Chapter 1 : the swedish maritime code | Download eBook PDF/EPUB

The present Swedish legislation in this field is contained in the Maritime Code of , as amended (sjÃ¶lagen). This Code, which is divided into 23 chapters and contains some sections, does not only comprise provisions of a civil or commercial law character, but also provisions in the field of administrative, procedural, criminal and.

Find out how crimes are handled on the open ocean. The Admiralty was a royal court with valuable emoluments. It functioned without the aid of juries, following procedures borrowed from the Continent that were somewhat less dilatory and cumbersome than those of the common-law courts, and applied the laws and customs of the sea to the maritime controversies that came before it. For these reasons it was preferred by the merchants and favoured by the Crown, which depended to a considerable extent on taxation of the merchants for its revenues. Its jurisdiction therefore waxed and waned with the strength or weakness of the reigning sovereign. Thus, it enjoyed wide jurisdiction under the Tudors, but its powers were severely curtailed under succeeding monarchs and governments, and were never fully restored until the passage of the first of the Admiralty Court Acts in the 19th century. Although the powers of the English Admiralty are today quite broad, in practice it is rare for cases other than those involving marine collisions and salvage to be brought before it. Controversies respecting charter parties, ocean bills of lading, and marine insurance, for example, are more generally brought before the Commercial Court. However, he is free to sue in a state court, unless the defendant is a citizen of another state, in which case the suit may be tried as an ordinary civil action in the district court. Under American maritime law, the ship is personified to the extent that it may sometimes be held responsible under circumstances in which the shipowner himself is under no liability. Some state statutes impose a penalty on a shipowner whose vessel fails to take a pilot when entering or leaving the waters of the state. Maritime liens can arise not only when the personified ship is charged with a maritime tort , such as a negligent collision or personal injury, but also for salvage services, for general average contributions, and for breach of certain maritime contracts. In a proceeding in rem, the vessel, cargo, or freight can be arrested and kept in the custody of the court unless the owner obtains its release by posting a bond or such other security as may be required under the applicable law or as may be acceptable to the plaintiff. More frequently, however, the owner will post security to avoid a threatened arrest, and the property never has to be taken into custody. When the judgment is for the plaintiff in a proceeding in rem, there will be a recovery on the bond or other security if the owner of the property does not pay; or, if security has not been posted, the court will order the property sold, or the freight released, in order to satisfy the judgment. The sale of a ship by an admiralty court following a judgment in rem divests the ship of all pre-existing liensâ€”and not merely those liens sought to be enforced in the proceeding in rem. By way of contrast, the holder of an in personam judgment against a shipowner can, like any judgment creditor, have the ship sold in execution of the judgment; but such a sale, unlike the sale under an admiralty judgment in rem, does not divest existing liens; the purchaser at the execution sale takes the ship subject to all such liens. Thus, an in rem proceeding has decided advantages over a proceeding in personam in a case in which the shipowner is insolvent. Efforts have been made from time to time to increase the security value of ship mortgages , in order to encourage lending institutions to finance vessel construction, but these efforts have not been very successful, largely because of differences in national laws respecting the relative priorities of mortgages and maritime liens. Under general maritime law there is a complex hierarchy of maritime liens; that is to say, in a proceeding that involves distribution of an inadequate fund to a number of lien claimants, liens of a higher rank will be paid in full in priority over liens of a lower rank; and in most countries a ship mortgage ranks lower than a number of maritime liens. Attempts were made to harmonize some of these conflicts by international conventions signed in and , but the first failed to win widespread support and, as of the end of , the second had been ratified by only half of the signatories required for the convention to enter into force. Shipping charters The function of ships, other than warships, pleasure craft, and service vessels of various types is of course transportation of cargoes and passengers. The great majority of the contracts governing the carriage of goods by water are evidenced either by charter parties or by bills of lading. Under both demise and time charters, the charterer pays charter hire for the use of the vessel at

