



# **SOUTH ASIAN UNIVERSITY**

## **Faculty of Legal Studies**

**LLM**

**2015-2017**

**Winter Semester (Fourth Semester)**

### **Course Information**

Course Title:	International Maritime Law
Course Code:	LW0038
Course instructor:	Dr. V.G. Hegde
Course Duration:	One Semester
Credit Units:	4
Medium of Instruction:	English
Prerequisites:	Nil
Precursors:	Nil
Equivalent Courses:	N/A

## **Part I**

This course “International Maritime Law” is a subject that has its moorings from ancient times, even within the Asian context. The subject involves study of some of the basic issues relating to admiralty courts and their jurisdictions, maritime liens, insurance, civil liability, compensation schemes, some criminal sanctions, limitations on liability, rescue and search, salvage operations, maritime security issues such as piracy, drug trafficking, maritime terrorism and the like. Effort will largely be to study these aspects with specific focus on the available South Asian domestic legal frameworks relating to maritime law. It should be noted that majority of the South Asian countries are parties to several of the maritime conventions adopted under the auspices of the International Maritime Organizations and its predecessor the International Maritime Consultative Organization (IMCO). The focus of the course will be on the study of these international conventions that are crucial to the countries of South Asia and examine as to how these countries have responded to the implementation of the maritime standards that have been negotiated within these conventions. The course also will attempt to examine some of the domestic cases within South Asia that have had impact on the development of maritime law in the region. An attempt will also be made to understand the institutional structure that exists within South Asia with regard to the regulation of maritime regime.

## **Part II - Course Aims**

The Course on the “International Maritime Law” that is being offered for LL.M students will, *inter alia*, have the following objectives:

- To understand the historical development of the subject leading to the adoption of various conventions under the auspices of the IMCO, IMO, IOC and other international organizations;
- To study the jurisprudence that has developed involving British courts, Indian courts and those of the South Asian region;
- To equip students with a general understanding of legal issues involved in the subject which involves an interface with municipal law, international law and also rules of private international law.

### **Part III – Evaluation criteria**

Detailed information on the evaluation structure. FLS has been adopting a three level evaluation process

- mid-semester
- end-semester
- term paper

### **Part IV**

#### **Week 1 History of the development of maritime law**

The week will engage students in a general discussion and debate on the historical evolution of regulation of maritime affairs.

#### **Week 2 & 3 Nature, content and jurisdiction under Admiralty Law**

The week at hand would discuss issues relating to definition of ships, modes jurisdiction (in rem and in personam), maritime claims, liens, sovereign immunity cases under British law and those of South Asian countries (subject to availability of material on case laws).

#### **Week 4 & 5 Role of international organizations in the development of maritime law**

The week would involve an introduction to the work of organizations such as United Nations Conference on Trade and Development (UNCTAD), United Nations Commission on International Trade Law (UNCITRAL), Convention and Operating Agreement on the International Maritime Satellite Organization (INMARSAT) and the International Maritime Committee (*Comite Maritime International*) and their contribution to the development of the subject.

#### **Week 6 & 7 International Conventions relating to Maritime Law**

The week will discuss various international conventions relating to international maritime law with specific focus on South Asia.

## **Mid-semester examination**

### **Week 7 & 8 Maritime Security**

The topic for the week will involve studying some of major security issues in the Indian Ocean region. These include the threats of piracy, hijacking, human trafficking, terror, drugs trade in the region and the larger issue of the Indian Ocean as a zone of peace. Treaties such the BIMSTEC Convention on Cooperation in Combating International Terrorism, Organized Crime, and Illicit Drug Trafficking, SAARC Convention on Combating Regional Terrorism and other agreements will be studied.

### **Week 9 International law on Salvage**

The week at hand would concentrate on the historical development of the law of salvage. More particularly emphasis would be placed on studying the 1989 Salvage Convention, which replaced the Brussels Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, 1910. Important principles of salvage such as danger, future danger, voluntary services, no cure-no pay, salvage agreements and relevant cases would be discussed.

### **Week 10 Maritime Traffic**

Issues discussed would include protection of submarine cables, facilitation of maritime traffic, recognizing right of flag states having no sea coast, right to transit in countries having no sea coast, code of conduct for liner conferences, international cooperation for rational use of telecommunications, breadth of contiguous zone, delimitation of contiguous zone between neighbouring states, juridical control of coastal State, classification of punitive and preventive control, doctrine of hot pursuit. Special features of the South Asian countries' practice will be discussed.

### **Week 11 Protection of the Marine Environment**

During the week at hand issues discuss, among others will include: sources of pollution, international legal framework regulating marine pollution, pollution from ships (MARPOL 73/78 and other instruments), pollution emergencies, liability for

pollution damage, oil pollution incidents (Torrey Canyon, Amoco Cadiz, Exxon Valdez, Brent Spar and others).

## **Week 12 Marine Claims and Insurance**

The week will look at: origin of the concept of marine insurance, modern definition of marine insurance, types of marine insurance, sources of law, leading insurance markets, contracts of indemnity, maritime reinsurance, disclosure good faith and representations and study of some marine insurance legislations.

### **Cases**

*Constitution of the IMCO Case*, ICJ 1960

*Muscat Dhows Case* (United Kingdom v. France) (1905) 6 R.I.A.A. 92

*M V Elizabeth v. Harwan Investment & Trading Pvt. Ltd* AIR 1993 SC 1014.

