

# Chalmers' Marine Insurance Act 1906

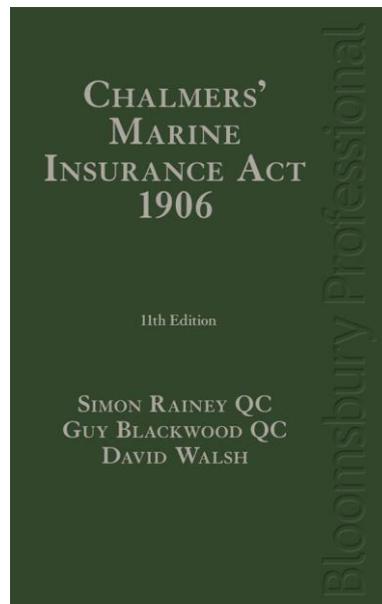
by the late Sir Mackenzie D Chalmers, KCB, CSI,  
Draftsman of the Act

Eleventh Edition

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## Preface to the Eleventh Edition

The last edition of Chalmers on the Marine Insurance Act 1906 was the tenth, published as long ago as 1993 (and reprinted in 2007). It has a long and distinguished pedigree.

The core of the text first saw light as the Marine Insurance Bill, drafted by Mackenzie Chalmers with assistance from Douglas Owen, and first presented to Parliament, by Lord Herschell, in 1894. In that form, the Bill was accompanied by the Lloyd's SG policy (still in its 1779 form, albeit minus the opening words "In the name of God, Amen", replaced with what the late Donald O'May described as "the less fervent phrase 'Be it known that'") and the case law based Rules for Construction of Policy. The Bill represented the third great codification of English commercial law undertaken by Chalmers, following his drafting of the Bills of Exchange Act 1882 and the Sale of Goods Act 1893. The impetus for the codification of marine insurance law appears to have sprung not only from the late Victorian desire to bring certainty and order to important areas of commercial law which had acquired a settled understanding in the reported cases (and which may have been spearheaded by Joseph Chamberlain when President of the Board of Trade from 1880 to 1885 and by Herschell himself, later Lord Chancellor in 1886 and from 1892 to 1895) but also from initiatives by the leading insurance companies of the day. Robert Owen, a barrister and the secretary of the Alliance Marine and General Insurance Company Ltd undertook a project of collection and compilation of the various policies, clauses and other wordings used by marine insurers in London and in Liverpool. He published his work in 1883 under the title *Marine Insurance: Notes and Clauses*. Owen's work encouraged the formation of the Institute of London Underwriters (1884) and the adoption by it of a systematic approach to drawing up a set of clauses to be used in conjunction with (and in certain respects to amend) the Lloyd's SG policy: the Institute Clauses.

The Bill fared less well in the choppy waters of Parliament than Chalmers' other exercises in codification. After much discussion in a special committee of interested parties set up by Herschell, it was shelved after Herschell's unexpected death in 1899. An attempt to enact it in 1899 saw it pass the House of Lords under Lord Halsbury's steerage only to be blocked in the House of Commons. This led Chalmers to prepare a digest using the text of the Bill together with case notes and discussion of the principles, amplified with illustrations of the principles from over 2,000 reported cases, and incorporating comments and criticisms from Lord Justice Mathew (founder of the Commercial Court) "and other friends". Chalmers' previous codification work on the Bills of Exchange and Sale of Goods Act had always been preceded by the drafting of a case law digest with statement of principles with the drafting of the bill then following. Perhaps Chalmers felt that the digest helped to demonstrate better how the codification simplified a mass of case law and was a necessary adjunct to obtaining Parliamentary support.

The Ur-text of Chalmers as we know it today was published as *A Digest of the Law relating to Marine Insurance* in 1901. It was published as a joint work by himself and Robert Owen although the "main responsibility for the purely legal part" was stated to be Chalmers'. A second edition of Chalmers and Owen's Digest was published in 1903. In 1903 Chalmers wrote an article for the *Law Quarterly Review* (19 LQR 10) under the heading *Codification of Mercantile Law* deploring that there was difficulty in getting any measure of law reform passed in the then current state of the Commons, and with a tantalising footnote that "one obstinate member" was the source of the problem.

The Bill was finally enacted in 1906. A new edition of Chalmers and Owen's Digest was promptly prepared and published as *The Marine Insurance Act 1906* in 1907. Chalmers was knighted shortly afterwards. And so the current work began its long life.

The 1906 Act has not perhaps received the plaudits that Chalmers' other codifications rapidly acquired. Frank Mackinnon KC (later Mackinnon LJ) in the entry for Chalmers in the Dictionary of National Biography 1922-1930 put the matter politely: "the subject matter is not so amenable to successful treatment in a code as is that of the other two, and for that reason only, the Act is less valuable than its predecessors". Anthony Diamond QC in 1986 was more trenchant: "far less successful" [1986] LMCLQ 25 at 26.

However, the form adopted by Chalmers in this book has certainly stood the test of time as a point of immediate reference, section by section, to the relevant case law and underlying principles behind the provision and explaining how it has been applied and interpreted. The present editors, in taking over the privilege of editing this work, have set as their goal Chalmers' own. He described the objects of the text accompanying the provisions of the Marine Insurance Act 1906) as being:

"to support [the sections of the 1906 Act], where possible, by reference to leading cases, or cases containing good expositions of principle by eminent commercial judges [and] Where rules of law seem difficult to apply, illustrations from decided cases are inserted after the section to show the application of the abstract propositions to concrete states of fact."

We have tried to do likewise.

The text of Chalmers, having stood still since 1993, has sadly fallen into the ever-growing oubliette of legal texts. A 2007 reprint could not arrest its slide into obscurity given that by 2007 the work has already become seriously out of date. Our task has therefore required significant revision and rewriting to make the text up-to-date and relevant once more to practitioners. But we have modelled ourselves on the terse but informative style of Chalmers himself, which was largely, but not wholly, preserved in the four modern editions under the editorship of Professor Hardy Ivamy.

The title of the work remains unashamedly *Chalmers' Marine Insurance Act 1906*. An in-depth study of the major changes to insurance law and to the central provisions of the 1906 Act on disclosure and good faith made by the Insurance Act 2015 are beyond the scope of this book, whose purpose remains that of a commentary on the now reduced but still substantial body of provisions of the 1906 Act. For those seeking a detailed commentary on the new 2015 Act, reference may be made to *The Insurance Act 2015: A New Regime for Commercial and Marine Insurance Law*, edited by Professors Malcolm Clarke and Baris Soyer (Informa 2017) to which two of the editors (Simon Rainey and David Walsh) were contributors. We have, however, included a short section providing our observations on the 2015 Act and we have also included the explanatory notes which are to be read with it.

We have made three principal changes to Chalmers.

In the tenth edition, a very short commentary was included on the principal Institute Clauses. We have decided that this was not likely to be useful part of the book and was at odds with the purpose of a detailed annotated commentary on the sections of the 1906 Act. Since 1993 when the text was written, other textbooks have set out a far more valuable and compendious analysis of these Clauses (see e.g. *Arnould, Law of Marine Insurance and Average*, 19<sup>th</sup> Edn, Chapter 23, pp. 1117 to 1230). We have however retained appendices setting out the text of the Institute Clauses and other useful reference sources.

Secondly, the value of Chalmers' original work is reflected in the fact that the starting point in considering the meaning and purpose of a provision of the 1906 Act is still very often the case law which Chalmers sought to distil into the particular codified proposition and his original commentary on it. We thought it would therefore be useful to practitioners to have in one volume, not only a modern annotated commentary on the 1906 Act but also Chalmers' original text as an appendix. We considered whether we should take as the original text the 1901 *Digest* but on reflection have decided that the more useful original text is the third reworking of the *Digest* which formed the first, 1907, edition of *The Marine Insurance Act 1906*. The reason is simple: as Chalmers himself recognised, the text of the Bill set out in the first edition of the *Digest* was the subject of amendments and changes as it progressed (slowly) to the statute book. Chalmers (and Owen) revised the commentary and text in drawing up their considered views on the Act, in the light of any changes made to the original draft Bill. We think it is useful to have that version as a ready reference source and for it be made much more widely available. If nothing else, it may relieve the kindly librarians of the Middle and Inner Temple libraries of the task of retrieving it from the dusty and dimly-lit shelves of the basement collections.

Thirdly, we have included a concise summary of our observations on the Insurance Act 2015.

We would like to thank the publishers for their patient forbearance and unfailing support and also for agreeing to include 'Chalmers 1907' in this new 'Chalmers 2018'.

We have endeavoured to state the law as at 3<sup>rd</sup> December 2018.

For further information, or to buy the book: [www.bloomsburyprofessional.com/chalmersmarine](http://www.bloomsburyprofessional.com/chalmersmarine)

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