

# Famous Lost Artworks

Serhan Handani

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*Serhan Handani was admitted as a solicitor in 2018 and currently maintains a civil litigation practice at Bramsdon & Childs. He completed an LLM in Maritime Law at the University of Southampton and has previously worked in seafarers' rights initiatives and with the Maritime and Coastguard Agency. Serhan retains a keen interest in the field of maritime law.*

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Modern commerce takes place at supersonic speed. It therefore surprises many that most of the world's traded goods are still, at some point, carried on a container ship. Shipping by sea has been the primary means to move items around the planet for much of human history. In the present, 11 billion tons of goods are shipped each year,<sup>1</sup> representing around 80% of trade by volume.<sup>2</sup> Given how many items are shipped, then, it is unsurprising that many are lost at sea. Romantic stories of shipwrecks filled with treasure and priceless artworks persist for a reason: they are not far from the truth.

One cannot mention lost treasures in international waters without mentioning the sinking of the RMS *Titanic*. While this was a human tragedy of unprecedented scale, the amount of artwork lost is also notable. The *Titanic* was a luxurious cruise liner on its maiden voyage to New York, and carried many wealthy travellers. It is therefore unsurprising that estimates of the value of the art on board often exceed £200 million. There have been numerous displays of recovered items. Even the most mundane items are now considered precious records of the tragedy.

The *Mary Rose*, another famous wreck, was also carrying a good deal of art. The Tudor carrack was lost in the Solent in 1545. Its salvaging was one of the most expensive projects of maritime archaeology. The *Mary Rose* it was one of the first wrecks to be protected under the Protection of Wrecks Act 1983. It was finally raised in 1982, and was found to contain many artefacts providing valuable insight into Tudor life.<sup>3</sup>

The Spanish frigate *Nuestra Señora de las Mercedes* is another wreck noted for its salvage. It was sunk by the British off the coast of Portugal in 1804. It was recovered in 2007, and contained 600,000 silver and

gold coins. The salvors quietly brought these to the US.<sup>4</sup> However, the Kingdom of Spain took the case to court, and the salvors were ordered to return the coins.<sup>5</sup> This decision was upheld at appeal.

Sculptures generally preserve better than other artworks under the sea. Many sculptures are recovered from shallower waters, especially the Mediterranean.<sup>6</sup> It is enjoyable simply to list such stories, but the purpose of this article is to summarise how the law treats shipwrecks and their valuable cargo. Who owns treasures found at sea, particularly under UK law?

## International salvage

To begin with, it is worth considering how salvage and lost artworks are treated in international law.

The concept of 'maritime salvage' is pervasive. Maritime salvage is the right of a volunteer to a reward if they assist a ship in danger. By contrast, it is trite law that a person who voluntarily saves the property of another on land is not entitled to reward or compensation. The right to maritime salvage is upheld by English admiralty law. However, it has also been enshrined in international law through customary law, commonly accepted contracts,<sup>7</sup> and international treaties.<sup>8</sup> After all, it is politically expedient to have different rules govern this scenario on sea from on land. The sea is hazardous, and financial incentives encourage people to help vessels in need.

Maritime salvage only covers property, including cargo, if it is

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1 International Chamber of Shipping, 'Shipping and world trade: driving prosperity' <<https://www.ics-shipping.org/shipping-fact/shipping-and-world-trade-driving-prosperity/>>.

2 United Nations, *UNCTAD Review of Maritime Transport 2020 20*.

3 See David Childs, *The Warship Mary Rose: The Life and Times of King Henry VIII's Flagship* (Chatham Publishing 2007).

4 Kimberley Alderman, 'Federal Court Orders Treasure Hunters Return Coin Trove to Spain' (*Cultural Property & Archaeology Law*, 20 February 2012) <<https://culturalpropertylaw.wordpress.com/2012/02/20/federal-court-orders-treasure-hunters-return-coin-trove-to-spain/>>.

5 *Odyssey Marine Exploration, Inc v The Unidentified Shipwrecked Vessel et al* (Odyssey II), 657 F3d 1159 (2011).

6 The Antikythera wreck is an example. Lost off the Greek coast in the first century BC, it was discovered in 1900 with many sculptures.

7 Notably the Lloyd's Open Form (LOF).

8 The 1989 Salvage Convention is the most important of the recent treaties.

in danger. Therefore, it does not generally extend to historical wrecks. Wrecks may be dealt with by treaty where they pose a risk to navigation or the environment, but this is rare for historical wrecks.<sup>9</sup> Under English law, the wreck remains the property of her owner at the time of sinking, and under the jurisdiction of her flag state. However, not all jurisdictions agree.

Some wrecks are protected by individual treaties. In the case of the *Titanic*, the UK and US governments have agreed by treaty they will each protect the wreck and preserve it as a memorial. The treaty was signed by the UK in 2003, but only came into force in 2019 following ratification by the US.<sup>10</sup> Whether it has adequate 'teeth' remains to be seen.

