

**PART XIV**  
**LEGAL PROCEEDINGS**  
*General Provisions*

**Court for trial of offences under Ordinance**

**492.** Unless the context otherwise requires, any offence under this Ordinance or under any provisions of the Merchant Shipping Acts in force in the Federation or any part thereof may be tried by a Sessions Court or by a Magistrate's Court. [del .] (A792/91)

**Charge with offence under Ordinance**

**493.** No person shall be charged with any offence under this Ordinance, other than an offence relating to discipline or order on board a ship, except on the complaint or with the sanction of a Port Officer, a Port Health Officer, a Surveyor of Ships or a police officer.

**Liability of shipowners**

**494.** Where any person is beneficially interested, otherwise than by way of mortgage, in any ship or share in a ship registered in the name of some other person as owner, the person so interested shall, as well as the registered owner, be subject to all pecuniary penalties imposed by this or any other Ordinance or by the Merchant Shipping Acts on the owners of ships or shares therein, so nevertheless that proceedings may be taken for the enforcement of any such penalties against both or either of the aforesaid parties, with or without joining the other of them.

**Liabilities of ships nor recognised as British**

**495.** Where it is declared by the Merchant Shipping Acts that a British ship shall not be recognised as a British ship, that ship shall not be entitled to any benefits, privileges, advantages or protection usually enjoyed by British ships, nor to use the British flag or assume the British national character:

Provided that so far as regards the payment of dues, the liability to fines and forfeiture, and the punishment of offences committed on board such ship or by any persons belonging to her, such ship shall be dealt with in the same manner in all respects as if she were a recognised British ship.

**Officers to be deemed public servants**

**496.** The Director of Marine, Port Officers, Port Health Officers and their respective deputies, the Surveyor-General of Ships, Surveyors of Ships, Judges and Assessors of and in any Court of Investigation or Court of Survey, and Registrars of Courts of Survey shall be deemed to be

public servants within the meaning of the Penal Code.

### *Limitation of Time for Proceedings*

#### **Prosecution of offences**

**497.** (1) Subject to any special provisions of this Ordinance, neither a conviction for an offence nor an order for payment of money shall be made under this Ordinance in any proceeding instituted in a Sessions Court or a Magistrate's Court in the Federation, unless that proceeding is commenced within six months after the commission of the offence or after the cause of complaint arises, as the case may be; or, if both or either of the parties to the proceeding happen during that time to be out of the Federation, unless the same is commenced, in the case of a conviction within two months, and in the case of an order within six months, after they both first happen to arrive or to be at one time within the Federation.

(2) No law for the time being in force under any Ordinance, or otherwise, which limits the time within which proceedings may be instituted in a Sessions Court or a Magistrate's Court, shall affect any proceeding under this Ordinance.

### *Jurisdiction*

#### **Provision as to jurisdiction in case of offences**

**498.** For the purpose of giving jurisdiction under this Ordinance, every offence shall be deemed to have been committed, and every cause of complaint to have arisen, either in the place in which the same actually was committed or arose or in any place in which the offender or person complained may be.

#### **Jurisdiction over ships lying off the coast**

**499.** Where any district within which any Court has jurisdiction either under this or any other Ordinance or under any Imperial Act in force in the Federation or in any part thereof or at common law for any purpose whatever is situate on the coast of any sea, or abutting on or projecting into any bay, channel, lake, river or other navigable water, every such Court shall have jurisdiction over any vessel, British, Malayan or foreign, being on, or lying or passing off, that coast or being in or near that bay, channel, lake, river or navigable water and over all persons on board that vessel or for the time being belonging thereto, in the same manner as if the vessel or persons were within the limits of the original jurisdiction of the Court.

#### **Jurisdiction in case of offences on board ship**

**500.** (1) Where any person, being a British subject or a Federal citizen, is charged with having committed any offence on board any British or Malayan ship on the high seas or in any foreign port or harbour or on board any foreign ship to which he does not belong, or, not being a British subject or a Federal citizen, is charged with having committed any offence on board any British or Malayan ship on the high seas, and that person is found within the jurisdiction of any Court in the Federation which would have had cognizance of the offence if it had been committed on board a British or Malayan ship within the limits of its ordinary jurisdiction, that Court shall have jurisdiction to try the offence as if it had been so committed.

(2) Nothing in this section shall affect the Admiralty Offences (Colonial) Act, 1849, in so far as it extends to the Federation or any part thereof.

