GDAŃSKIE STUDIA PRAWNICZE 2019, NR 3

Dorota Pyć
University of Gdańsk
dpyc@prawo.univ.gda.pl

ORCID 0000-0003-0111-4184
https://doi.org/10.26881/gsp.2019.3.13

THE LAWS OF OLERON AS THE RULES GOVERNING MARITIME LABOUR. HAVE WE LEARNED A LESSON FROM THE PAST?

Introduction

The Laws of Oleron,[1] also known as the Judgments of the Sea,[2] are a set of medieval rules created from the maritime consuetude and customs, which contributed considerably to the development of maritime customary law.[3] However, the exact time of formation of those rules is unknown. It is assumed that the original version of the Laws of Oleron was drawn up at the beginning of the twelfth century.[4] In fact, it is well recognized in the maritime literature that merchants

[1] This paper is based on the copy of the *Charter of Oleroun of the Judgments of the Sea* presented in *The Black Book of the Admiralty*, i.e. Twiss (The Black Book of the Admiralty, Vol. III, Rep. 1985), 4–33.

[2] According to Twiss (The Black Book of the Admiralty, Vol. III, Rep. 1985), 4 the oldest known manuscript of "the *Judgment of the Sea* is contained in the *Liber Horn*", with "the exception of that contained in the *Liber Memorandum* from which it seems to have been copied."

[3] According to the *Penny Cyclopaedia* (1840), 426: "The laws, or constitutions, or judgments of Oleron, are capitulary of ancient marine custom written in old French, and bearing the name of Oleron for several centuries, because tradition points to the island so called as the place of their original promulgation. An ancient copy of these laws is to be found in the Black Book of the Admiralty, the original of which is supposed to be in the Bodleian Library; but they are not there called the Laws of Oleron, nor is there any reference in the laws themselves, or in the book which contains them, to their origin or history. They are not unfrequently appended to ancient editions of the 'Coutumier' of Normandy under the title of 'Les Jugemens de la Mer' in Cleirac's edition of 'Uz et Countumes de la Mer' they are given, without any description of the book, or place from whence they are taken, under the name of 'Rolle des Jugemens d'Oleron'. They are generally referred to by French writers on maritime law as 'Jugemens d'Oleron'."

[4] "The early manuscripts of the Rolles of Oleron resolve themselves into two classes, which for convenience may be distinguished as the Gascon and as the Norman or Breton between which are to be observed notable variations in the reading of certain articles", see Twiss (The Black Book of the Admiralty, Vol. I, Rep. 1985), lxiii–lxv.

had a significant influence on the development of the rules in questions. Those medieval merchants were trading along the western coast of France between the French ports and Bruges (*cf.* Kadens, 2015, 268–269), while their main merchandise in the eleventh-twelfth century was most likely wine.

In medieval Europe, the maritime law applicable on the north-east coasts of the Atlantic Ocean, the North Sea and the Baltic Sea was based on the Laws of Oleron (*cf.* Matysik, 1950a, 126; see also: Matysik, 1950b, 141–145; Janik, 1961, 5–20, 90–109; Matysik, 1971, 28–29). Legal norms relating to the terms and conditions of a seafarer contract of employment, which regulated his duties and rights, are found in medieval maritime law collections (*cf.* Frankot, 2007; Pooler, 2015). It may be noted that early maritime law collections did not distinguish commercial maritime law, did not refer to the delimitation of maritime areas as the law of the sea does, nor did it contain specific maritime labour law provisions (*cf.* Trivellato, 2016). The purpose of the norms of customary maritime law of the Middle Ages was to regulate matters related to shipping, particularly issues arising from maritime trade practice.

The Laws of Oleron were introduced in England in the twelfth century by King Richard I (*cf.* Twiss, The Black Book of the Admiralty, Vol. II, Rep. 1985, xlvii–li) and codified in the Black Book of the Admiralty in the fourteenth century (*cf.* Twiss, The Black Book of the Admiralty, Vol. I, Rep. 1985, lvi–lviii). The Laws of Oleron became the maritime law administered by the English admiralty court (*cf.* Runyan, 1975, 97) and were expanded and perfected in the eighteenth century by Lord Mansfield (see Sherman, 1914, 323). The Black Book of the Admiralty disappeared from the Admiralty Registry at the beginning of the nineteenth century. A few handwritten copies of parts of the Black Book of the Admiralty still survive. All known sources were collated and Sir Travers Twiss published as *The Black Book of the Admiralty* in 1871–1876, under Twiss's name as the editor.

