

Admiralty Jurisdiction Act (No. 40 of 1983)

AN ACT TO AMEND AND CONSOLIDATE THE LAW RELATING TO ADMIRALTY JURISDICTION, LEGAL PROCEEDINGS IN CONNECTION WITH SHIPS AND THE ARREST OF SHIPS AND OTHER PROPERTY AND TO PROVIDE FOR ALL MATTERS CONNECTED THEREWITH.

Admiralty Jurisdiction Act (No. 40 of 1983) - Sect 1

1. This Act may be cited as the Admiralty Jurisdiction Act, No. 40 of 1983, and shall come into operation on such date (hereinafter referred to as the "appointed date") as the Minister may appoint by Order published in the Gazette.

Admiralty jurisdiction of the High Court of the Republic of Sri Lanka

2. (1) The admiralty jurisdiction of the High Court of the Republic of Sri Lanka shall, notwithstanding anything to the contrary in any other law, be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims:

(a) any claim to the possession or ownership of a ship or to the ownership of any share therein ;

(b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;

(c) any claim in respect of a mortgage of or charge on a ship or any share therein ;

(d) any claim for damage received by a ship ;

(e) any claim for damage done by a ship ;

(f) any claim for loss of life or personal injury sustained in consequence of

(i) any defect in a ship or in her apparel or equipment; or

(ii) the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglect or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of good on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;

(g) any claim for loss of or damage to goods carried in a ship;

(h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;

(i) any claim in the nature of salvage;

(j) any claim in the nature of towage in respect of a ship;

(k) any claim in the nature of pilotage in respect of a ship;

(l) any claim in respect of

(i) goods or materials supplied, or

(ii) services rendered, to a ship for her operation or maintenance ;

(m) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;

(n) any claim by a master or member of the crew of a ship for wages and any claim by or in respect of a master or member of the crew of a ship for any money or property which under any law in force for the time being is recoverable as wages ; (n) any claim by a master or member of the crew of a ship for wages and any claim by or in respect of a master or member of the crew of a ship for any money or property which under any law in force for the time being is recoverable as wages ;

(o) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;

(p) any claim arising out of an act which is or is claimed to be a general average act;

(q) any claim arising out of bottomry;

(r) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for jetsam, flotsam, lagan and derelict found in or on the sea, the shores of the sea or any tidal water or for property found in the possession of convicted pirates,

(2)

(a) Nothing in subsection (1) shall be read and construed as conferring upon the High Court jurisdiction to hear and determine any question or claim arising from any act or thing done or in any proceedings under the provisions of the Customs Ordinance or any other written law read with the provisions of the Customs Ordinance.

(b) Nothing in section 13 of the Judicature Act, No. 2 of 1978, or subsection (1) shall be read and construed as affecting any jurisdiction conferred by any other law, on any other court or tribunal to hear and determine any such question or claim as is referred to in subsection (1).

(3) The jurisdiction of the Court under paragraph (b) of subsection (1) includes power to settle any account out standing and unsettled between the parties in relation to the ship, and to direct that the ship, or any share thereof, shall be sold, and to make such other order as the Court thinks fit. (3) The jurisdiction of the Court under paragraph (b) of subsection (1) includes power to settle any account out standing and unsettled between the parties in relation to the ship, and to direct that the ship, or any share thereof, shall be sold, and to make such other order as the Court thinks fit.

(4) The jurisdiction of the Court under paragraph (e) of subsection (1) includes the jurisdiction to hear and deter mine any claim in respect of a liability incurred under the Marine Pollution Prevention Act, No. 59 of 1981, by reason of the discharge, escape or dumping, of any oil or pollutant in Sri Lanka waters, from or by, any ship.

(5) The reference in paragraph (i) of subsection (1) to claims in the nature of salvage includes a reference to such claims for services rendered in saving life from a ship or in preserving cargo, apparel or wreck as by any law in force for the time being are authorized to be made in connection with a ship.

(6) The provisions of subsections (1), (2), (3) and (4) apply –

(a) in relation to all ships whether registered in any port in Sri Lanka or outside and wherever the residence or domicile of their owners may be ;

(b) in relation to all claims, where so ever arising (including in the case of cargo or wreck salvage claims in respect of cargo or wreck found on land) ; and

(c) so far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not and whether legal or equitable, including mortgages and charges created under foreign law :

Mode of exercise of admiralty jurisdiction

3.

