

(1) Crimes committed on the high seas on board national ships or by foreign pirates shall be decided by the judge of the district where is situated the first port at which the ship arrives; . . .

- (d) ORGANIC REGULATIONS TO LAW No. 4712 (ORGANIZATION OF CONSULAR SERVICE), ENACTED BY THE MINISTRY OF FOREIGN AFFAIRS AND WORSHIP, 31 MARCH 1926. MINISTERIO DE RELACIONES EXTERIORES Y CULTO, "REGLEMENTACIÓN ORGÁNICA DE LA LEY No. 4712" (1926), p. 7. TRANSLATION FROM A. H. FELLER AND M. O. HUDSON, "A COLLECTION OF THE DIPLOMATIC AND CONSULAR LAWS AND REGULATIONS" (WASHINGTON, 1933), VOL. I, PP. 17, 30-31.

Article 186. If on board of an Argentine merchant ship a crime is committed on the high seas, the consular official who has jurisdiction at the first point which the ship touches, shall inquire whether the master has drawn up a report of the offence, and, if this has not been done, he shall make, taking the declarations of the crew and the passengers, all pertinent investigations.

He shall retain the offenders on board and shall send them, together with the papers of the investigation, by the same ship or by the first one leaving for the Republic, to be submitted to the competent judges.

Article 187. If the ship on board of which the crime was committed has to leave for another destination and there is no ship to carry the offenders to the Republic, the consular official shall request the local authorities to hold them in a public prison, until they can be sent on for prosecution, with due attention to the respective provisions of the treaties or the laws of the country.

Article 188. He shall protest against any attempt which the authority might make to take cognizance of crimes committed on the high seas on board of Argentine merchant vessels, for it is incumbent upon the authorities of the Republic to judge these crimes.

2. Australia

- (a) NAVIGATION ACT 1912-1935, AS AMENDED BY ACT No. 1 OF 1943. AUSTRALIA, "COMMONWEALTH ACTS, 1901-1935", VOL. II, PP. 1504, 1505-6, 1607-8, 1610, 1635-6, 1638-1640; *idem*, VOL. 41 (1943), p. 2.

Section 2. (1) This Act shall not apply in relation to any Australian-trade ship, limited coast-trade ship, or river and bay ship, or her master or crew, unless the ship:

(a) Is engaged in trade or commerce with other countries or among the States or with or among the Territories under the authority of the Commonwealth; or

(b) Is on the high seas, or in waters which are used by ships engaged in trade or commerce with other countries or among the States; or

(c) Is in the territorial waters of any Territory under the authority of the Commonwealth.

Section 258. (1) The Governor-General may make regulations for the prevention of collisions and for prescribing what lights are to be carried and exhibited, and what fog signals are to be carried and used by ships.

(2) No owner or master of a ship shall:

(a) In any way contravene the regulations for the prevention of collisions; or

(b) Exhibit any lights or use any fog signals other than those prescribed by the regulations.

Penalty: One hundred pounds.

(3) The imposition of a penalty under this section shall not relieve any person from any civil liability for any damage occasioned by any default.

(4) If any contravention of the regulations is caused by the wilful default of the master or owner of the ship, he shall be guilty of an indictable offence.

Section 264. (1) In every case of collision between two vessels it shall be the duty of the person in charge of each vessel, if and so far as he can do so without danger to his own vessel, crew, and passengers (if any):

(a) To render to the other vessel, her master, crew, and passengers (if any) such assistance as is practicable and necessary in order to save them from danger caused by the collision; and

(b) To stay by the other vessel until he has ascertained that she has no need of further assistance; and

(c) To give to the master or person in charge of the other vessel the name of his own vessel and the port to which she belongs, and also the names of the ports from which she comes and to which she is bound.

(2) If the master of any vessel fails without reasonable cause to comply with this section, he shall be guilty of an indictable offence.

(3) Notwithstanding anything contained in sub-section (2) of section four hundred and twenty-two of the Merchant Shipping Act, in case of a collision between two vessels, the collision shall not be deemed to have been caused by the wrongful act, neglect, or default of the master or person in charge of the vessel, who failed to comply with the provisions of that section, solely by reason of the fact that he has not complied with the provisions of that section.

Section 364. (1) A court of marine inquiry shall have jurisdiction to make inquiries as to all casualties affecting ships, or entailing loss of life on or from ships, and as to charges of incompetency or misconduct, or of failure of duty in regard to any collision or in any matter relating to the navigation, management or working of a ship, on the part of masters, mates or engineers of ships, in the following cases, namely:

(a) Where a shipwreck or casualty occurs to a ship on or near the coast of Australia, or in the course of a voyage to a port within Australia;

(b) Where a shipwreck or casualty occurs in any part of the world to a British ship registered in Australia;

(c) Where some of the crew of a ship, which has been wrecked or to which a casualty has occurred, who are competent witnesses to the facts, are found in Australia;

(d) Where the incompetency or misconduct has occurred on board a British ship on or near the coasts of Australia, or on board a British ship in the course of a voyage to a port within Australia;

(e) Where the incompetency or misconduct or failure of duty has occurred on board a British ship registered in Australia;

(f) Where the master, mate, or engineer of a British ship who is charged with incompetency or misconduct is found in Australia;

(g) Where any ship is lost or supposed to have been lost, and any evidence is obtainable in Australia as to the circumstances under which she went to sea or was last heard of; and

(h) Where it appears to the Minister, on a report made in consequence of a medical examination made under this Act, that a master, mate, or engineer holding a certificate of competency issued or recognized under this Act is incompetent by reason of his unfitness to perform the duties ordinarily required of a person employed in a position corresponding to that certificate.

(2) An inquiry shall not be held under this section into any matter:

(a) Which has once been the subject of an investigation or inquiry, and has been reported on, by a competent court or tribunal in any part of the King's dominions outside Australia; or

(b) With reference to which an investigation or inquiry has been commenced in the United Kingdom; or

(c) In respect of which the certificate of a master, mate, or engineer has been cancelled or suspended by a naval court constituted under the Merchant Shipping Act; or

(d) In respect of a shipwreck or casualty occurring to a ship registered in any part of the King's dominions outside Australia unless:

(i) At the request or with the consent of the government of that part;

(ii) The shipwreck or casualty occurs on or near the coast of Australia;

or

(iii) The ship is wholly engaged in the coasting trade.

Section 378. For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed, and every cause of complaint to have arisen, either:

(a) In the place in which it actually was committed or arose; or

(b) In any place in which the offender or person complained against is.

Section 379. If, in any legal proceeding under this Act, a question arises whether any ship or person is or is not within the provisions of this Act or of some part thereof, the ship or person shall be taken to be within those provisions unless the contrary is proved.

Section 380. (1) Where any district within which any court has jurisdiction is situated on the sea coast, or abuts on or projects into any navigable water, the court shall have jurisdiction over any vessel being on or lying or passing off that coast, or being in or near that navigable water, and over

all persons thereon or belonging thereto, in the same manner as if the vessel or persons were within the limits of the original jurisdiction of the court.

(2) The jurisdiction in this section shall be in addition to, and not in derogation of, any jurisdiction or power of a court of summary jurisdiction.

Section 381. Where any person:

(a) Being a British subject, is charged with having committed an offence on board a British ship on the high seas or in a foreign port or harbour, or on board a foreign ship to which he does not belong; or

(b) Not being a British subject, is charged with having committed an offence on board a British ship on the high seas,

and that person is found within the jurisdiction of any court in Australia which would have had cognizance of the offence if it had been committed on board a British ship within the limits of its ordinary jurisdiction, that court shall have jurisdiction to try the offence as if it had been so committed.

Section 382. Any offence against property or person committed in or at any place either ashore or afloat, out of the King's dominions, by a master, seaman, or apprentice who at the time when the offence is committed is, or within three months previously has been, employed in any British ship, shall be deemed to be an offence of the same nature, and be liable to the same punishment, and be inquired of, heard, tried, determined, and adjudged in the same manner and by the same court and in the same place, as if the offence had been committed within Australia.

Section 383. (1) Whenever:

(a) Any foreign ship has, in any part of the world, caused injury to any property belonging to either the King, the Commonwealth, or any State, or any of His Majesty's subjects; and

(b) At any time thereafter that ship is found in any port of Australia or within three miles of the coast thereof,

a justice of the High Court or a judge of the Supreme Court of a State may, upon its being shown to him by any person applying summarily that the injury was probably caused by the misconduct or want of skill of the master or crew of the ship, issue an order directed to any officer of Customs or other official named in the order, requiring him to detain the ship until such time as the owner, master, or consignee thereof has:

(i) Made satisfaction in respect of the injury, or

(ii) Given security, to be approved by the judge or court, to abide the event of any legal proceeding that may be instituted in respect of the injury, and to pay all costs or damages that may be awarded thereon,

and the official to whom the order is directed shall detain the ship accordingly.

(2) Where it appears that, before an application can be made under this section, the ship will depart from Australia, the official may detain the ship for such time as will allow the application to be made and the result thereof to be communicated to him, and he shall not be liable for any costs or damages in respect of the detention unless it is proved to have been made without reasonable grounds.

(3) In any legal proceeding in relation to any such injury, the person giving security shall be made defendant, and shall be stated to be the owner of the ship that has occasioned the damage; and the production of the order of the judge or court made in relation to the security shall be conclusive evidence of the liability of the defendant to the proceeding.

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3. Austria

(a) PENAL CODE, 27 MAY 1852, AS REINSTATED BY ACT NO. 25 OF 12 JUNE 1945. J. KIMMEL, "LEHRBUCH DES ÖSTERREICHISCHEN STRAFRECHTES" (10TH EDITION, 1948), PP. 87-88, 196-197.

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CRIMES (VERBRECHEN) COMMITTED BY AUSTRIAN CITIZENS ABROAD

Article 36. A citizen of the Austrian Republic who commits a crime abroad and afterwards enters Austria may not be extradited therefor but shall be dealt with in accordance with this Penal Code irrespective of the law of the country in which the crime was committed.

If the citizen has already been punished abroad for the act, the penalty suffered shall be set off against that imposable under this Penal Code.

No decision of a foreign authority in penal matters may be executed in Austria.

CRIMES COMMITTED BY ALIENS

(a) *In Austria*

Article 37. An alien committing a crime in Austrian territory may be judged only in accordance with the present Code.

(b) *Abroad*

Article 38. An alien committing abroad the crime of high treason against the Austrian Republic (article 58), of espionage or other collusion with the enemy (article 67), of illicit recruiting (article 92), of counterfeiting of Austrian public securities or coinage (articles 106-121), or inciting to or abetting a breach of military duty (article 222) shall be dealt with according to this Code as though he were a national. (As amended by Act of 15 July 1920.)

Article 39. An alien committing abroad any crime other than those mentioned in the foregoing article shall, if he enters Austria, be taken into custody, but agreement for his extradition shall be forthwith negotiated with the State in which the offence was committed.