law of Shipping* published in 1792, contain passing references to the common-law duty to provide a seaworthy ship, but do not make any reference to criminal liability of shipowners.

The first main development in the field of statutory control of safety and navigation were the *Trinity House Rules* (which later developed into the *Collision Regulations*). They were first promulgated by Trinity House in 1840 and were given statutory force by Section 7 of the Steam Navigation Act 1846.

During the middle of the 19th Century interest in ship safety grew. Lord Campbell's Act, (1846) which for the first time allowed the dependants of seaman and passengers killed or injured to bring actions against ship owners for compensation, is credited with being one of the reasons for the birth of the P&I Clubs as the mutual concept had originally been used to esatblish hull clubs. The Merchant Shipping Act 1854 established state supervision of construction of ships through the UK Board of Trade. It was not until 1876 however that it was finally made a misdemeanour (which under English law was a slight crime for which the penalty was less than imprisonment) to send a ship to sea in an unseaworthy state. In the same year, the Plimsoll Line, backed by criminal sanctions, was introduced to prevent the overloading of ships.

The statutory controls enacted during the latter part of the 19th Century were consolidated in the Merchant Shipping Act 1894. The 1894 Act gave the Board of Trade power to detain

unsafe ships and contained offences relating to the carriage of dangerous cargoes and abuses of passenger steamer certificates.

That Act and the numerous Merchant Shipping Acts that followed were consolidated into the 1995 Merchant Shipping Act. Throughout, the impetus for statutory regulation has come predominantly from two sources. First, the international conventions for Safety of Life at Sea (SOLAS) followed the Second World War, the establishment of IMO and the introduction of numerous conventions and protocols reflecting progress in marine engineering, international concern for passenger and crew safety and of course the prevention of pollution. As we have already noted, the second major impetus of change has been the great maritime disasters such as the *Titanic* in 1912 and *the Herald of Free Enterprise.* Each disaster has led to swift changes in the law relating to safety procedures - the speed of response, as often happens, producing sometimes ill-thought-out legislation. The *Herald of Free Enterprise* gave rise to the Merchant Shipping Act 1988. The *Braer* incident gave rise to the Donaldson Report "Safer Ships - Cleaner Seas," which advocated many sensible improvements, most of which have now incorporated in the latest Merchant Shipping Act 1995 which consolidates all the previous acts, and the Maritime Security Act 1997 which added some additional features.

The potential range of statutory criminal sanctions faced by owners, even before the Merchant Shipping Act 1988, was wide ranging though, in fact, rarely used. For example:

- Under Section 44 of the Merchant Shipping Act 1979, an owner and master of a ship committed an offence if the ship was unfit to go to sea without serious danger to human life. The unfitness had to be caused by the defective condition of hull, machinery or equipment or by overloading or improper loading. It was a defence if the master and owner could prove that they had made arrangements to restore the ship's fitness before going to sea or that it was reasonable not to make such arrangements. Section 44 was replaced following the *Herald* by more stringent requirements.

- Environmental damage that can result from oil discharge has led to detailed regulations on the construction and equipment of oil tankers. The owner and the master both have responsibilities to ensure that the condition of the ship and its equipment is maintained in compliance with the regulations, or they can be guilty of an offence punishable by an unlimited fine.

As I say it was rare, however, for owners to be indicted for criminal offences. The major change in recent years has been the attitude of the prosecuting authorities and the growing willingness to hold management criminally responsible for safety. Although most statutory offences make both the owner and the master liable and some also impose criminal liability on masters alone, until recently, most prosecutions in the maritime field were against masters for unsafe navigation involving breaches of the collision regulations. Similarly, most oil pollution cases in the UK have involved the prosecution of masters, particularly where a foreign owner was involved. The change in attitude towards the use of criminal sanctions in major shipping casualties was brought about predominantly by the *Herald.*

The Herald of Free Enterprise

On 6th March 1987 the ro-ro passenger ferry *Herald of Free Enterprise* sailed from Zeebruge on her scheduled run to Dover just after 6 pm. She was manned by a crew of 80 and carried 459 passengers as well as vehicles. The weather was good, there was a light easterly breeze and very little sea swell. She capsized four minutes after passing the outer mole of the harbour and 150 passengers and 38 crew lost their lives. Many others were injured.