(1) Subject to section 4, an action in personam may be brought in the Court in all cases within the admiralty jurisdiction of that Court

(2) In the case of any such claim as is mentioned in paragraph (a) or paragraph (c) or paragraph (r) of sub section (1) of section 2 or any such question as is mentioned in paragraph (b) of subsection (1) of section 2, an action in rem may be brought in the High Court against the ship or property in connection with which the claim or question arises.

(3) In any case in which there is a maritime lien or other charge on any ship, or other property for the amount claimed, an action in rem may be brought in the Court against that ship or property.

(4) In the case of any such claim as is mentioned in paragraphs (e) to (q) of subsection (1) of section 2, where

(a) the claim arises in connection with a ship ; and

(b) the person who would be liable on the claim in an action in personam (" the relevant person ") was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship,

(5) Where, in the exercise of its admiralty jurisdiction,, the Court orders any ship or other property to be sold, the Court shall have jurisdiction to hear and determine any question arising as to the title to the proceeds of sale.

(6) In determining for the purposes of subsection (4) whether a person would be liable on a claim in an action in personam it shall be assumed that he has his habitual residence or a place of business within Sri Lanka.

(7) Where, as regards any such claim as is mentioned in paragraphs (e) to (q) of subsection (1) of section 2, a ship has been served with a writ or arrested in an action in rem brought to enforce that claim, no other ship may be served with a writ or arrested in that or any other action in rem brought to enforce that claim ; but nothing in this subsection shall be read and construed as preventing the issue, in respect of any one such claim, of a writ naming more than one ship or of two or more writs each naming a different ship.

Jurisdiction in personam in collision and other cases

4.

(1) The Court shall not entertain an action in personam to enforce a claim to which this section applies unless -

(a) the defendant has his habitual residence or a place of business within Sri Lanka ; or

(b) the cause of action arose within the territorial waters of Sri Lanka or within the limits of a port of Sri Lanka; or

(c) an action arising out of the same incident or series of incidents is proceeding in the Court or has been heard and determined by the Court.

(2) The Court shall not entertain an action in personam to enforce a claim to which this section applies until any proceedings previously brought by the plaintiff in any Court outside Sri Lanka against the same defendant in respect of the same incident or series of incidents have been discontinued or otherwise come to an end.

(3) The preceding provisions of this section shall apply- to counter-claims (not being counter-claims in proceedings arising out of the same incident or series of incidents) as they apply to actions in personam, the references to plaintiff and the defendant being for this purpose read as references to the plaintiff on the counter-claim and the defendant on the counter-claim respectively.

(4) The preceding provisions of this section shall not apply to any action or counter-claim if the defendant thereto submits or has agreed to submit to the jurisdiction of the Court.

(5) Subject to the provisions of subsection (2) the Court shall have jurisdiction to entertain an action in personam to enforce a claim to which this section applies wherever any of the conditions specified in paragraphs (a) to (c) of subsection (1) of this section are satisfied.

(6) This section applies to any claim for damage, loss of life or personal injury arising out of

(a) a collision between ships; or

(b) the carrying out of, or omission to carry out, a manoeuvre in the case of one or more of two or more ships; or

(b) non-compliance, on the part of one or more of two or more ships, with the collision regulations.

Wages,

5. Anything in this Act shall not be construed as limiting the jurisdiction of the Court to refuse to entertain an action for wages by the master or a member of the crew of a ship, not being a Sri Lanka ship.

Jurisdiction not to be exercised in cases falling within Rhine Navigation Convention

6. The Court shall not have jurisdiction to determine any claim or question certified by the Minister in charge of the subject of Defence, to be a claim or question which, under the Rhine Navigation Convention, falls to be determined in accordance with the provisions thereof and any proceedings to enforce such a claim which are commenced in such Court shall be set aside.

Power of High Court to order arrest of a ship

7.