a specified daily or monthly rate. Under a voyage charter, it is customary for the master or his agent to issue a bill of lading to the shipper, who is usually the charterer, although as between shipowner and charterer the voyage charter remains the governing contract of carriage; the bill of lading serves only as a receipt and as a document of title to the goods. Ocean bills of lading are usually in order form; that is, they call for delivery to the order of the shipper or of some other designated party. Such a bill of lading may be negotiated in much the same way as a check, draft, or other negotiable instrument , which means that a bona fide purchaser of the bill of lading takes it free and clear of any defects not appearing on its face. Once a bill of lading issued under a voyage charter is negotiated to a bona fide purchaser, it becomes the governing contract between the carrier and the holder of the bill. When a ship strands or collides with another vessel, substantial cargo loss or damage may result. Limitation of liability A distinctive feature of maritime law is the privilege accorded to a shipowner and certain other persons such as charterers in some instances to limit the amount of their liability, under certain circumstances, in respect of tort and some contract claims. In some countries, including the United States, the limit, except as to claims for personal injury and wrongful death, is the value of the ship and the earnings of the voyage on which it was engaged at the time of the casualty. This formula means, generally speaking, that the shipowner is entitled to limit his liability for the negligence of the master or crew, but not for his own personal negligence or that of his managerial personnel. In a sense the limited liability of shipowners may be compared to the limited liability that any investor may now achieve by incorporating his enterprise. The limited-liability idea in maritime law, however, long antedates the emergence or invention of the modern corporation or limited company; its early appearance in maritime law may be taken as a recognition of the extraordinary hazards of seaborne commerce and the need to protect the adventurous shipowner from the crushing burden of liabilityâ€”that is, in the days before even the most primitive forms of insurance had become available. Although no maritime country has yet gone to the length of abolishing limitation of liability, shipowning interests appear to have become concerned about the possibility of such a development. In most maritime countries the principle of limitation of liability was considered to be a part of the general maritime law. As it developed in continental Europe, the idea, generally stated, was that a shipowner entitled to limitation could satisfy his liability by abandoning the ship and its pending freight to claimants. Since the privilege of limitation was, and is, typically invoked following a large-scale maritime disaster, the abandonment theory meant that claimants got the value of the ship as it was following the disaster. If the ship had sunk or was a total loss with no freight pending, the claimants got nothing. This theory was carried over into the law of many South American countries. Great Britain and the United States were once the only maritime countries that refused to admit the principle of limitation as part of the general maritime law. In both countries, however, the competitive needs of the shipping industry compelled its introduction by statute. In general, the limitation law of any country will be applied by its own courts in favour of foreign shipowners as well as of citizens. From the point of view of shipowning interests, however, a major weakness of limitation law has been the fact that limitation proceedings were not given international recognition. That has meant that a shipowner whose ships moved in international trade could find himself sued in several countries as a result of one disaster and forced to set up limitation funds in each country. The Brussels convention of makes limitation decrees delivered by admiralty courts in ratifying countries internationally effective; that is, a shipowner is required to set up only one limitation fund, out of which all claims are paid, no matter in how many countries proceedings might be instituted against him. Thus, the convention, which increases the liability of shipowners in most countries, does offer in return this considerable advantage to shipowners. Collision liability Under maritime law responsibility for collision damage is based upon the fault principle: It is not always necessary, however, to establish fault by positive evidence; there is a presumption of fault when a moving vessel collides with a fixed object or with another vessel that is properly moored or anchored, and the burden of proving freedom from fault will lie with the moving vessel. In certain countries that have not ratified the Convention, such as the United States, the law is such that, if both vessels are to blame, the total damages are equally divided, regardless of the respective degrees of fault. Salvage and general average Salvage and general average are doctrines peculiar to maritime law. Under the law of salvage, strangers to the maritime venture who succeed in saving maritime property from loss or damage from perils of