### *Damages Occasioned by Foreign Ship*

#### **Power to arrest foreign ship that has occasioned damage**

**501.** (1) Whenever any injury has in any part of the world been caused to any property belonging to Her Majesty or the Government or to any British subject or a citizen by any foreign ship, and at any time thereafter that ship is found in any port or river of the Federation or within three miles of the coast thereof, a Judge of the High Court may, upon its being shown to him by any person applying summarily that the injury was probably caused by the misconduct or want of skill of the master, pilot or mariners of the ship, issue an order directed to any Port Officer or other officer named by the Judge, requiring him to detain the ship until such time as the owner, master or consignee thereof has made satisfaction in respect of the injury, or has given security to be approved by the Judge to abide the event of any action, suit or other legal proceeding that may be instituted in respect of the injury, and to pay all costs and damages that may be awarded thereon; and any Port Officer or other officer to whom the order is directed shall detain the ship accordingly.

(2) Where it appears that, before an application can be made under this section, the ship in respect of which the application is to be made will have departed from the limits of the Federation or three miles from the coast thereof, the ship may be detained for such time as will allow the application to be made and the result thereof to be communicated to the officer detaining the ship, and that officer shall not be liable for any costs or damages in respect of the detention unless the same is proved to have been made without reasonable grounds.

(3) In any legal proceeding in relation to any such injury aforesaid, the person giving security shall be made defendant, and shall be stated to be the owner of the ship that has occasioned the damage.

(4) The production of the order of the Judge, made in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceeding.

## *Inquiries into Deaths*

### **Inquiry into cause of death on board ship**

**502.** (1) Where a case of death happens on board any foreign-going British or Malayan ship, the crew of which is discharged at any port within the Federation, the Port Officer at such port shall, on the arrival of the ship at that port, inquire into the cause of the death, and shall make in the official log an endorsement to the effect either that the statement of the cause of death in the log is in his opinion true, or the contrary, according to the result of the inquiry.

(2) If in the course of any such inquiry it appears to a Port Officer that any such death has been caused on board the ship by violence or other improper means, he shall either report the matter to the *Minister*, (LN 332/58) or if the emergency of the case so requires shall take immediate steps for bringing the offender or offenders to justice.

(3) A Port Officer shall for the purpose of an inquiry under this section have the power of an Inspector under this Ordinance.

## *Depositions*

### **Depositions to be received in evidence when witness cannot be produced**

**503.** (1) Whenever in the course of any legal proceeding instituted before any Court, or before any persons authorized by law or by consent of parties to receive evidence, the testimony of any witness is required in relation to the subject matter of that proceeding, then upon due proof that the witness cannot be found in the Federation, any deposition that the witness has previously made on oath in relation to the same subject matter before any Judge or Magistrate in Her Majesty's dominions, or any British consular officer elsewhere shall be admissible in evidence, provided that -

(a) if the deposition was made in the Federation, it shall not be admissible in any proceeding instituted in the Federation; and

(b) if the proceeding is criminal, it shall not be admissible unless it was made in the presence of the person accused.

(2) A deposition so made shall be authenticated by the signature of the Judge, Magistrate or consular officer before whom it is made; and the Judge, Magistrate or consular officer shall certify, if the fact is so, that the accused was present at the taking thereof.

(3) A deposition so made shall be deemed to be duly authenticated if it purports to be signed by the Judge, Magistrate or consular officer before whom it is made.

(4) It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition, and in any criminal proceeding a certificate under

this section shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified.

(5) Nothing herein shall affect any case in which depositions taken in any proceeding are rendered admissible in evidence by any Imperial Act or any Ordinance in force in the Federation or in any part thereof, or interfere with the power of the Federal legislature to make those depositions admissible in evidence or interfere with the practice of any Court in which depositions not authenticated as hereinbefore mentioned are admissible.

### *Detention of Ship and Distress on Ship*

#### **Enforcing detention of ship**

**504.** (1) Where under this Ordinance or any written law or under any provision of the Merchant Shipping Acts in force in the Federation or any part thereof a ship is to be or may be detained, the Director of Marine or any Port Officer or officer of customs or the Surveyor-General of Ships may detain the ship.

(2) If the ship after detention, or after service on the master of any notice of or order for detention, proceeds to sea before it is released by competent authority, the master of the ship, and also the owner and any person who sends the ship to sea, if that owner or person is party or privy to the offence, shall be liable to a fine not exceeding *fifty thousand ringgit*. (*amended - A895/1994*)

(3) Any person hereby authorised to detain a ship may, if he thinks it necessary so to do, place a police guard on board.