(1) Where an action in rem has been instituted under this Act, and the judge is satisfied that the vessel or property to which the action relates will be removed out of the jurisdiction of the Court before the plaintiff's claim is satisfied, it shall be lawful for that judge to issue, in accordance with the rules made under this Act, a warrant for the arrest and detention of that vessel or property:

(2) Where any vessel or property has been arrested and detained in pursuance of a warrant issued under subsection (1), the judge may, on an application by the defendant or any other person who has entered an appearance, in the action relating to such vessel or property, make order re-leasing such vessel or property if such defendant or other person

(a) pays into court, the amount claimed in such action or an amount equal to the appraised value of the vessel or property which has been arrested or detained ; or

(b) gives bail, guarantee or other security, to the satisfaction of the plaintiff to the action, for the payment of such amount.

(3) Where any property arrested in pursuance of a warrant issued under subsection (1) is subject to speedy decay, the Court may, on an application made in that behalf by the Marshal, direct that such property be sold and the proceeds deposited in Court, pending the determination of the action.

(4) The judge may, having regard to all the circumstances of the case, reduce or increase the amount of any bail, guarantee or other security ordered under subsection (1) or subsection (2).

Costs, charges, &c

8.

(1) The Court may award costs, charges, expenses and fees,

(2) Costs when awarded shall be payable as taxed in accordance with the rates made applicable under section 11(3) :

(3) Charges, expenses and fees when awarded shall be payable according to the scales prescribed by rules of Court in force for the time being or, where there is no such rule, as may be determined by the Court.

Marshal and Deputy Marshal

9.

(1) For the purpose of assisting the High Court in the exercise of its admiralty jurisdiction, there shall be

(a) a Marshal, who shall be the Director of Merchant Shipping appointed under section 3 of the Merchant Shipping Act, No. 52 of 1971 ; and

(b) a Deputy Marshal, who shall be the Deputy Director of Merchant Shipping appointed under that Act.

(2) In the performance of the duties imposed on them by this Act, the Marshal and the Deputy Marshal shall be subject to such orders and directions as may be given by a Judge of the High Court exercising admiralty jurisdiction.

Stamps

10. Pleadings, motions and documents filed in an action or other proceedings under this Act shall be stamped in accordance with the provisions that may be made in the Stamp Duty Act, No. 43 of 1982.

Savings and transitional provisions

11.

1) All applications, actions, inquiries, trials or other proceedings pending in the High Court of Colombo on the day immediately preceding the appointed date shall stand removed to the Court sitting in the exercise of Admiralty jurisdiction in Colombo and be continued as nearly as may be according to the provisions of this Act.

(2) All notifications published, tenders called, powers and authorities conferred, forms prescribed, appraisements, orders, rules and appointments made, commissions and directions issued, sanctions, approvals and consent given under the law in force before the appointed date shall be deemed to have been published, called, conferred, prescribed, made, issued and given under this Act or the rules made there under.

(3) Rules may be made under Article 136 of the Constitution regulating the practice and procedure of the High Court in the exercise of its jurisdiction under this Act.

(4) Any provision of this Act or any repeal consequential thereon shall not affect proceedings in respect of any cause of action arising before the appointed date.

Court to have the same powers as a Court having admiralty jurisdiction in England in certain cases

12. Where in any proceedings instituted under this Act, any matter or question of procedure arises in respect of which no provision or adequate provision has been made by or under this Act or any other enactment or any rule, the Court shall have power to make such orders and to give such directions which the Court exercising admiralty jurisdiction in England would have the power to make and give in like circumstances in so far as such orders and directions shall not conflict or be inconsistent with any provisions made by or under this Act or any other enactment or any rule.

Construction of certain expressions in the Merchant Shipping Act, No. 52 of 1971

13. Every reference in any such provision of the Merchant Shipping Act, No. 52 of 1971 as is specified in Column I of the Schedule to this Act to any such word or expression as is referred to in the corresponding entry in Column II of that Schedule shall be read and construed as a reference to "a Judge of the High Court of the Republic of Sri Lanka exercising admiralty jurisdiction".

Interpretation

14. In this Act unless the context otherwise requires "collision regulations " means the regulations under section 186 of the Merchant Shipping Act, No. 52 of 1971 ; " the Court" means the High Court of the Republic of Sri Lanka ; " goods " includes baggage ; " master " used with reference to a ship shall mean any person (except a pilot) having for the time being control or charge of a ship ; " ship " includes any description of vessel used in navigation ; " the Rhine Navigation Convention " means the Convention of the Seventh of October, Eighteen hundred and sixty-eight revised by any subsequent convention.