the sea or other waters are entitled to an award for their efforts and have a maritime lien on the salvaged property therefor. Several elements will be taken into account in fixing the amount of the award, including the extent of the efforts required; the skill and energy displayed by the salvors, the amounts involved, including both the value of the vessel or other property employed by the salvors in rendering the service and the value of the vessel, cargo, or other property salvaged; the risks incurred by the salvors; and the degree of danger from which the property was rescued. General average defined at the beginning of this article is a principle still universally accepted, although there is some agitation for its abolition, principally because the accounting and other expenses incurred in administering a general average are often quite out of proportion to the amounts involved and because the same underwriters sometimes insure both hull and cargo. Marine insurance An appreciation of the part played by marine insurance is essential to an understanding of the shipping industry and the special law that governs it. Waterborne cargo is almost universally insured against the perils of the seas. It is impossible in a brief outline such as this to go into any of the special intricacies, which are many, of marine insurance law. Most cases of damage to a ship or its cargo resolve themselves into settlements between insurance carriers. Proposals for changes in the maritime law must always be evaluated against this background of insurance coverage, as the imposition of liabilities that cannot be insured against can discourage all but the wealthiest ocean carriers from engaging in the affected trades. Marine insurance is the oldest known form of insurance. Indeed, the institution of general average, under which the participants in a maritime venture contribute to losses incurred by some for the benefit of all, may itself be looked on as a primitive form of mutual insurance. Hull and cargo insurance today, in fact, is usually written on forms whose wording has changed little since the 18th century. The practice has since become universal, with the result that the owner of a ship or cargo must either purchase separate war-risk insurance or else pay his marine underwriters an additional premium in return for deletion of the F. An early type of marine liability insurance was against liability for damage that the insured vessel caused to other vessels. On the theory that, if given full protection, owners and operators would not be encouraged to exercise proper care in the maintenance of their vessels and the selection of their masters and crews, hull underwriters at first refused to insure against more than 75 percent of the collision liability. With the advent of steam-driven vessels of iron and steel in the 19th century, the potential liabilities of shipowners increased substantially. These included liability for cargo damage, personal injury, and damage to piers, bridges, and other fixed objects, and also 25 percent of the liability for damage to other vessels against which the hull underwriters refused to insure. Foreign owners soon found the P. International regulation Maritime law is often thought of as being a species of international law rather than a branch of domestic or municipal law. It should not be denied that the international aspect of maritime law gives it a distinctive flavour; in doubtful cases courts of one country will often look to the precedents or statutes of another country for inspiration or guidance. Except to the extent that it may have bound itself by international conventions, however, each country has the right to adopt such maritime laws as it sees fit. Although many such laws are common to most maritime countries, others are not, though there is a growing tendency to restore the international uniformity in the maritime law achieved during the Middle Ages. When such a draft is prepared, it is submitted to the Belgian government, which then convenes a diplomatic conference at which the CMI draft is discussed and amended as the official delegates may decide. If the revised draft wins approval at the conference, it is then submitted to the national governments for possible ratification. Although many of these conventions have failed to be widely ratified, others have been highly successful. The international regulations for the prevention of collisions at sea, first adopted at an international conference held in Washington in and revised at maritime safety conferences held in London from time to time since , are recognized by all of the maritime countries. The regulations are, in effect, an international code of navigation. In other fields much has been accomplished to ensure international uniformity through private agreements voluntarily adhered to by affected interests; the York-Antwerp Rules of General Average, first promulgated in and most recently amended in , are the best known example of such agreements; although they do not technically have the force of law, nevertheless, by incorporation in charter parties and bills of lading, they determine the rights and obligations of the parties as effectively as any statute.

planatory notes in the Swedish Maritime Code (SjÃ¶ och transportrÃ¤tt no 22, Stockholm). Cases not reported in recognised journals are cited by court name, date and case number, and reported cases are referred to by recognised report name.