(4) Where a ship proceeding to sea takes to sea when on board thereof in the execution of his duty any officer authorised to detain the ship, or any police guard or any Surveyor of Ships, the owner and master of the ship shall each be liable to pay all expenses of and incidental to the officer, police guard or Surveyor being so taken to sea, and also to a fine not exceeding *five thousand ringgit* (*amended - A895/1994*) for every day until the officer, police guard or Surveyor returns, or until such time as would enable him after leaving the ship to return to the port from which he is taken, and the expenses ordered to be paid may be recovered in like manner as the fine.

(5) Any police guard so placed on board a ship is hereby authorised to take such steps as are necessary to prevent the ship from leaving the port.

(6) Any person who opposes or in any way obstructs any officer authorised to detain the ship, police guard or Surveyor shall be liable to a fine not exceeding *twenty-five thousand ringgit*. (*amended - A895/1994*)

### **Sums ordered to be paid leviable by distress on ship**

**505.** Where any Court has power to make an order directing payment to be made of any seaman's wages, fines or other sums of money, then, if the party so directed to pay the same is the master or owner of a ship, and the same is not paid at the time and in the manner prescribed in the order, the Court which made the order may, in addition to any other powers which it has for the purpose of compelling payment, direct the amount remaining unpaid to be levied by distress and sale of the ship, her tackle, furniture and apparel.

### **Notice to be given to consular officer where proceedings taken in respect of foreign ships**

**506.** Where any foreign ship is detained under this Ordinance, and where any proceedings are taken under this Ordinance against the master or owner of any such ship, notice shall forthwith be served on the consular officer for the country to which the ship belongs at or nearest to the port where the ship is for the time being, and such notice shall specify the grounds on which the ship has been detained or the proceedings have been taken.

### **Cost of detaining ships**

**507.** Where a ship is detained in pursuance of any provision of this Ordinance which provides for the detention of a ship until a certain event occurs, sub-section (2) of section 303 shall apply as if the ship had been finally detained within the meaning of that section.

## ***Evidence, Service of Documents, and Declaration***

### **Proof of attestation not required**

**508.** Where any document is required by this Ordinance or by any provision of the Merchant Shipping Acts in force in the Federation or any part thereof to be executed in the presence of or to be attested by any witness or witnesses, that document may be proved by the evidence of any person who is able to bear witness to the requisite facts without calling the attesting witness or the attesting witnesses or any of them.

### **Admissibility of documents in evidence**

**509.** (1) Where a document is by this Ordinance or by any provision of the Merchant Shipping Acts in force in the Federation or any part thereof declared to be admissible in evidence, such document shall on its production from the proper custody be admissible in evidence in any Court or before any person having by law or consent of parties authority to receive evidence, and, subject to all just exceptions, shall be evidence of the matters stated therein in pursuance of this Ordinance or of those Acts or by any officer in pursuance of his duties as such officer.

(2) A copy of any such document or extract therefrom shall also be so admissible in evidence, if proved to be an examined copy or extract, or if it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was entrusted, and that officer shall furnish such certified copy or extract to any person applying at a reasonable time for the same upon payment of the fee prescribed by the *Eleventh, Twelve and Thirteenth Schedule*. (No.49 of 1955)

### **Service of documents**

**510.** (1) Where for the purposes of this Ordinance or of any provision of the Merchant Shipping Acts in force in the Federation or any part thereof any document is to be served on any person, that document may be served -

(a) in any case by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode;

(b) if the document is to be served on the master of a ship, where there is one, or on a person belonging to a ship, by leaving the same for him on board that ship with the person being or appearing to be in command or charge of the ship; and

(c) if the document is to be served on the master of a ship, where there is no master, and the ship is in the Federation, on the managing owner of the ship, or, if there is no managing owner, on some agent of the owner residing in the Federation, or where no such agent is known or can be found, by affixing a copy thereof to the mast of the ship.

(2) Any person who obstructs the service on the master of a ship of any document under this Ordinance relating to the detention of ships as unseaworthy shall be liable for each offence to a fine not exceeding one hundred dollars.

(3) Any owner or master of the ship who is party or privy to such obstruction shall be liable for each offence to imprisonment for a term which may extend to two years.