The arrangements made for the *Titanic* are unusual. International law retains a varied and complex arrangement of treaty, customary law, and rewards offered to salvors. The United Nations Convention on the Law of the Sea 1982 places a duty on states to protect archaeological and historic objects. However, it explicitly excludes objects with identifiable owners. The UNESCO Convention on the Protection of the Underwater Cultural Heritage 2001 represents a more recent effort to 'enable states to better protect their submerged cultural heritage'. It is intended to provide an internationally agreed basis for dealing with historical wrecks, and it states that they are not subject to maritime salvage. Unfortunately, this Convention was heavily criticised for its broad language and has not gained international acceptance.<sup>11</sup>

## Wrecks in the UK

I turn now to home waters. Some of the world's busiest shipping lanes pass through the UK's territorial waters. It is therefore unsurprising that there are thousands of wrecked ships and aircraft around the UK coast. The UK has passed statutes intended to protect wrecks and deal with the complexities of ownership. How, then, are lost treasures and artworks dealt with when recovered in the UK's territorial waters?<sup>12</sup>

## The Merchant Shipping Act 1995

The main piece of legislation concerning UK wrecks is the Merchant Shipping Act 1995, especially Part IX. The Act defines the role of the 'Receiver of Wreck', an official in the Maritime and Coastguard Agency who administers the law of wrecks and salvage. The Act prescribes that any finder of 'wreck material' in the UK report their find to the Receiver of Wreck. The Act states:

### Duties of finder etc. of wreck.

(1) If any person finds or takes possession of any wreck in United Kingdom waters or finds or takes possession

of any wreck outside United Kingdom waters and brings it within those waters he shall—

- (a) if he is the owner of it, give notice to the receiver stating that he has found or taken possession of it and describing the marks by which it may be recognised;
- (b) if he is not the owner of it, give notice to the receiver that he has found or taken possession of it and, as directed by the receiver, either hold it to the receiver's order or deliver it to the receiver.<sup>13</sup>

Subsection (2) criminalises the failure to report a wreck without reasonable excuse.

It should be noted that 'wreck' is not limited to shipwrecks. It includes 'jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water'.<sup>14</sup> These terms have clear meaning in maritime law. 'Jetsam' denotes goods cast overboard to lighten a vessel, even if the vessel is lost. 'Flotsam' denotes goods that remain afloat after their ship has sunk. 'Lagan' is similar to jetsam: it denotes goods, cast overboard from a ship that perishes, which have been buoyed that they be recovered later. Finally, 'derelict' denotes all property, ship or cargo, that has been abandoned without hope of recovery. Derelict is the most relevant to historical shipwrecks and their cargo.

Under English law, the owner of a ship that is wrecked also owns the wreck. Therefore, the Receiver of Wreck will track down the owner of the wrecked ship and its cargo and ensure that they receive a fair salvage award, if one is applicable. If the wreck remains unclaimed for one year, it becomes Crown property.<sup>15</sup>

## The Protection of Wrecks Act 1973 and The Protection of Military Remains Act 1986

The Protection of Wrecks Act 1973 lets the UK designate specific wrecks as 'protected wrecks' if they have historical, archaeological, or artistic value. Diving is prohibited around such wrecks unless a special licence is obtained.<sup>16</sup> The Act contains a separate mechanism prohibiting access to dangerous wrecks.<sup>17</sup> It also requires that the exact location of a wreck become a matter of public record. However, this encourages treasure hunters. Perhaps the best protection for famous wrecks would be to keep their locations mysterious.

The military remains of British persons, or of those operating from British ships, are now protected under the Protection of Military Remains Act 1986. The Act applies even if they lie outside of UK territorial waters. This highlights a key issue.

Both Acts create legal regimes of protection and regulation. However, they are in practice very difficult to enforce, since wrecks are often in isolated locations.

## Closing remarks

The law encompassing maritime wrecks and historical artefacts is complex. By its very nature it raises difficult jurisdictional issues,

<sup>9</sup> See the Nairobi Wreck Removal Convention 2007.

<sup>10</sup> Secretary of State for Foreign and Commonwealth Affairs, *Agreement concerning the Shipwrecked Vessel RMS Titanic* (Treaty Series 8, 2019).

<sup>11</sup> See Hayley Roberts, 'The British Ratification of the Underwater Heritage Convention: Problems and Prospects' (2018) 67(4) *International and Commercial Law Quarterly* 833.

<sup>12</sup> I use 'territorial waters' to denote an area of sea over which a state has jurisdiction. This includes 'territorial sea', 'contiguous zones', and 'exclusive economic area'. These terms are defined in the United Nations Convention on the Law of the Sea 1982. A state's territorial sea extends 12 nautical miles from its 'baseline'. A state's exclusive economic zone extends up to 200 nautical miles from its 'baseline'. See Marine Regions <<https://www.marinerregions.org/eezmapper.php>> for a useful map of these zones.

<sup>13</sup> Merchant Shipping Act 1995 s 236.

<sup>14</sup> *ibid* s 255.

<sup>15</sup> *ibid* s 241.

<sup>16</sup> Protection of Wrecks Act 1973 s 1.

<sup>17</sup> *ibid* s 2.

since shipwrecks do not conveniently conform to the international boundaries of their flag state.

States are increasingly taking steps to protect their cultural heritage. Many, including the UK, have passed legislation to protect culturally significant shipwrecks. However, approaches to such legislation have varied around the world, and to date, attempts to harmonise the international law have been without significant success.

The good news is that many states have passed domestic measures to protect important shipwrecks and ensure that their cultural heritage is preserved.

Whatever the jurisdiction and the legal issues, it is clear that historical wrecks present significant cultural value to the world and must be preserved and protected as much as possible.

The sea is a vast and wondrous place, filled with mystery, danger, and hardship. The romantic notion of treasures on and under the high seas is far from a historical fiction, and seems destined to persist far into the future.