As a result, there is a considerable degree of uniformity between the Maritime Codes of Sweden, Denmark, Finland and Norway. The parts of the Codes that govern the carriage of goods and chartering of vessels are actually practically identical. As a result of the similarity of maritime legislation between the Nordic countries, judgements rendered by the courts in one of these countries are normally taken into account by the courts in the other countries. This Code, which is divided into 23 chapters and contains some sections, does not only comprise provisions of a civil or commercial law character, but also provisions in the field of administrative, procedural, criminal and public international law. The Code deals inter alia with registry of ships, ship mortgages, arrest of vessels, responsibility and competence of ship masters, civil liability in general and limitation of liability, collision liability, liability for oil pollution, carriage of goods and passengers, salvage, general average and maritime courts as well as criminal liability for negligence in sea traffic and for navigation of vessels under the influence of alcoholic beverages. Some areas are, however, dealt with in separate acts, for example, legislation concerning the crew, maritime safety and marine insurance. Contrary to what is the case in most countries in continental Europe, Swedish ratification of an international treaty does not result in the treaty becoming part of Swedish domestic law, but it must be incorporated into national law by a legislative act to have effect domestically. Those parts of a treaty which affect individuals, legal persons or Swedish authorities are then in most cases rewritten in a Swedish statute using the technique in respect of systematics and language normally used in Swedish domestic legislation. This is also the case as regards treaties in the field of maritime law to which Sweden is a party. Examples of how certain maritime treaties have been implemented in Sweden are given below. The Convention on Limitation of Liability for Maritime Claims, as amended by the Protocol thereto, has been implemented through Chapters 9 and 12 and the Convention on Salvage through Chapter Chapter 4 on Arrest of Vessels in International Legal Relations is implementing the Convention for the unification of certain rules relating to arrest of sea-going ships. Sweden is a party to the International Convention for the Unification of Certain Rules relating to Bills of Lading as amended by the Protocol thereto the Hague-Visby Rules , and previous Swedish legislation was based on these Rules. The Government was authorised by the Swedish parliament to decide when ratification should take place. The content of Chapter 13 was brought in line with the Hamburg Rules to the extent possible without bringing the legislation in conflict with the Hague-Visby Rules. As regards the carriage of passengers and their luggage, Sweden is not a party to the Athens Convention on the subject, or to the Convention as amended by the Protocols of or thereto. However, Chapter 15 of the Maritime Code is to a large extent based on the Athens Convention, and the limitation of liability of the carrier is under the Chapter set at the amounts laid down in the Protocol. It should be noted that the Protocol is not in force and that the Protocol will enter into force on 23 April The Regulation differs from Chapter 15 of the Maritime Code mainly by imposing a more onerous liability on the carrier and providing for higher limitation amounts. Where Chapter 15 is at variance with the Regulation, the Regulation will prevail. The Swedish Government is considering a proposal that Sweden should ratify the Athens Convention and is in that context examining the amendments to Chapter 15 required in the light of the Regulation and the Convention. In a separate act, the Act on Compensation from the International Oil Pollution Compensation Funds, it is provided that the substantive articles of these treaties apply directly in Sweden, and the relevant articles are annexed to the Act. A special concept in maritime law is that of general average, which in simple terms is a form of mutual insurance whereby all those who have a financial risk in a maritime adventure contribute proportionally to the loss sustained by one or more of the interested parties in the event that a sacrifice is made or an expenditure is incurred in order to safeguard the maritime adventure for the remaining participants. Chapter 17 of the Maritime Code implements the version of the York-Antwerp Rules by a provision to the effect that the significance and importance of general average is

governed by those Rules unless otherwise agreed The future development of the Swedish maritime legislation will to a large extent depend on external factors. It is possible that the present high degree of similarity between the legislation in the Nordic countries will gradually diminish for several reasons. It appears that Nordic co-operation in the field of maritime law is not nowadays given the same political importance as previously. The European Union has in recent years become more active in that field of law, and the fact that three of the Nordic countries are members of the Union whereas the forth is not may play a role in this regard. It should also be recognised that today the maritime policy interests of the Nordic countries may not always coincide.

Chapter 3 : Code of Statutes - Sjofartsverket

Swedish Maritime Administration Code of Statutes These pages contain digital versions of the Swedish Maritime Administration's regulations and general advice in force. The statutes are available in Swedish and some of them in english.

Chapter 4 : Swedish Register of Ships - Transportstyrelsen

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Chapter 5 : Swedish maritime law â€“

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Chapter 6 : Home - Sjofartsverket

SWEDISH MARITIME CODE SJÃ–LAGEN In Swedish and English SjÃ¶lagen i engelsk Ã¶versÃ¤ttning med svensk parallelltext JuristfÃ¶rlaget Skrifter utgivna av Axel Ax:son Johnsons institut.

Chapter 7 : The Swedish maritime code: with Swedish parallel text - Sweden - Google Books

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Chapter 8 : Admiralty and Maritime Law Guide - Maritime Law by Country

The Swedish maritime code of was regarded as a good piece of legislation for its time. 4 This codification was by no means a genuine Swedish product but there was much influence from the Visby maritime law.

Chapter 9 : The Swedish Maritime Code and the Implementation of International Treaties | Government Ga

Information to Maritime Administrations and Training Providers - Maritime Resource Management Page 1. T he Swedish Club was founded in as a marine non-profit making mutual insurer.