



## CRIMINAL LIABILITY

### **Owners' and Masters' Criminal Liability**

Following the "HERALD OF FREE ENTERPRISE" disaster in 1987, legislation was quickly passed in order to create new offences in relation to unsafe ships and their operation. This legislation is contained within Sections 30, 31 and 32 of the Merchant Shipping Act 1988.

Section 30 of the Act replaces S.44 of the Merchant Shipping Act 1979 by creating a more extended offence in respect of ships not fit to go to sea without serious danger to human life. It is important to note that the offence does not require any attempt to send the ship to sea. In other words, being found in an unsafe condition in port - which includes under-manning and overloading - is enough. Masters, owners, charterers and ship managers are punishable by a fine of up to £50,000.00 on summary conviction (before the Magistrates) and by unlimited fines and imprisonment on indictment (before the Crown Court).

Section 31 of the Act is a completely new offence and places a statutory duty on the owners of British registered ships and foreign ships within U.K. territorial waters, to take all reasonable steps to ensure that their ships are operated in a safe manner. Thus, whereas S.30 is directed to the condition of the ship, S.31 is concerned with the manner in which it is being run and utilised. Demise charterers and ship managers can also be prosecuted for this offence, along with the registered owner. The punishments are the same as those which will be meted out for S.30 offences. Owners are, however, provided with a defence in circumstances where they have employed a reasonable firm of ship managers and have taken "reasonable steps" to ensure that their managers are accomplishing the job properly.

Section 32 of the Act revises and replaces S.27 of the Merchant Shipping Act 1970 and creates a criminal offence where Masters or seamen endanger the safety of their ship or another ship or structure or the life of any person in circumstances where:

- the act or omission was deliberate or amounted to a breach of duty; or
- the Master or seaman was under the influence of drink or drugs at the time.

The offence is punishable on summary conviction by a fine of up to £5,000.00 and on indictment to a term of imprisonment not exceeding 2 years or to unlimited fines or both.

In a case called *The Safe Carrier* [1994] 1LR 589 the provisions of S.31 were tested when a prosecution was brought against the owners of an offshore standby vessel in the Magistrates Court. Section 31(1) of the Act provides:

“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.”

The relevant facts of the case were that the ship had set sail from the River Tyne bound for Aberdeen, after having recently been converted for use as an offshore standby safety vessel. The Chief Engineer was very experienced but he had boarded the ship for the first time only a few hours before she put to sea. Early the next morning, because he was not familiar with the piping arrangements on board, the generators broke down and the engines became flooded with water. The ship was towed back to port.

The shipowners were convicted by the Magistrates Court with an offence contrary to S.31. The Magistrates' reasons for convicting the owners, included the finding that the company had caused the ship to be operated in an unsafe manner by allowing the Chief Engineer only 2 hours and 50 minutes in which to familiarise himself with the ship before sailing and that the minimum time necessary for a Chief Engineer to familiarise himself with a converted ship was 3 days.

The decision of the Magistrates was overturned on appeal to the Divisional Court and the Secretary of State then appealed to the House of Lords for reinstatement of the Magistrates' decision. The House of Lords accepted that the failure of an owner to establish a system for ensuring that a ship did not go to sea before the Chief Engineer had sufficient time to familiarise himself would constitute an S.31 offence. However, the failure had to be on the part of senior management, i.e. someone who, by virtue of the company's constitution or otherwise, was entrusted with the exercise of the powers of the company. This being the case, it was not sufficient for there to be merely evidence of fault on the part of persons who were simply employees, such as the Chief Engineer or the owner's personnel manager. No evidence had been adduced by prosecuting solicitors to the Magistrates relating to senior management's culpability, such that the Magistrates had not been in a position to apply their minds to the question of whether owners had failed to establish any system for ensuring that the ship did not go to sea before the Chief Engineer had sufficient opportunity to familiarise himself with his machinery and equipment. Accordingly, the conviction could not stand.

The particular lesson to be learned by owners is that it is essential to ensure that they have a proper system relating to the familiarisation of shipboard personnel prior to the vessel's departure for sea. If they fail to do so and an incident arises, then it is likely that they will be subjected to a criminal prosecution in circumstances where prosecuting solicitors will have learned from the error of their colleagues in failing to get the evidence right. In other words, it is unlikely that owners will escape conviction again on what was essentially a legal technicality.

Members should bear in mind that S.31 may also apply to owners who demand that their Masters maintain schedule despite the weather conditions; or who fail to have a supervisory staff ashore to check on the faults of the Master; or who fail to respond to repeated requests from Masters for new safety equipment; or employs seafarers who he knows to be incompetent; or who fails to provide standing orders for his ships; or who condone practices by their crew, which are detrimental to safety, e.g. overloading or improper securing of cargo. Most of these faults are surmountable by ensuring that safe systems of management are in place, including proper measures to ensure compliance. Members are referred to the International Safety Management Code which is currently planned to be phased in on a mandatory basis, commencing in July 1996 with passenger vessels. The Club and its legal advisors endorse the implementation of the ISM Code which should assist in reducing potential exposure to criminal liability by meeting the statutory duty generated by S.31 to establish and maintain a safe system of operation.

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