*The Asia*, 5 Bombay 1861, HCR 64

*Bardot v. The American Ship or Vessel Augusta* 1871(10), Bon HCR 110

*Steedman v.Scofield*, 1992, 2 Lloyd's Reports 163 (Definition of a Ship)

*The Bold Buccleugh*, 1851, MooPC 267

*The Jupiter No.2*, 1925, p 69

*The Eschersheim*, 1976, 1 WLR 430

*The Esso Malaysia* 1975 QB 198

*The Halcyon Skies* 1976, 1Lloyd's Rep 461

*Mareva Compania Naviera v. International Bulk carriers*, 1975, 2 Lloyd's Rep 509

*Monica S.*, 1967, 2 Lloyd's Rep 113

*Indian Grace, No.2*, 1998 I Lloyd's Rep.1

*The Parlement Belge*, 1880 5 PD 197

*The Cristina*, 1938, 60LIL Rep 147

*The Arantzazu Mendi*, 1939 63LIL Rep 89

*Factortame*, 1991 AC 603 HL

*The Vanessa Ann* 1985 1 Lloyd's Rep 549

*Meridian Global Funds Management Asia v. Securities Commission*, 1995, 3 All ER 918 PC

*Wagon Mound No.1 &2* 1961, AC 388 (PC)

*The Charlotte* 1848, 3 W.Rob.68

*Troilus* 1951, AC 820

*The Aldora*, 1975 1 Lloyd's Rep. 617

*The Sava Star*, 1995 2 Lloyd's Rep. 134

*The Winson* 1982 AC 939 (HL)

*The Choko Star* 1990, 1 Lloyd's Rep. 516

*The TojoMaru* 1972, 1972 AC 242, 1971 1 Lloyd's Rep. 341 (HL)

*The Erika*, COM 2000, 142, Brussels, 21 March 2000

*Carter v. Boehm* (1766) 3 Burr 1905

## **Reading List**

### Books

Agarwal, Narmada M., *Merchant Shipping Legislation in India and UK*, Bombay University: Bombay 1973.

Burke, William T; *The New International Law of Fisheries* (Oxford, Clarendon, 1994

Caron David D and Scheiber Harry N., *Bringing New Law to Ocean Waters* Martinus Nijhoff, 2004.

Churchill R.R and Lowe A.V., *The Law of the Sea*, (Manchester University Press, 3<sup>rd</sup> Edition 1999.

Deakin, B.M. *Shipping Conferences: A Study of Their Origins, Development and Economic Practices*, Cambridge: Cambridge University Press, 1973

Freestone David, Barnes R. and Ong D, (eds.), *Law of the Sea: Progress and Prospects*, Oxford: Oxford Publications, 2006.

Gutierrez Norman A. Martin, *Serving the Rule of International Maritime Law: Essays in Honour of Professor David Joseph Attard*, Routledge, 2009.

Friedrich Johann Jacobsen, *Laws of the Sea: With Reference to Maritime Commerce During Peace and War*, Nabu Press, 2012.

Juda Lawrence, *International Law and Ocean Management*, Routledge Advances in Maritime Research, Routledge, 2013.

Klein Natalie, *Maritime Security and Law of the Sea*, Oxford, Oxford, 2012.

Mandaraka-Sheppard Aleka, *Modern Maritime Law* Routledge-Cavendish, 2007

Sharma O.P., *The International Law of the Sea: India and the UN Convention of 1982*(New Delhi: Oxford University Press, 2009.

Simmonds K.R; *The International Maritime Organization*, London, Simmonds and Hill, 1994.

Singh, Nagendra 'International Problems of Merchant Shipping,' *Recueil Des Cours*, vol III, (1962)

Singh, Nagendra *Maritime Law of India*, Bombay: Bhandarkar Publications,1979.

Thomas D.R. (ed.), *Marine insurance: The Law in Transition*, Lloyd's of London Press, London, 2006.

Thommen, T.K., *International Legislation on Shipping*, United Nations: New York 1968.

Wendel Phillip, *State Responsibility for Interferences with the Freedom of Navigation in Public International Law (Hamburg Studies on Maritime Affairs)*, Springer, 2007.

### **Articles**

Basnayake 'Origin of the Hamburg Rules', *American Journal of Comparative Law*, vol. 27, 1979, pp.353–355.

Bennathan, Esra and Walters, A.A. ( 'Shipping Conferences: An Economic Analysis', *Journal of Maritime Law and Commerce*, vol. 4,1972-73, pp. 93–115.

Boyle Alan, Further Development of the Law of the Sea Convention: Mechanisms for Change, *The International and Comparative Law Quarterly*, vol. 54, No. 3 (Jul., 2005), pp. 563-584.

Carbone, M. Sergio 'Present trends about the Scope of Application and the Effects of the Uniform Law on the Carriage of Goods,' *IL DIRITTO MARITTIMO*, 1992, pp.

919–33.

Gold Edgar, “International Shipping and the New Law of the Sea: New Directions for a Traditional Use”, *Ocean Development and International Law*, vol.20, 1988, pp. 433-44.

Jagota S.P., “Maritime Boundary”, *Recueil Des Cours*, vol. 257, 1981, p.81.

Nicholson, A.A.N., and Bridger, M.W. (1988), ‘North/South co-operation in shipping: new approaches,’ *Transport Review*, vol.8(2), 145–60.

Schrier, Elliot., et al ‘Forces Shaping International Maritime Transport,’ *The World Economy*, vol.7(1), 1984, pp.87-102.

Sturley, Michael F. ‘The History of COGSA and the Hague Rule,’ *Journal of Maritime Law and Commerce*, vol. 22(1), 1991,