### **Declarations**

**511.** Any declaration required by this Ordinance or by any provision of the Merchant Shipping Acts in force in the Federation or any part thereof to be taken before a Justice of the Peace or any particular officer may be taken before a person appointed under section 2 of the Commissioners for Oaths Ordinance, 1947.

### ***Application of Penalties and Costs of Prosecutions***

#### **Application of penalties**

**512.** (1) Where any Court imposes a fine under this Ordinance or under any provision of the Merchant Shipping Acts in force in the Federation or any part thereof for which no specific

application is provided, that Court may, if it thinks fit, direct the whole or any part of the fine to be applied in compensating any person for any wrong or damage which he has sustained by the act or default in respect of which the fine is imposed, or to be applied in or towards payment of the expenses of the proceedings.

(2) Subject to any directions under this section or to any specific application provided under this Ordinance or under any provision of the Merchant Shipping Acts in force in the Federation or any part thereof, all such fines shall, notwithstanding anything in any other Ordinance, be paid over in the Treasury and form part of the public revenue of the Federation.

### ***Compounding of offences***

*512A (1) The Director of Marine may, in a case he deems it fit and proper to do so, compound any offence committed by any person which is punishable under any provision of this Ordinance, by making a written offer to such person to compound the offence by paying to the Director of Marine within such time as may be specified in the offer such sum of money as may be determined in the offer which shall not exceed fifty per centum of the amount of the maximum fine (including the daily fine, if any, in the case of a continuing offence) to which that person would have been liable if he had been convicted.*

*(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified in the offer or within such extended period as the Director of Marine may grant, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.*

*(3) When an offence has been compounded under subsection (1), no prosecution shall thereafter be instituted in respect of such offence against the person to whom the offer to compound was made.*

*(4) The power to compound any offence under this Ordinance shall be exercised by the Director of Marine personally. (inserted vide A895/1994)*

### ***Civil Proceedings***

#### **Rule as to division of loss**

**513.** (1) Where, by the fault of two or more vessels, damage or loss is caused to one or more of those vessels, to the cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault:

Provided that -

- (a) if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally; and
  - (b) nothing in this section shall operate so as to render any vessel liable for any loss or damage to which her fault has not contributed; and
  - (c) nothing in this section shall affect the liability of any person under a contract of carriage or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.
- (2) For the purposes of this Ordinance, the expression "freight" includes passage money and hire, and references to damage or loss caused by the fault of a vessel shall be construed as including references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

### **Damages for personal injuries**

**514.** Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and of any other vessel or vessels, the liability of the owners of the vessels shall be joint and several:

Provided that nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in an action brought against him by the person injured, or any person or persons entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

### **Right of Contribution**

**515.** (1) Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and any other vessel or vessels, and a proportion of the damages is recovered against the owners of one of the vessels which exceeds the proportion in which she was in fault, they may recover by way of contribution the amount of the excess from the owners of the other vessel or vessels to the extent to which those vessels were respectively in fault;

(2) In addition to any other remedy provided by law, the persons entitled to any such contributions as aforesaid shall, for the purpose of recovering the same, have, subject to the provisions of this Ordinance, the same rights and powers as the persons entitled to sue for damages in the first instance.

### **Application of sections 513, 514 and 515**

**516.** Sections 513, 514 and 515 shall apply to any persons other than the owners responsible for the fault of the vessel as though the expression "owners" included such persons, and in any case where, by virtue of any charter or demise, or for any other reason, the owners are not responsible

for the navigation and management of the vessel, the said sections shall be read as though for references to the owners there were substituted references to the charterers or other persons for the time being as responsible.

### **Limitation of actions**

**517.** No section shall be maintainable to enforce any claim or lien against a vessel or her owners in respect of any damage or loss to another vessel, her cargo or freight, or any property on board her, or damages for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former vessel, whether such vessel be wholly or partly in fault, or in respect of any salvage services, unless proceedings therein are commenced within two years from the date when the damage or loss or injury was caused or the salvage services rendered, and an action shall not be maintainable under this Ordinance to enforce any contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings therein are commenced within one year from the date of payment:

Provided that any court having jurisdiction to deal with an action to which this section relates may, in accordance with the rules of court, extend any such period, to such extent and on such conditions as it thinks fit, and shall, if satisfied that there has not during such period been any reasonable opportunity of arresting the defendant vessel within the jurisdiction of the court, or within the territorial waters of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity.