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THE ROMAN LAW'S IMPACT ON THE DEVELOPMENT OF THE MODERN MARITIME LAW

The body of law regulating maritime matters has evolved from the codes, customs and usages of seafaring nations since time immemorial to the maritime law as it is today. Many nations had contributed to the formation of its rules, but which nation was the first to formulate them it is yet not clear. In order to get closer to the real state of the things, a number of scholars offer to study the history of Maritimelaw, taking into consideration five periods of its development: from the ancient times to the year 1000; the years 1000 to 1360; the years 1360 to 1660; the years 1660 to 1840; from 1840 to the present [1, 14].

Sea trade, as it is known, appeared in the ancient civilizations of India and China, but we have little knowledge of their laws or customs, and nothing remains of any maritime law in their writings. The earliest reference to law of the sea is in the Babylonian Code of Hammurabi around 2000 to 1600 B.C. But, substantially, it is from the Mediterranean that maritime law has evolved. According to the scholarly works the Egyptians and the Minoans from Crete were the first maritime «lords» in this area. Gradually they lost their supremacy to the Phoenicians, who had dominated in the sea up to the 8-th century B.C. [2, 2-4]. From this time it was the port of Rhodes's turn to take over the power and to become the scene of a large number of maritime disputes. The customs and practices of the Rhodian mariners became the pattern for other nations to follow, and the maritime law of this time is generally known as the Rhodian Sea Law [3, 223].

As to Rome it is claimed that the early Romans were not a maritime people. Regardless the fact, that the Romans were located near the sea, their language was deficient in nautical terms, and their XII Tables (450 B.C.) contained no provisions of maritime law[4]. By the time of the Punic wars the Romans had become masters of the vast body of water, which they applied the name Nostrum Mare. During all the years of the Roman Empire the Mediterranean

was in Roman control, and thus under Roman laws, but nonthe lessthe Romans did not invent their own maritime law. They rather recorded principles of the earlier, the Greek customary maritime law - the Rhodian Sea Law, accepted and «enriched» it, thus, helping to preserve the Lex Maritima of the past so that they could be included in subsequent codes and customaries. This statement may be evidenced by the following citation in the latest restatement of Roman law: «All nautical matters and litigation are decided by the Rhodian Law... unless some other is found contrary thereto» [2, 6].

Despite the intensive researches in the field of Roman lawits branch, which relates to maritime matters, seems to have been as a whole either neglected or considered doubtful in terms ofits maturity andimportance. Some experts does find a considerable body of maritime law in the Roman law, the others, on the opposite, are doubtful that there was an extensive body of Roman maritime law [5, 15-17; 6, 3].

As to the historical background of the Roman maritime law, it has been commonly admitted by most of the researchers that the Romans were not the first to explore and to develop a maritime law [7, 39; 8, 15; 9, 10]. But, on the other hand, there are no doubts that the Roman law has subsequently influenced maritime law through its civil law side.

Most of what we know of the workings of Roman admiralty comes from the two documents-the Digest of Roman Law and the Institutes both were ordered and completed under Emperor Justinian, and the aforementioned Rhodian Sea Law[4].Thus, the first Roman maritime law provisions were contained in the Digest of Justinian (533 A.D.). These rules concern such subjects as: the relationships between the parties to the maritime adventure; general average; the ownership of the vessel; liability for freight; charter of vessels; salvage. Furthermore, a number of the maritime liens can be found in this document: a loan to build, buy or equip a ship secured by a privilege; a privilege for repairing the ship or supplying the crew; a privilege on cargo by the ship-owner or by person who lent money to pay freight; etc [4].