As a maritime law collection, the Laws of Oleron were substantially merchant-oriented. The mariners were wage workers and the merchants who entrusted their property to them were aware of the importance of their own duties to the mariners. To protect their own commercial interests, merchants sought to meet the necessary needs of the mariners. This approach is evinced in the content of the Laws of Oleron, which contain, *inter alia*, norms relating to: the rights and obligations of the master and mariners as well as their relationship to the master of the ship; the contract of carriage of goods by sea; general average; pilotage and collision of ships.[5]

Moreover, the Laws of Oleron are characterized by the internal coherency of the text. The order in which the Laws appear very well corresponds to the stages

[5] For the total of 24 rules of the Laws of Oleron, 20 apply to the matters related to the position of the master and the crew (1–3, 5–8, 10–12, 14–22 and 24); the contract of carriage of goods by sea is a subject of 8 rules (3–4, 9–11, 13, 22–23); the general average is regulated in 2 rules (8–9), pilotage is covered in 1 rule (24) and one rule is dedicated to collision of ships (15).

of the sea voyage. The Laws of Oleron begin with the appointment of the master and then cover ship's departure from the port of loading which ought to take place in counsel with the master's companions (the crew). The following laws generally cover certain essential stages during the course of the sea voyage, including the loss of the ship ("it happens sometimes that she is lost") and cargo ("the wines and the other goods") early on in the sea voyage, when the mariners can go ashore at the ports of loading; the laws further specify what happens if the mariners become sick during the sea voyage, resolve in the matters relating to jettison ("she cannot escape without casting overboard goods and wines") and sharing losses incurred to save the ship during storms ("pound by pound amongst the merchants"). Finally, the Laws of Oleron provide for issues arising in the port of unloading at the end of the sea voyage.

Although the doctrine often emphasizes that the Laws of Oleron represent a codification of decisions made in the maritime courts on the small island of Oléron near La Rochelle, and became widely adopted as rules for the settlement of disputes at sea (*cf.* Matysik, 1950a, 125; Runyan, 1975, 96), some authors suggest that the text comprising the first twenty-four laws is "not a compilation of ad hoc judgements rendered over time by some authority, but was compiled for use as a reference for purposes of resolving problems arising in a specific context" (*cf.* Shepard, 2005).[6]

The essential aim of this text is to illustrate the genuine link between the norms contained in the medieval rules that have survived until the modern times, spanning certain legal solutions which applied over the ages. The Laws of Oleron contain rules that are relevant to contemporary maritime labour law. Certainly, they are not a model which is reflected in the Maritime Labour Convention (MLC 2006).[7] Nevertheless, these rules can be an interesting starting point for the discussion about the importance of decent working and living conditions for seafarers on board ships from a perspective of several centuries later.

Rules governing maritime labour

The international shipping rules governing maritime labour for maritime safety and maritime security are upheld through international conventions and codes, which are legally binding instruments.[8] They are a legal source of great significance for the safety of maritime shipping. When analyzing the rules of conduct, it is worth focusing on the working and living conditions on the ship as well as on maritime safety. Decent working and living conditions and safety culture are strictly connected.

---

[6] https://www.trans-lex.org/116770 [access: 19.05.2019].

[7] https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/normativeinstrument/wcms_554767.pdf [access: 19.05.2019].

[8] http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/Default.aspx [access: 19.05.2019].

In 2013, the Maritime Labour Convention entered into force. The MLC 2006 aims at creating a single, coherent global instrument (*cf.* Pyć, 2016), consolidating numerous convention achievements developed by the International Labour Organisation (*cf.* McConnell, Devlin, Doumbia-Henry, 2011). The MLC 2006 refers to human rights centered on the idea of dignity promoting decent working conditions. They are expressed in the norms contained therein, in particular those from which it is clear that seafarers should be provided with human working and living conditions on board ships. The MLC 2006 stresses that the global nature of maritime transport implies the need for special protection for seafarers. The rules governing maritime labour are aimed at ensuring both decent working and living conditions on board a ship for all seafarers regardless of their nationality and of the flag of the ships on which they sail, and fairer conditions of competition for shipping companies which are respectful of the rules and therefore often disadvantaged by substandard shipping; also, it seeks to limit social dumping to secure fair competition for ship owners who respect seafarers' rights.

Maritime safety culture requires three elements: personal and collective commitment of all persons on board to the work, common sense and good communication. The mutual trust between the shipowner and the master and crew as well as personnel "on land" is also important. Maritime safety culture has an impact on effective safety management system in practice. This constitutes the substance of management, while management procedures form a functional framework for the Safety Management System (SMS) and the implementation of the primary purpose of the International Management Code for the Safe Operation of Ships and Pollution Prevention (ISM Code),[9] namely maritime safety encompassing the ship, the people and the environment. Participation in the management requires cooperation of many people (*cf.* Lappalainen, 2008, 46–47; Lappalainen, Salmi, 2009, 38). In simplified terms, it can be stated that management is a "team game". Maritime safety culture is a function of team play – management game. This means participation in management, a type of qualitative participation depending on the skills, abilities and commitment of the seafarers – in short it relies on the crew competences.

Over the last few centuries, the shipmaster has been an individual with considerable authority on a ship. But in recent decades, shipping companies are moving away from the hierarchical structure based on master's command and control. The underlying philosophy in the ISM Code supports the development of a safety culture in the shipping companies (*cf.* Anderson, 2015, 58–59). The ISM Code constitutes a system of self-regulation of safe ship operation as well as occupational safety and health on board. The ISM Code requires procedures to ensure: safety and environmental protection policy; safety shipboard operations;

[9] International Management Code for the Safe Operation of Ships and Pollution Prevention – ISM Code 1993, Res.A.741/18; and: Res. MSC.104(73), Res. MSC.179(79), Res. MSC.195(80) Res. MSC.273(85) and MSC.353(92).

identification, assessment and management of risk; reports and analysis of non-conformities, accidents and hazardous occurrences, maintenance of the ship and equipment, documentation, as well as company verification, review and evaluation.

It remains to be considered whether and how the issues of working and living conditions on the ship were provided for in the Laws of Oleron. Then it will be easier to answer the question: have we learned a lesson from the past?

Qualifications for work on a ship

The effectiveness of maritime law standards governing maritime labour can be examined from the standpoint of the methods used by shipping companies operating to achieve the intended commercial venture. For many decades, such considerations have aroused interest in maritime law literature, mainly due to its practical nature. Even after a preliminary analysis, it can be determined that Laws of Oleron naturally respected the rights of a mariner as a professional worker familiar with the maritime customs, who has an important role to play on the ship and without which the merchant would have been unable to pursue his commercial interest effectively. This observation is quite important from the point of view of the MLC 2006, which was developed on the international forum together with the representatives of shipping companies.

The first rule of the Laws of Oleron pertains to a question of fundamental importance for the success of a shipping venture, namely, the appointment of the ship's master. The master was appointed by the shipowner.

> *First a man is made master of a ship. The ship belongs to two or three men. The ship departs from the country to which she belongs, and comes to Bordeaux or to Rochelle, or elsewhere, and is freighted to go to a strange country. The master may not sell the ship unless he has a mandate or procuration from the owners; but, if he has need of money for his expenses, he may put some of the ship's apparel in pledge upon consultation with the ship's company, and this is the judgment in this case* (*Law I*).

The Laws of Oleron allow interpretation, from which it follows that the master should be aware of the seafarer's qualifications, because he was responsible for the damage caused by replacing the dismissed mariner with a less skillful one. Also, a mariner could have reckoned with unpleasant consequences if he left the ship without the master's permission, became intoxicated and started arguing. But if the master had sent a mariner ashore on ship's business and mariner suffered an injury, then he was treated at the expense of the ship.

> *Mariners hire themselves out to their master, and some of them go ashore without leave, and get drunk, and make a row, and there are some of them who are hurt; the master is not bound to have them healed, nor to provide them with anything; on the contrary he may properly put them ashore, and hire others in their place; and if the others cost more than they did, they ought to pay, if the master can find anything of theirs. But if the master sends a mariner on any service of the*

ship by his order, and the mariner wounds himself or is hurt, he is to be healed and maintained at the cost of the ship. And this is the judgment in this case (*Law VI*).

The purpose of the MLC 2006 is to ensure that seafarers are trained or qualified to carry out their duties on board a ship. Regulations in this area are now extensively developed (*cf.* McConnell, Devlin, Doumbia-Henry, 2011). Still, just as in the Laws of Oleron, the shipmaster is appointed and employed by the shipowner. In compliance with the maritime international and domestic law, the shipmaster may order a seafarer to leave the ship and go ashore in the nearest port when it appears that he has been employed on a ship above his qualifications, although he has the required certificates. Moreover, shipowners' safety policy covers all issues related to the maritime safety culture required by the ISM Code. Seafarers shall not work on a ship unless they are trained or certified as competent or otherwise qualified to perform their duties. Presently, shipowners' policy is: no alcohol and no drugs aboard the ship.

Communication and commitment to work on a ship

Effectiveness of action was and is an essential element in maritime shipping, being in evidence on a ship on which a team of mariners works, among which the master usually represents the interests of several entities. In practice, the crew of a particular ship creates a specific pattern of effective action, with characteristic separations exclusively reserved for her. According to the ISM Code the cornerstone of good safety management is commitment from the top (*cf.* Anderson, 2015, 52).

The concept of effective action is encountered both in the medieval Laws of Oleron and in contemporary maritime law, particularly in terms of maritime labour and maritime safety. The ability to act in an effective manner is not static, but is characterized by internal and external dynamism, as well as variability over time. Thus, the assessment of the ability to act in the working conditions on a ship has tended to vary over the centuries.

However, both formerly and now, the crew had to cooperate with one another. The master, as well as the seafarers could not afford to act independently. In medieval maritime law, by way of custom, conduct standards were developed that forged team identity of the ship's crew. The crew acted collectively and had the same goal to achieve. The master's role was to mobilize all the mariners to accomplish the objective, and if any of them decided to leave the ship before the end of the sea voyage, the master had the task to prevent it.

The Laws of Oleron contain rules that directly indicate on what matters the master should consult the crew. One such case, in connection with the departure of the ship on a sea voyage, was to agree a convenient moment with the crew. Before the departure, the mariners had to be consulted to determine if the weather was favorable for sailing. In accordance with the Laws of Oleron, when:

A ship is in a haven and stays to await her time, and the time comes for her departure, the master ought to take counsel with his companions and to say to them: 'Sirs, you have this weather'. There will be some who will say the weather is not good, and some who will say the weather is fine and good. The master is bound to agree with the greater part of his companions. And if he does otherwise, the master is bound to replace the ship and the goods, if they are lost, and this is the judgment in this case (*Law II*).

The legal situation of seafarers was quite clearly defined. The basic duty of the seaman was to work on the ship. The sailors were obliged to save the cargo and the ship. If a seaman failed to save the goods and the remains of the ship, he "lost with the ship", which included the wages. If they fulfilled their duties, it is the master had to provide them with a return to their home port; otherwise, the master would not owe them any obligation. The master could not sell the ship's equipment ("the apparel of the ship") without the shipowners' permission. In this situation, the master should act as a loyal person to the owners of the ship.

If a ship is lost in any land or in any place whatever, the mariners are bound to save the most they can; and if they assist, the master is bound, if he have not the money, to pledge some of the goods which they have saved, and to convey them back to their country; and if they do not assist, he is not bound to furnish them with anything nor to provide them with anything, on the contrary they shall lose their wages, when the ship is lost. And the master has no power to sell the apparel of the ship, if he has not a mandate or procuration from the owners, but he ought to place them in safe deposit, until he knows their wishes. And he ought to act in the most loyal way that he can. And if he acts otherwise, he is bound to make compensation, if he have wherewithal. And this is the judgment in this case (*Law III*).

According to the Laws of Oleron, a prohibition for a mariner to leave the ship without the master's permission was stipulated (under the penalty of paying compensation). The mariners could not go ashore without the permission of the master; if the ship was moored by four lines then the mariners were entitled to go ashore.

A ship departs from a port laden or empty, and arrives in another port; the mariners ought not to go ashore without the leave of the master; for if the ship should be lost from any accident, in such a case they would be bound to make compensation [if they have wherewithal]. But if the ship is in a place where she has been moored with four hawsers, they may properly go ashore] and return in time to their ship. And this is the judgment in this case (*Law V*).

Also, in the case of a jettison the master had to rely on the trustworthiness of the mariners. In a justified need, wines and other goods might be jettisoned overboard; in such an event, the permission of the owners of the goods was required or the master had to swear that it was necessary to save the ship:

A ship loads at Bordeaux, or elsewhere, and it happens that a storm catches the ship at sea, and that she cannot escape without casting overboard goods and wines; the master is bound to say to the merchants: 'Sirs, we cannot escape without casting overboard wines and goods'; the merchants, if there are any, answer as they will, and agree readily to a jettison on the chance, since the reasons of the master are most clear; and if they do not agree, the master ought not to give up

for that reason casting over board as much as he shall see fit, swearing himself and three of his companions upon the Holy Evangelists, when he has arrived in safety on shore, that he did not do it, except in order to save the lives and the ship and the goods and the wines. Those which are cast overboard ought to be appraised at the market price of those which have arrived in safety, and shall be sold and shared pound by pound amongst the merchants; and the master ought to share in the reckoning of his ship or his freight at his choice, to reimburse the losses: the mariners ought to have a ton free, and the rest they ought to share in the jettison, according to what they shall have on board, if they conduct themselves as men on the sea; and if they do not so conduct themselves, they ought not to have any exemption, and the master shall be believed on his oath. And this is the judgment in this case (*Law VIII*).

The master should follow the advice of the majority of the crew. If he did not consult the crew at all or he did not listen to the majority of the crew about weather conditions of the sea voyage, he would be liable. This concerned a situation where the ship had been lost and obviously when the master was able to pay. Thus, the loss of a ship that occured in the absence of a convenient time setting for the commencement of a sea voyage could result in severe consequences for the master. The master was responsible for damages resulting from improper stowage. The master and his crew decided jointly on the way of stowing wine, which is well illustrated in one of the Laws of Oleron:

A ship loads at Bordeaux, or elsewhere, and hoists sail to convey her wines, and departs, and the master and mariners do not fasten as they ought their bulkheads, and bad weather overtakes them on the sea in such manner, that the casks within the ship crush either a tun or a pipe; the ship arrives in safety, and the merchants say that the casks have destroyed their wines; the master says that it is not so; if the master can swear himself and three of his companions, or four of those whom the merchants have chosen, that the wines were not destroyed by the casks, as the merchants stowed their wines above the waterline, they ought to be quit; and if they are not willing to swear they ought to make good to the merchants all their damage, for they are bound to fasten well and surely their bulkheads and their hatches before they depart from the place where they have loaded. And this is the judgment in this case (*Law XI*).