A formal investigation was held under Section 55 of the Merchant Shipping Act 1970 and concluded that the *Herald* had capsized because she went to sea with the inner and outer bow doors open. The Commissioner for Wrecks, Mr Justice Sheen, found that a general instruction issued in July 1984 by the owners prescribed that it was the duty of the officer loading the main vehicle deck to ensure that the bow doors were secure when leaving port. The Commissioner concluded that this instruction was regularly flouted and had not been followed on this occasion. Had it been followed, the casualty would not have occurred. The chief officer left the responsibility for closing the doors to the assistant bosun who was in his cabin at the critical time. It was, accordingly, this failure to obey the standing instructions and the lack of any positive reporting system that was the root cause of the loss.

The Wreck Commissioner was however highly critical of the ship management company and stated in a passage which is highly significant for our consideration if this subject:

> " At first sight the faults which led to this disaster were errors of omission on the part of the master, the chief officer and the assistant bosun and also the failure by (a senior master) to issue and enforce clear orders. A full investigation into the circumstances of the disaster leads inexorably to the conclusion that the underlying or cardinal faults lay higher up in the company. The Board of Directors did not appreciate their responsibility for the safe management of their ships. They did not apply their minds the question "What orders should be given for the safety of our ships?". The Directors did not have any proper comprehension of what their duties were. There appears to have been a lack of thought about the way in which the *Herald* ought to have been organised for the Dover/Zeebruge run. All concerned in management, from the members of the Board of Directors down to the junior superintendents, were guilty of fault in that all must be regarded as sharing responsibility for the failure of management. From top to bottom the body corporate was infected with the disease of sloppiness....The failure on the part of the shore management to give proper and clear directions was a contributory cause of the disaster".

Notwithstanding these criticisms, the Wreck Commissioner concluded that the owners had not committed any statutory offence. He decided that there had not been a breach of Section 44 of the Merchant Shipping Act 1979 because the section only dealt with the condition of the ship's hull, equipment or machinery and not the position of doors. Nor was the ship in breach of load line regulations since they only dealt with construction. The statutory regime developed during the previous 150 years, therefore, contained a lacuna in the regulation of passenger ship – and in particular ro-ro ferry - safety.

Although the relatives of those who lost their lives tried hard to bring a charge of 'corporate manslaughter' against the company, the Court of Appeal concluded that the investigation had

not produced any evidence to suggest that the company or its directors were guilty of such an offence. Nevertheless following a long investigation by the police, the company and several of its directors were indicted on charges of manslaughter. However, none of these charges succeeded.

Until the *Herald*, there was considerable doubt whether a company could be convicted of corporate manslaughter. In 1927 the English courts had held that a company could not be indicted for manslaughter on the ground that a company could not have the requisite guilty mind or "mens rea" (R v Cory (1927). However, while it is now clear that in theory a company can be convicted of corporate manslaughter and its responsible officers jailed, no successful prosecutions have yet been made in the UK. The problem is that the collective nature of corporate behaviour makes it extremely difficult to attribute the elements of manslaughter to a single individual within the corporation. Any given individual's responsibility is usually less than criminal, and falls short of the level of culpability which is central to criminal liability. However I will mention later the proposed changes in the law in the UK which would make such prosecutions more likely to succeed.

One immediate change brought about by the *Herald* was the establishment of the UK Marine Accident Investigation Branch (MAIB) to mirror the arrangements already in place to investigate casualties involving civil airliners. MAIB investigative findings are not made available to the MCA and the MCA are specifically barred from using them in criminal proceedings. On the other hand, the MCA's investigative findings are immediately passed to the MAIB, in order that all possible knowledge is considered in the preparation of their report, the purpose of which is to promulgate the lessons that will save life and protect the environment, not apportion blame.

The second major change in the UK as a result of the *Herald* was the creation of new statutory offences to cover the gaps discovered in that case. Under Section 30 of the 1988 Act, owners, demise charterers or managers, together with the master, may be criminally liable for a dangerously unsafe ship and liable to a maximum of two years imprisonment or an unlimited fine. Section 31 provides that it is the duty of an owner, charterer or manager to take reasonable steps to secure that the ship is operated in a safe manner. The relevant sections apply not only to British flag ships worldwide but also to foreign ships within UK waters.