For example, such quasi-contractual relationships like *negotiorum gestio*have been seen in the modern concept of salvage.«He who of his own accord assumes the management of the business of another is entitled to be reimbursed for his necessary and useful expenses whether he has been

successful or not, providing he has acted as a prudent administrator«[10, 410-411].These ideas were adopted by the modern law of salvage and were applied as one of the basic principles of the International Convention on Salvage 1989 and namely, of the special compensation. The Convention imposes an obligation on the salvor to use best endeavors in the salvage and to obtain assistance from other salvors where the circumstances so require. If the salvor carries out operations in circumstances where there is a threat of environmental damage, the salvor is entitled to his expenses, even if he has not prevented or minimized

the damage[1l]. Apparently, these particular provisions of the Conventionare derived from the Roman's *negotiorum gestio.*

Justinian's *Digest* lists several nautical actions that would be considered torts today, and also the appropriate remedy for the harm. For example, the chapter titled «Concerning the *Lex Aquilia*» details the Roman law on ship collision. Generally, the law required the sitting court to determine what party caused the collision and then determine if the ship's crew, her captain, or natural forces beyond human control were the cause of the loss of the damaged ship. If the crew were at fault, the action would lie against them to the extent dictated by the Code. There is also mention of possible minor offenses such as if the sailors were responsible for a loss of cargo, there were other punishments that could be enacted of a lesser extent.

As to the formation of the contractual obligations in the maritime commerce it worth mentioning that it was the Roman law on contracts that has served the basis for this development. The most formal types of contracts were known as *stipulato,* which was a specific promise from a party to another party that made a right in the receiving party and a legally enforceable duty within the promisor [12, 245-246]. Of the contracts relating to maritime issues in Rome, the three most prevalent are sales contracts (*emplio venditio*), contracts for the carriage of goods (*locatioconductio*), and marine insurance on loans for items This was especially useful in the purchase of goods from sources in other parts of the empire, and paved the way for an increase in shipping as the Empire progressed [13, 74-79]. Once goods started to be purchased over vast distances, the need to create special contracts to transport these goods became apparent. The Roman law thus developed the first contracts for the carriage of goods, or *lacatio conductio* [13, 81]. These came in a variety of subcategories, including hiring a ship by itself or the contract for the transport of goods from one port to another [13, 82]. Generally, these contracts were Roman sales contracts with an added warranty that allocated the risks associated with ancient sea voyages.

Ship financing has its birthplace in Roman law [13, 68]. A lender was protected by simply giving money to a borrower, whose receipt of the money instantaneously created an obligation within him to repay the loan at the terms specified by the borrower. Loans developed into more and more complex forms throughout the Republic and Empire periods, and one of the offshoots was known as a *fenus nauticum,* or sea loan [13, 69]. This loan was meant exclusively for maritime uses, such as the building or purchase of vessels, paying for carriage of goods, or paying for necessaries for seamen. The sea loan also forwarded the important public policy of promoting ancient shipping, by allowing shippers to accomplish what in effect was insurance on the goods.

The doctrine of General Average embodied into the Digest, to a larger degree was in the same spirit as is today. General Average is a risk and cost allocation device that the courts use to spread losses at sea across all those benefited by the loss. [14, 522]. Admiralty courts in Roman times as well as today imposed liability on the owners of the saved cargo merely because their property was

saved where others were lost, and justice requires compensation. Essentially, the process works the same today as it did in Roman times, but the procedures are more complex [14, 530].

The significance of the maritime law of Rome is that it had developed as a law followed by all nations, as to say it was a part of the *jus gentium,* which applied to nil peoples. Because of this, the laws of the sea were uniform and universal. And even after the fall of the Roman Empire its maritime law was borrowed ittul followed by the new Italian city-state republics as Venice, Genoa, Pisa and Amalli. Thus, the Roman legal tradition passed on to the rest of Western Europe ill the later Middle Ages and lived on among the seafaring nations of Europe nod were incorporated into medieval documents such as the Laws of Oleron and the Laws of Visby, which bridged the gap between the ancient admiralty and maritime law and what we know today [14**,** 6]. The study of the development of the international maritime law', in particular, of the international private maritime law has evidenced that this process had eventually tended to the democratization and liberalization of such its principles and provisions as, for example: equality of parties to a commercial contracts, contractual liability, the biding force of a labor contract, etc, that is to say, the principles adopted from the Roman Civil law'.

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