Title:
Shepard, James W., The Rôles d'Oléron - A Lex Mercatoria of the Sea?, in Piergiovanni, Vito (ed), From Lex Mercatoria to commercial law (2005), S. 207 et seq. (ca. 1200)

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Content:
The *Rôles d´Oléron*: A *lex mercatoria* of the Sea?

2. The Subject Matter

The subject matter of the *Rôles d'Oléron* is the wine trade between the South west of France and Northern Europe. More specifically, it provides a set of rules that define the rights and obligations of the parties to the maritime adventure during the outward voyage of a ship that would have loaded a cargo of wine at La Rochelle or Bordeaux and sailed north to Brittany, Normandy, England, Scotland or Flanders. The parties to the maritime adventure included the merchants who freighted the ship, the ship's owners, the ship's master, and the crew. Reference is also made to local pilots. The following is a summary of the thirty-eight articles that are found in the three versions of the *Rôles d'Oléron* discussed above.²⁹

a) The Original Version³⁰

*(exact date is unknown. ca. 1200, Trans-Lex)*

**Article 1:**

One of the owners is designated master. The master cannot sell the ship without the authorization of the owners but he can hypothecate its equipment if necessary.³¹

**Article 2:**

The master must ask the mariners for their opinion of the weather before setting sail. If he fails to ask their advice, then the master is responsible if the ship and its cargo are lost.³²

**Article 3:**

If the ship is lost, the mariners must try to save the cargo. If they do their duty, the master must return them to their home port. If they do not do their duty, the master owes them no obligation. The master shall not sell the cargo; he must place it in a safe location.³³

**Article 4:**

A ship is lost and part of its cargo is saved. The master can give part of the cargo to the merchants, and keep the other part to pay the freight on the portion of the voyage that has been made. He can also continue the voyage in another ship and receive the entire freight on the portion of the cargo that was saved.³⁴
Article 5:
The mariners must not go ashore without the permission of the master; provided that if the ship is moored by four lines then the mariners are entitled to go ashore.\(^\text{35}\)

Article 6:
If a mariner goes ashore without the permission of the master and is injured, then he can be dismissed; but if he is sent ashore on ship's business and is injured, then he must be cared for at the expense of the master.\(^\text{36}\)

Article 7:
If a mariner falls ill onboard the ship, he must be sent ashore and cared for at the expense of the master.\(^\text{37}\)

Article 8:
In need, the cargo may be jettisoned overboard; in such event, the permission of the owners of the cargo is required or the master must swear that it was necessary to save the ship.\(^\text{38}\)

Article 9:
If it is necessary to cut the mast or abandon an anchor to save the ship, the merchants must contribute to the loss.\(^\text{39}\)

Article 10:
The master is required to show the winches and ropes to the merchants for their approval. If a rope breaks and the merchants did not approve them, then the master is responsible for the loss. If the ropes were approved, then the merchants bear the loss.\(^\text{40}\)

Article 11:
The master is responsible for damages resulting from improper stowage.\(^\text{41}\)

Article 12:
Insults between mariners are punishable by fines. A mariner may act in defense if the master strikes him once. If the mariner strikes the master first, he must pay a fine or lose his hand.\(^\text{42}\)

Article 13:
Towage and pilotage are at the expense of the merchants.\(^\text{43}\)

Article 14:
The master must give a warning to a mariner before dismissing him. If he dismisses him wrongly, then the mariner can proceed to the port of off-loading and demand his entire wages.\(^\text{44}\)

Article 15:
If the ship is moored and another ship is poorly steered and collides with it, the damages are to be shared equally.\(^\text{45}\)

Article 16:
If ships are at anchor in a port that is uncovered at low tide, the master may request that anchors placed too near his ship
be moved. Anchors that are covered at high tide must be marked with a buoy. 46

Article 17:

Mariners from Brittany are entitled to one meal a day and those from Normandy are entitled to two meals. This is because the mariners from Brittany are entitled to wine, while those from Normandy only have water. 47

Article 18:

Mariners can either freight for their own account, or participate in the freight of the ship. 48

Article 19:

If a mariner wishes to receive his wages in a foreign port but doesn't have any property in the ship, the master is entitled to hold back part of the wages in order to ensure that the mariner makes the return voyage. 49

Article 20:

If some of the mariners are paid out of the freight of the ship and some receive a fixed wage, and if there is no cargo in the initial port of loading, then those paid out of the freight of the ship must follow the ship to another port, and those paid a fixed salary must be paid for the additional distance. 50

Article 21:

The mariners are entitled to take ashore food and bread corresponding to one meal on board ship, but no drinks. They must return on time or pay damages for the lost labor, and if any person is injured due to their absence, they must compensate that person, the master and all those at the ship's table. 51

Article 22:

If a merchant delays a ship for more than fifteen days beyond the agreed departure date, then he must hold harmless the master and the mariners. 52

Article 23:

If the ship is detained for a long time in a port and the master runs out of money, he is entitled to sell some of the merchants' wine. Such wine will be valued the same as the wine sold in the port of unloading, and the master will be paid the entire amount of the freight on such wine. 53

Article 24:

The responsibility of the pilot ends when the ship arrives in the port of moorage. 54

b) The Brittany Version

Article 25:

If the ship is lost due to the fault of the pilot he is required to pay damages to the merchants and master. If anyone dies due to his fault, then the master and mariners can cut off his head; however, it is advisable to first determine whether he can pay damages. 55

Article 26:

If any barrels are broken while unloading due to the fault of the master and the mariners, they are required to reimburse the merchants at the same value as that of the other barrels. However, the merchants must pay the freight on the broken barrels. 56
Article 27:

If two ships create a joint venture for fishing, they must have the same equipment and share equally in the profits. If one ship is lost, then the survivors of those lost shall receive half of the profits from the other ship.  

C) The Black Book Version

Article 28:

If a merchant freights a ship and it is detained in port due to the fault of the master or a feudal lord, the merchant may terminate the contract and freight another ship of his choice. The master is required to pay damages if the merchant cannot find another ship.  

Article 29:

When a merchant freights a ship to load wine he is entitled to freight the entire ship. Only the provisions necessary for the voyage can be loaded without his permission.  

Article 30:

A merchant is entitled to load in a ship as much wine as the master; in other words, one pipe of wine for each ten tons of capacity in the ship.  

Article 31:

If the mariners are paid out of the cargo, they are entitled to receive one barrel free. If they do not do their duty, they lose this exclusion. The master will receive his freight on the wine that is jettisoned and on the wine that is saved, and he decides whether the losses from the jettison will be reimbursed by the freight or by the ship.  

Article 32:

If the ship is loaded with wine, the mariners are not entitled to drink any; however, the merchants may, out of kindness, offer them some.  

Article 33:

The master must furnish meals to the merchants. If the ship is loaded with wine, he must also find someone to guard it. If a ship arrives at its port of destination and stays for more than twenty-one days, the master can unload the ship and leave one of his mariners with the merchants until he has been paid the freight.  

Article 35:

In the case of jettison, the Roman law must be applied. The losses are allocated against all the cargo and provisions in the ship. If the mariners possess more than one silver cup, or cloth that is not used as clothing, these items must also contribute to the losses.  

Article 36:

If the ship is lost due to the fault of the pilot, he is required to pay damages.  

Article 37:

If a ship is lost due to the fault of the pilot, the mariners can cut off his head without having to answer to any judge.
Article 38:

All ships are required to lower their flag before the ships of the King or his representatives. If they do not, they are subject to forfeiture.  

What is striking from a reading of the text of the *Rôles d'Oléron*, in particular the twenty-four articles of the Original Version, is the internal coherency of the text. The order in which they appear corresponds generally to the chronological order of the outward voyage. For example, Article 1 begins with the appointment of the ship's master and Article 2 covers the departure from the port of loading. The following articles generally cover events during the course of the voyage, including the loss of the ship and cargo early in the voyage (Articles 3 and 4), when the mariners can go ashore in the ports of loading (Articles 5 and 6), what happens if the mariners become ill during the voyage (Article 7), matters relating to jettison and sharing losses incurred to save the ship during storms (Articles 8 and 9). The articles at the end, including Articles 19, 23 and 24 deal with matters arising in the port of unloading at the end of the voyage. There are exceptions to the general chronological order. For example Article 18 (the mariners can choose how to be paid) and Article 22 (when a merchant delays the loading of the ship) address matters arising in the port of loading. Overall, however, the text suggests that at the time the Original Version was first put into writing an attempt was made to set forth a coherent set of rules corresponding in broad terms to the chronology of the voyage. In other words, it suggests that the text 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.

For the full text of these articles including important variations and a modern French translation, see Shephard, *Rôles d'Oléron, supra*, at 53 -141.

Articles 1 to 19 are summaries of the corresponding articles from Ms. AA1 Bayonne. Articles 20 to 24 are summaries of the corresponding articles from Ms. Libor Horn.
64 Ms. Black Book at 55 [hereinafter Article 33].
65 Ms. Black Book at 56 [hereinafter Article 34].
66 This is probably a reference to the Lex Rhodia de jactu. See 2 The Digest of Justinian 386 (Monro trans. 1909). For a complete analysis of the Roman law of general average, see The Rhodian Sea Law ccI-ccvii (ed. W. Ashburner 1909, reprinted 1976).
67 Ms. Black Book at 56 [hereinafter Article 35].
68 Ms. Black Book at 56-57 [hereinafter Article 36].
69 Ms. Black Book at 57 [hereinafter Article 37].
70 Ms. Black Book at 57-58 [hereinafter Article 38]. The source for this article dates from the second year of the reign of King John. Ms. Whitehall begins with the line: "Item, ordonne estoif a Hastynges pour loy et coustumes de mer ou temps du roy Johan, l’an de son regne second..." See Black Book, supra, I at 128 - 129.