The master "served as judge while at sea" (*cf.* Runyan, 1975, 100). He was responsible for keeping the ship calm and settling disputes, but the authority of the master was not unlimited:

A master hireth his mariners, and he ought to keep them in peace, and be their judge, if there is any one who hurts another, whilst he puts bread and wine on the table; he who shall give the lie to another, ought to pay four pence. And the master, if he gives the lie to any one, ought to pay eight pence; and if any one gives the lie to the master, he ought to pay as much as the master. And if it be so that the master strikes one of his mariners, the mariner ought to abide the first blow, whether it be of the fist or the palm of the hand; and if he strikes him again, the mariner may defend himself. And if a mariner strikes the master first, he ought to lose a hundred shillings or his fist at the choice of the mariner. And this is the judgment in this case (*Law XII*).

The complaint procedure laid down in maritime labor law corresponds in that respect with the Laws of Oleron. In order to ensure that complaints may

be resolved at the lowest possible level, the MLC 2006 provides an appropriate complaint procedure. Taking any action against seafarers in connection with their complaints is prohibited. Seafarers have the right to lodge complaints about the non-provision of decent working and living conditions on a ship. A seafarer can lodge a complaint with the shipmaster (*cf.* Pyć, 2017, 252).

The master was not allowed to strike the mariner under normal conditions, but a mariner struck by the master was required to endure the first blow, be it of fist or palm of the hand. If the master dealt another blow, the mariner had the right to defend himself. The Laws of Oleron do not mention the consequences of a master or a mariner assaulting passengers (*cf.* Runyan, 1975, 100).

According to the Laws of Oleron, the master was subject to several limitations. The master was obliged to ask the crew for advice and accede to the opinion expressed by the majority of the crew; also, he was obliged to rely on the crew to support his statements to the owners (as swearing by mariners) in the event of a collision of a vessel anchored in port with a ship entering the port.

> *A ship is in a roadstead moored and riding at her mooring, and another ship strikes her while she is at rest. The ship is damaged by the blow which the other has given her and there are some wines stove in. And the damage ought to be appraised, and divided by halves between the two ships. And the wines which are in the two ships ought to be halved for the damage between the merchants. The master of the ship, which has struck the other is bound to swear, himself and his mariners, that he did not do it intentionally; and the reason why this judgment is made, is, that it may happen that a vessel would willingly place herself in the way of a better ship, if she were to have all her damage made good from having struck the other ship. But when she knows she ought to share the damage of both by halves, she willingly places herself out of the way. And this is the judgment in this case* (*Law XV*).

If ships were at anchor in a port that was uncovered at low tide, the master could request to move the anchors placed too close to his ship. Anchors that were covered at high tide had to be marked with a buoy.

> *A ship and divers others are in a haven, where there is little water, and one of the ships dries and is too near the other. The master of this ship ought to say to the other mariners: 'Sirs, you should raise your anchor for it is too near us, and may do us damage'; and if they will not raise it, the master for himself with his companions may proceed to raise it and remove it to a distance from them. And if they fail to raise it, and the anchor does then damage, the others must are bound to make compensation thoroughly. And if it should be that they have let go an anchor without a buoy, and it does damage, they are bound to make compensation thoroughly. And if they are in a haven which dries, they are bound to put floats to their anchors, that they may appear above water. This is the judgment in this case* (*Law XVI*).

With respect to communication and commitment to work on a ship, this is currently a particularly important part of the ISM Code. This code clearly exposes common sense as a necessity and a kind of a "board of rescue" in many situations related to the work on a ship. What is missing today, or insufficiently provided in practice, is the appropriate communication on a ship in all conditions. There

is no doubt that the times when the master asked the crew for advice or when the crew had to swear by confirming the events on the ship have passed, but at that time the sailors had it in their minds that the success of the sea voyage might depend on sharing knowledge acquired in maritime practice with all, regardless of the circumstances. Shipping companies (as well as ship managers) and seafarers operate with fundamentally different understandings of the purpose and use of the ISM Code. This contributes to the gaps between its intended purpose and practice (*cf.* Bhattacharya, 2012).

Conditions of employment

The master engaged the mariners through a contractual agreement in mediewal (*cf.* Runyan, 1975, 99). The scope of capacities of the master included: forms of payment and other benefits for the crew. In compliance with the Laws of Oleron, mariners were hired under one of three methods of payment. They were paid asset wage for the voyage,[10] allowed to freight their own cargo in the space allotted to them or granted a share of the profits of the freight by the master (*cf.* Runyan, 1975, 99).

> *A ship arrives to load at Bordeaux or elsewhere. The master is bound to say to his companions: 'Sirs, will you freight your fares, or will you let them at the freight of the ship'. They are bound to reply, which they will do. And if they choose to let them according to the freight of the ship, such freight as the ship shall have they shall have. And if they wish to freight [their fares] for themselves, they ought to freight [them] in such manner that the ship ought not to be delayed. And if it should happen that they find not freight, the master is not to blame. And the master ought to show them their fares and their berths, and each ought to place there the weight of his venture. And if he wishes to place there a tun of water, and it be cast into the sea, it is to be reckoned for wine or other goods pound by pound if the mariners exert themselves reasonably on the sea. And if they freight their fares to merchants the same franchise which the mariners should have shall be allowed to the merchants. And this is the judgment in this case* (*Law XVIII*).