The aim behind the 1988 Act was firstly that accidents could be prevented by making everyone connected with ship management subject to the threat of serious prosecution. The Act makes perfectly clear the responsibility of management for ships' safety. Furthermore, if a company is guilty of breach of these sections and death results, the company will be guilty of manslaughter.

Following the unsuccessful prosecution of the owners of the *Herald* for corporate manslaughter – and a similar failure in the case of the Thames pleasure craft the *Marchioness* which was sunk by the *Bowbelle* - the Law Commission, a body which recommends changes in the law to the UK government, has proposed a reform which will create a new offence of "corporate killing". The offence of corporate killing would apply where a corporation's conduct in causing death falls far below what could reasonably be expected. The new offence should not require the risk to be obvious or the corporation to be capable of appreciating the risk. It also proposes that a death should be regarded as having been caused by the conduct of the corporation if it is caused by a "management failure" in the way in which its activities are

managed or organised. All this takes the concept much futher than the culpable gross negligence of identified senior company officers.

The Law Commission's proposals have not been enacted into law, although the government declared its intention of doing so some two years ago. In the UK since 1965 over 20,000 people have died in various types of disaster and there have only ever been three manslaughter convictions. But with a new and horrible train crash seemingly occurring about once every three months in the UK, most ordinary people probably feel that they should get on with it!

Finally, perhaps the most significant effect of the *Herald* tragedy, although outside the scope of this paper, has been the development of the ISM Code, designed specifically to improve the safety of ship operations and to ensure that the link to responsible shore management is made certain.

Criminal prosecutions in the United States

Now, I would like to turn to the position in the United States. As I have already intimated, the issue there is focussed at the moment much more heavily on environmental crimes and stems in large part from the *Exxon Valdez*, an incident which needs no further rehearsal amongst shipping people.

In the United States there are two categories of statute imposing criminal liability for pollution. First, if there is a pollution incidental to a maritime accident, criminal liability for a violation of state and federal environmental statutes may be imposed. Secondly, regardless of whether there is pollution, state and federal general criminal statutes impose criminal liability for damage to property, personal injury and loss of life.

As in the UK, the US courts historically have recognised that in order to be guilty of a crime a person must have criminal intent or "mens rea". This means that one needs to have acted with wrongful purpose, knowledge of a particular wrong or in a reckless and/or wilful manner. The mental state necessary to trigger criminal liability will vary from statute to statute. The basic notion running through the traditional criminal law was not to criminalize conduct in the absence of evil intent or motive. This basic concept of law relating to intent has however been abandoned in the application of statutes dealing with environmental issues. These "public welfare" statutes were initially concerned with the regulation and protection of the public from adulterated food. The courts reasoned that public safety outweighed the traditional requirement of criminal intent. Because environmental laws are also designed to protect public safety and welfare they have been construed by the US courts in a manner which maximises public protection. Consistent which this approach, some criminal environment statutes, such as the Refuse Act, are based on the notion of strict liability or impose criminal liability for the failure to comply with environmental regulations even when the violator was unaware that his or her conduct violated a law or regulation. In addition, some statutes impose criminal liability on individual corporate officers based on his or her position of responsibility in the corporation. Thus under the Clean Water Act (1972) only proof of simple negligence rather than gross negligence is necessary to sustain a criminal conviction. Other statutes require recklessness, knowledge (and sometimes wilful ignorance) to be proved.

In the United States a corporate officer may be held criminally liable for violation of an environmental statute, even if the officer did not participate in the illegal activity. Under the "Responsible Corporate Officer Doctrine", criminal liability can be imposed on corporate officers if they were in a position to know about or prevent the criminal act even if they did not actually commit the crime. This doctrine is of particular significance and concern to ship owners and managers. If an officer or responsible individual in such a company actively engages in acts or omissions that result in a spill, that person and the company will be charged with crimes under the various environmental statutes. For instance, if the responsible corporate officer knowingly hires an incompetent master or crewmember, that individual and his company are at risk of criminal prosecution. If an individual at the management company fails to comply with the ISM Code or fails to implement systems to monitor the crew's compliance with ISM requirements, that individual and his company are both at risk. If an individual in the management company knows or should have known of a defect in the ship's equipment that causes or exacerbates a spill incident, that individual or his company is also at risk. In the *North Cape,* the president and operations manager of the tug company were found guilty of criminal violations of various environment statutes in that they should have known that the anchoring system on the oil carrying barge that ultimately ran aground was not working properly. A similar prosecution occurred as a result of the *Morris J Berman* spill in Puerto Rico. Both resulted in enormous fines - $8.5 m in the *North Cape* and $75m in the *Morris J Berman.* Cruise companies have also been feeling the heat from the US authorities as they seek to ensure that what used to be routine pollution of all kinds – not just from oil – is stamped out, often with the imposition of huge fines. And you must also be aware of the US Coast Guard's current preoccupation with the by-passing of oily water separators in ships of all types, which has also resulted in a number of criminal prosecutions and huge fines.

The fact that the managing company is located outside the United States will be of little comfort. The US prosecutors can and will confiscate ships to collect fines and penalties, charge and hold ship's personnel pending trial and charge management companies and responsible corporate officers with violations of environmental regulations even if such individuals are outside the United States. As the United States is signatory to a number of extradition treaties with other countries prosecutors will invoke such treaties to bring a responsible individual to the United States to stand trial. A Korean fishing company, Boyang, is the first foreign company to have a director and two corporate officers indicted for the deliberate discharge of oily water - and fined $5m - while the master who instructed other crew members to lie about the offences has been jailed (the *Khana*).

There are of course some immediate practical consequences of this increase in criminal responsibility in the two major maritime jurisdictions, but there is precious little guidance for shipping companies on the way in which they should respond to a criminal investigations following a casualty. For instance in the United States the cast of characters at a spill will include the Coast Guard, the Environmental Protection Agency, the FBI, the State Police, the US Attorney, the Local District Attorney and the representative of the Attorney General. Each of these are separate and distinct organisations with their own policies and agendas. With the exception of the Coast Guard and the Civil Division of the Environment Protection Agency, the only purpose of the law enforcement personnel is to investigate and prosecute crimes. The Coast Guard has a mixed purpose; it has a responsibility to oversee and ensure that a proper cleanup takes place as well as to determine the cause of the accident in order to ensure safe operation of ships in the future. However the Coast Guard must turn over any evidence of criminal misconduct it discovers in the course of its investigations to the US

Attorney. Thus crew members, shipowners, operators and managers and their lawyers have to be aware of this criminal investigatory role and should be as careful in dealing with the Coast Guard casualty investigator as they would be in dealing with the FBI or the State Police. In particular shipowners and managers should ensure that their crews are not coerced into giving statements to law enforcement officials at the scene of a spill, and they should insist on consulting with lawyers and have a lawyer present when being interviewed by law enforcement officials.

Criminal responsibility in Australia and New Zealand

I won't try to address this audience about criminal responsibility shipping casualties in Australia and New Zealand, but I will make a couple of points. One is that the attitude of the enforcement and investigative authorities here and in New Zealand seems to be much more like that in the UK than in the United States. As far as I am aware, there have been no cases involving criminal prosecution of company officers in shipping cases, although of course there are the usual crop of masters been prosecuted and fined (but not I think jailed) for a variety of offences - usually for environmental damage, such as damage to the Great Barrier Reef. And it appears that in Australia the sensible "not blame but safety" approach to the investigation of casualties, will continue with *Transport Safety Investigation Bill 2002* proposing to give the ATSB wider powers of investigation with individuals being protected against incrimination by investigative material being inadmissible in civil or criminal proceedings.

In New Zealand I understand that the Transport Accident Investigation Commission also operates to determine the circumstances and causes of accidents with a view to avoiding similar accidents in the future. Neither the investigation nor the reporting process is undertaken for the purpose of assigning fault or blame or determining liability. As in Australia, the TAIC has no power to institute prosecutions. In this respect both countries have investigative arrangements similar to that offered by the Marine Accident Inquiry Board in the United Kingdom.

The other point is that in Australia at least (I have no information on this in respect of New Zealand) the government is also considering legislation to create an offence of "corporate manslaughter" in a manner similar to the UK. I believe that there have only been two corporate manslaughter cases in Australia and neither resulted criminal convictions. Instead – as happens in the UK, fines are imposed under Occupational Health & Safety legislation. Furthermore these cases have not involved shipping. It seems that we are still some way both in the UK and Australia from shipping company officers facing jail terms for shipping casualties.

Criminal acts and P&I Insurance

The final aspect of criminal responsibility that I want to discuss relates to insurance and the extent to which P&I Club cover can encompass liability arising from a criminal act. Both civil liabilities and criminal penalties arise in parallel from acts that are - or are deemed to be - criminal. For the P&I Club, this raises two questions:

1. First, can the ship owner legally insure against the criminal penalties imposed in respect of such acts? Isn't there something objectionable about this?

2. Second, does the ship owner have a right of recovery from his Club for the civil consequences of a criminal act? To what extent are his rights prejudiced by criminality?

The answer to the first question tends to depend upon an imprecise concept, the principle of public policy. In the UK, in cases involving motor accidents, the courts have held that the proper application of the principles of public policy do not make a contract of insurance unlawful even if it covers liability arising from an intentionally criminal act: it merely bars the criminal himself from taking benefit of such insurance.

This is sensible, and in particular ensures that insurance funds will be available to pay those affected by eg. an oil spill

Lord Donaldson, as he so often has, also brings common sense to this issue. In "Safer Ships - Cleaner Seas," he says on the subject of insurance against fines:

> "This has been criticised on the basis that it allows ship owners to escape punishment. This point of view is deserving of respect, but the matter is more complex than it might at first appear. We understand that in some countries "fines" are imposed for fiscal or political reasons and do not reflect any wrong doing on the part of the ship owner. Furthermore, even where there is an element of "wrong doing" in the sense that the ship owner has breached some local regulations, it by no means follows that this breach involved any departure from high standards of operation and maintenance. It may have been the purest technicality. Last, but by no means least, fines are usually for relatively small amounts which pale into insignificance when compared with third party liabilities which everyone agrees are properly the subject of insurance".

I suspect that when Lord Donaldson wrote that he wasn't aware of the level of fines for pollution that seem now to be imposed in the US - or even the fines meted out here for damage to the Barrier Reef!

In considering whether or not it will pay, the club will take the view that where the offence is not committed intentionally or recklessly but is merely a careless omission, then the criminality of the act should not in itself be sufficient reason to deny cover to the owner in respect of the resulting civil liability.

Part of the explanation for this is that we sense different degrees of criminality and feel more relaxed about "technical" criminal defences. We might feel that only the more serious crimes require the invocation of public policy considerations, perhaps along the lines of the old distinction between "mala prohibita" - where the wrongfulness of the act is derived only from its prohibition (the "maritime parking ticket") - and "mala in se" - where the wrongfulness is inherent in the nature of the act itself (i.e. theft, manslaughter etc).

Nevertheless, to be recoverable from his club, a fine, whether or not imposed as a result of criminal or civil proceedings, must be imposed on either the assured owner, or on a seaman for whom the owner is legally liable to reimburse – or who reimburses him by agreement where this is reasonable. P&I cover will not respond if the criminal act which is punished by the fine was an act of wilful misconduct or equivalent recklessness upon the part of the owner. So for any crime where a criminal intent must be demonstrated to secure a conviction,

the club will not be liable to reimburse the owner if the demonstration of criminal intent suffices also to establish wilful misconduct of the assured.

I have said elsewhere that ships without accidents and like vegetarian crocodiles – they sound nice but in practice they don't exist. Accidents can happen to even the best- run ships – and the difference between the causes of an insignificant accident and a major casualty are slight. In the event of a major casualty causing the death of anyone (though perhaps not of the seafarers themselves), we are moving slowly towards the position that if the casualty arose predominately through a failure of the management company to set and adhere to a strict safety and compliance regime, the criminal law will be invoked and shipping company officers will find themselves behind bars.

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