If a mariner wanted to receive his wages in a foreign port and did not have any property on the ship, the master could stop paying him the wages, to ensure that the mariner would complete the sea voyage.

> *A ship arrives to discharge. The mariners wish to have their wages. And there are some who have neither cot nor chest on board; the master may retain of their wages, in order to take the ship back to the place whence he brought it, if they do not give good security to perform the voyage. And this is the judgment in this case* (*Law XIX*).

A sailor had to follow the ship, even when he knew that the ship would not get the freight.

> *The master of a ship hires his mariners at the town whereof the ship is, some of them for the venture, the others for money, it happens that the ship cannot find freight in those parts to come*

[10] Only the payment of a set of wage for sea voyage is known to Roman Law.

in, and it is expedient to go to a further distance, those who are engaged for the venture ought to follow the ship, but to those who are engaged for money the master is bound to increase their wages, view by view and, course by course, by reason that he has engaged them [to go] to a given place. And if they go a shorter distance than that for which the engagement was made, they ought to have all their wages, but they ought to assist in bringing the ship back to the place whence they brought it, if the master wishes it, at the adventure of God. And this is the judgment in this case (*Law XX*).

The following rights of the master were derived from the Laws of Oleron: the right to suspend the payment of mariner's earnings in order to compel him to return by ship; granting a mariner the right to defense against the master blows only the second time; the right to dismiss a seafarer after having excluded him from the table three times:

Contention arises on board of a ship between the master and his mariners. The master ought to take away the napkin from before the mariners three times before he sends them out of the ship. And [if] the mariner offers to make amends according to the award of the mariners who are at the table; and [if] the master is so cruel that he will not do anything and he puts him out of the ship, the mariner may go and follow the ship to her port of discharge, and have all his wages, as if he had come aboard the ship, making amends for his fault according to the award of the mariners. And if it be so, that the master has not another mariner as good on board the ship, and it, is lost through any accident, the master is bound to make good the damage, if he have wherewithal. And this is the judgment in this case (*Law XIV*).

If a merchant did not load the ship and kept her for more than fifteen days beyond the agreed departure date, the merchant was obliged to compensate for the damage caused to the master, as well as the mariners:

A master lets for freight his ship to a merchant, and it is devised between them, and a term is fixed [for loading] and the merchant does not observe this time; on the contrary he keeps the ship and the mariners waiting for fifteen days or more, and sometimes the master loses his time and his expenses from the default of the merchant. The merchant is bound to indemnify the master; and of the indemnification that shall be paid the mariners ought to have one fourth, and the master three fourths, because he provides the expenses. And this is the judgment in this case (*Law XXII*).

The master was required to show the winches and ropes to the merchants for their approval. If a rope broke and the merchants did not approve them, then the master was responsible for the loss. If the ropes were approved, then the merchants bore the loss.

A master of a ship comes in safety to his place of discharge; he ought to show to the merchants the ropes with which he will hoist; and if he sees anything to mend, the master is bound to mend them, for if a tun is lost by fault of the hoisting or of the ropes, the master is bound to make compensation, he and his mariners; and the master ought to share all that he receives for the hoisting, and the hoisting ought to be reckoned in the first place to replace the losses, and the residue ought to be shared amongst then. But if the ropes break without his having shown them to the merchants, he and his mariners will be bound to make good all the damage. But if the merchants

say that the ropes are fair and good, and they break, each ought to share the loss, that is to say, the merchants to whom the wine belongs, so much alone. And this is the judgment in this case (*Law X*).

A person could become a ship's pilot. He was hired to work to move the ship to the place of unloading. The pilot was obliged to ensure that the ship arrived in safety to her berth.

A young man is pilot of a ship, and he is hired to conduct her into the port where she ought to discharge, it may well happen that the port where ships are placed to discharge is a closed port. The master is bound to provide her berth by himself and his crew, and to place buoys that they may appear above water, or to see that her berth is well buoyed, that the merchants may suffer no damage; and if damage results the master is bound to make it good, if they state reasons wherefore the master should be driven from his reasons. And the pilot who has well done his duty when he has brought the ship in safety to her berth, for so far he ought to conduct her, and thenceforth the duty is on the master and his companions. And this is the judgment in this case (*Law XXIV*).

Currently, those are most often shipmasters with many years of experience at sea who choose the profession of a maritime pilot. In order to work as a pilot, the seafarer must obtain the required qualifications and have the appropriate certificate provided for in domestic law and in compliance with international law.

Accommodation and food

The Laws of Oleron also set down specific rules for the treatment of seafarers. Mariners were entitled to one cooked meal a day and wine onboard ship. Mariners from Brittany were entitled to one meal a day and those from Normandy were entitled to two meals. This was due to the fact that mariners from Brittany were entitled to wine, while those from Normandy only had water.

The mariners of the coast of Brittany ought to have only one cooked meal a day, by reason that they have drink going and coming. And those of Normandy ought to have two a day, by reason that their master only supplies them with water in going. But when the ship arrives at the land where the wine grows, the mariners ought to have drink, and the master ought to find it. And this is the judgment in this case (*Law XVII*).

A seaman could take the available food from the ship when the ship was in the port, but he had to come back so that the ship did not suffer a loss as a result of the seafarer's lack of services.

It happens that a ship is at Bordaux or elsewhere; of such cooked food as there shall be in the ship, two mariners may carry with them [ashore] one mess, such as they are cut on board ship. And such bread as there shall be, they ought to have according to what they can eat, and of drink they ought to have none; and they ought to return all quickly, in order that the master lose not the service of the ship, for if the master loses it and there shall be damage, they shall all be bound to indemnify him; or one of the crew hurts himself for want of help, they are bound to contribute to his cure and to make compensation to their companion and the master, and their mess-men. And this is the judgment in this case (*Law XXI*).

Both in the Laws of Oleron and in current regulations, seafarers have the right to accommodation, as well as food and water on board ship. In accordance with the MLC 2006, seafarers on board a ship shall be provided with food and drinking water of appropriate quality, nutritional value and quantity that adequately covers the requirements of the ship and takes into account the differing cultural and religious backgrounds. Food is free of charge during the period of engagement. Seafarers employed as ships' cooks with responsibility for food preparation must be trained and qualified for their position on board a ship.

Medical care on board ship and ashore

Mariners and other maritime employees often work in dangerous conditions on a ship at sea far from home. Therefore, both medieval and modern maritime laws often stipulate special protective measures for those who were injured in their work at sea.

Many legal norms of the current maritime law can be traced back to the Laws of Oleron. As maritime commerce expanded, the need for regulations governing maritime activity and the treatment of employees engaged in maritime activities also increased.

Maritime laws have long described mariners as "wards of admiralty." Thus, mariners as workers require special legal protection due to the higher risk of injury, illness or death they face in their work at sea. According to the Laws of Oleron, shipowners were responsible for the living expenses and medical care of mariners who became ill or were injured in the course of their duties.

This law of "maintenance and cure" is still included in current maritime law, both in the MLC and domestic law. Injured seafarers are entitled to maintenance and treatment until "maximum cure" is reached. They are also entitled to payment of wages they would have received.

If a mariner ("one of the ship's company") should become injured or ill during the course of a voyage, the master must get him not only medical attention onshore, but also provide him with food like onboard the ship and pay him his wages:

> *It happens that sickness attacks one of the ship's company, or two or three, and the sick man can do nothing in a the ship, as he is so ill; the master ought to put him ashore, and seek a lodging for him, and furnish him with tallow or a candle, and supply him with one of the ship's boys to tend him, or hire a woman to nurse him; and he ought to provide him with such food as is used in the ship, that is to say, with as much as he had when he was in health, and nothing more, unless he pleases. And if the sick man wishes to have more delicate food, the master is not bound to find it, unless it be at his expense; and the ship ought not to delay her voyage for him, on the contrary she should proceed on it; and if he should recover, he ought to have his wages for the whole voyage; and if he should die, his wife or his near relatives ought to have them for him. And this is the judgment in this case* (*Law VII*).

To protect the health of seafarers and ensure their prompt access to medical care on board the ship and ashore, including essential dental care, the MLC 2006 provides a number of detailed regulations imposing different duties on the ship. These regulations are not limited to the treatment of sick or injured seafarers but include measures of a preventive character such as health promotion and health education programmes. Ships shall carry a medicine chest, medical equipment and a medical guide, the specifics of which shall be prescribed and subject to regular inspection by the competent authority.

Conclusions

Maritime law has been evolving for centuries. The consuetude and customs that were intimately linked to maritime practice became the foundation for maritime customary law and then international and domestic maritime law, as well as the law of the sea. The Laws of Oleron set down detailed rules governing the mutual relationship of the master and the members of the crew as well as theirs standing with regard to merchants and shipowners, and the person of the pilot. Safety culture has been introduced and studied to ensure safe working environment and to prevent an accident as an important concept to manage risks in various shipping companies.

The Laws of Oleron are an example of customary norms that served to establish patterns of effective action and patterns considered ineffective. This line of reasoning allows one to assume that axiology and common sense, which throughout the ages has permeated the norms of maritime law, is a continuation of past maritime practice in modern times. Traditional command and control structure does pose challenges for seafarers. The seafarers are used to being blamed for onboard incidents and near-misses, which have resulted from poor communication. Therefore, seafarers ought to participate in the management of workplace health and the development of maritime safety culture as stakeholders.

Secondary Sources

Anderson, P. (2015), *The ISM Code: A Practical Guide to the Legal and Insurance Implications*, New York.

Bhattacharya, S. (2012), The effectiveness of the ISM Code: a qualitative enquiry, *Marine Policy* 36, pp. 528–535.

Frankot, E. (2007), Medieval Maritime Law from Oléron to Wisby: Jurisdiction in the Law of the Sea, Jurisdiction, [in:] J. Pan-Montojo, F. Pedersen (eds.), *Communities in European History: Representations, Jurisdictions, Conflicts*, Pisa, pp. 157–172, https://pdfs.semanticscholar.org/ee2e/d7cdaf06379f4225d07a0beba35474f42eda.pdf.

Janik, B. (1961), *Najstarszy tekst prawa morskiego w Gdańsku*, Gdańsk.

Kadens, E. (2015), The Medieval Law Merchant: the Tyranny of a Construct, *Journal of Legal Analysis* 7, pp. 251–289.

Lappalainen, J. (2008), *Transforming Maritime Safety Culture. Evaluation of the Impacts of the ISM Code on Maritime Safety Culture in Finland*, Turku.

Lappalainen, J., Salmi, K. (2009), *Safety Culture and Maritime Personnel's Safety Attitudes. Interview Report*, Turku.

McConnell, M.L., Devlin, D., Doumbia-Henry, C. (2011), *The Maritime Labour Convention, 2006: A Legal Primer to an Emerging International Regim*e, Leiden–Boston.

Matysik, S. (1950a), Początki prawa pracy w średniowiecznym prawie morskim, *PiP* 5, pp. 125–131.

Matysik, S. (1950b), *Prawo Nadbrzeżne (ius naufragi). Z historii prawa morskiego*, Toruń.

Matysik, S. (1971), *Prawo morskie. Zarys systemu*, t. 1, Wrocław–Warszawa–Kraków.

Penny Cyclopaedia (1840), *Penny Cyclopaedia of the Society for the Diffusion of Useful Knowledge*, vol. 16, London.

Pooler, B. (2015), The Expansion of Admiralty Jurisdiction Into the Realm of Workers' Compensation: Newly Applying Learned Hand to Jones Act Personal Injury Claims to Incentivize Dangerous Seafaring Work and Protect Workers From the Perils of the Sea, *The John Marshall Law Review* 48.3, pp. 877–905.

Pyć, D. (2017), Compliance and Enforcement of Maritime Labour Conditions – the Polish Legal Perspective, *Polish Yearbook of International Law* 36, pp. 247–255.

Runyan, T.J. (1975), The Rolls of Oleron and the Admiralty Court in Fourteenth Century England, *The American Journal of Legal History* 19.2, pp. 95–111.

Sherman, C.P. (1914), The Romanization of English Law, *Yale Law Journal* 23, pp. 318–329.

Shepard, J.W. (2005), The Rôles d'Oléron – A Lex Mercatoria of the Sea?, [in:] V. Piergovani (ed.), *Lex Mercatoria to commercial law*, Berlin, pp. 207–254, https://www.trans-lex.org/116770.

Trivellato, F. (2016), Usages and customs of the Sea, *The Legal History Review* 84, pp. 193–224.

Twiss, T. (The Black Book of the Admirality, Vol. I, Rep. 1985), *The Black Book of the Admiralty with an Appendix, Introduction, ed. by Sir Travers Twiss, Her Majesty's Advocate General, Published by the Authority of the Lords Commissioners of Her Majesty's Treasury, under the Direction of the Master of the Rolls, Monumenta Juridica*, Vol. I, Abington, Reprint 1985, pp. lxiii–lxv.

Twiss, T. (The Black Book of the Admirality, Vol. II, Rep. 1985), *The Black Book of the Admiralty. Appendix – Part II, ed. by Sir Travers Twiss, Published by the Authority of the Lords Commissioners of Her Majesty's Treasury, under the Direction of the Master of the Rolls, Monumenta Juridica*, Vol. II, Abington, Reprint 1985, pp. xlvii–li.

Twiss, T. (The Black Book of the Admirality, Vol. III, Rep. 1985), *The Black Book of the Admiralty. Appendix – Part III, ed. by Sir Travers Twiss, Published by the Authority of the Lords Commissioners of Her Majesty's Treasury, under the Direction of the Master of the Rolls, Monumenta Juridica*, Vol. III, Abington, Reprint 1985, pp. 4–33.

Websites

https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/normative-instrument/wcms_554767.pdf

http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/Default.aspx

Dorota Pyć

THE LAWS OF OLERON AS THE RULES GOVERNING MARITIME LABOUR. HAVE WE LEARNED A LESSON FROM THE PAST?

The essence of this paper is to illustrate the genuine link between the norms contained in the medieval Laws of Oleron that have survived to modern times, binding certain legal solutions in the space over the ages. The Laws of Oleron contain norms relating to contemporary maritime labour law. Certainly they are not a model fully reflected in the Maritime Labour Convention (MLC 2006). Nevertheless, these principles can be an interesting starting point for discussions on the importance of decent working conditions, the lives of seafarers on ships and maritime safety culture from a few centuries perspective.