
Book Reviews

Aleka Mandaraka-Sheppard, *Modern Admiralty Law: With risk management aspects*. London: Cavendish, 2001. xci, 1015 pp. £ 80.00. [ISBN 1 85941 531 8]

Dr Michael Underdown

Readers of this journal will be aware that Admiralty Law is only one part of Maritime Law, although a very extensive and important part. In this work, the author seeks to provide a modern approach to the study of the principles of admiralty law and marine safety. She deliberately avoids examination of carriage of goods by sea, which anyway most of us would not regard as part of Admiralty Law strictly speaking, and only tangentially touches on marine environmental pollution, another topic not normally associated with Admiralty Law. A feature of the book, as alluded to by the sub-title and highlighted by Lord Mustill in his Foreword, is the treatment of risk management.

The book is divided into five parts, dealing with admiralty jurisdiction and procedure, ownership of ships, safety regulations and liabilities, specialised contracts and miscellaneous topics respectively. Within this general framework, the author covers the major aspects of Admiralty Law: admiralty jurisdiction, ship ownership and mortgage, ship purchase, collisions, salvage, towage, ports and pilotage, and limitation of liability.

Readers will look in vain for any consideration of Australian admiralty jurisdiction, and the vast majority of cases cited were decided in the English courts. Statutory references are entirely to English and European Union legislation, although there are also extensive references to international agreements. Of course, these aspects do not render the book any less valuable because of the fundamental importance of English Admiralty Law in the development of both Australian and New Zealand Admiralty Law, and also because of the widespread choice of English law in arbitration and jurisdiction clauses.

The first quarter of the book covers the crucial areas of admiralty jurisdiction and procedure. This part can be supplemented usefully with Damien Cremean's authoritative account of the Australian jurisdiction and procedure in this field in *Admiralty Jurisdiction. Law and Practice in Australia* (1997). The main legislative bases for admiralty jurisdiction in England are the *Supreme Court Act 1981* (the Supreme Court of England and Wales comprises the Crown Court, the High Court and the Court of Appeal), a number of international conventions given force of law through enactment by Parliament, the Civil Procedure Rules 1999 and Practice Directions.

The opening chapter is somewhat disjointed, although it contains an interesting discussion of what a ship is. The next chapter on the nature of admiralty jurisdiction is both more substantial and more practical, dealing primarily with the range of claims available under s 20(2) *Supreme Court Act 1981*. Chapter 3 examines the exercise of admiralty jurisdiction and in particular *in rem* claims (actions). The House of Lords' decision in *The Indian Grace (No 2)* appears likely to have far-reaching consequences. The author discusses this case and its implications in detail before turning to several cases that can be described as 'non-truly *in rem*' actions. The next two chapters explain the arrest procedure and the various rules giving the court discretion to refrain from

exercising jurisdiction. Chapter 5 contains a very informative discussion of the adoption of the Scottish doctrine of *forum non conveniens* into English law, beginning with the decision in *The Atlantic Star*. Chapter 6 looks at the important role played by European and other international conventions in providing a basis for jurisdiction. The Brussels and Lugano Conventions (the latter's days surely numbered) are of particular importance. The final chapter in the first Part examines the circumstances in which the court will grant an anti-suit injunction.

The second Part of the book covers ship ownership, including registration, mortgages, shipbuilding and ship sale. These are topics of considerable interest to all those in the maritime community. The IMO and European Commission are closely monitoring flag states and sub-standard ships, increasing the pressure on both flag states and open registers. Port states, marine insurers and classification societies are all concerned to improve safety. In the first chapter in this Part, the author looks particularly at the legal implications of the International Safety Management Code (annexed to SOLAS 1974, Ch IX). Chapter 9 deals with ship mortgages in general, including the rights and obligations of both mortgagors and mortgagees. Of particular interest is the author's discussion of the effect of exercise of a mortgagee's rights on charterparties. The brief discussion of priorities between foreign liens and mortgages is also of practical interest. The next two chapters on shipbuilding and ship purchase look at contracts of construction and sale, which usually provide for English law to apply. A number of leading cases are examined with regard to the applicable principles. The author also discusses whether classification societies might become liable to third parties for personal injury or death.

Part Three is an extensive discussion of navigation regulations and liability for collisions at sea. An extensive range of cases dealing with both criminal and civil liability are examined, before turning to the issue of assessment of damages and (briefly) limitation of liability.

Salvage, towage and pilotage are essential aspects of the subject, and the fourth part of the book is devoted to them. The author considers the Salvage Conventions as well as a master's authority to enter into salvage agreements binding the shipowner. In the light of recent events, it is also illuminating to read what the author says about the duty to assist others. The treatment of the SCOPIC clause and problems associated with Art 14 Salvage Convention 1989 in Chapter 13 is of considerable practical importance. In the next chapter, the author discusses towage contracts and the duties of tugowners. Again, there is an important discussion of a practical issue: the exclusion of liability and indemnity clauses in the UK Standard Towage Contract. Oil pollution, vessel-source pollution and marine casualties in general are of considerable concern to port authorities worldwide. Chapter 15 examines the powers and duties of port authorities, not just in relation to pilotage, but also with respect to navigational safety and overall port operations, as well as the liability of shipowners for damage caused by their vessels to port facilities.

The final Part of the book examines limitation of liability in more detail. This area of Admiralty Law is governed by a number of conventions, apart from the Hague-Visby Rules familiar to all readers. The final chapter looks at the role of the European Commission with regard to maritime safety. This is not a new concern, but gained increased impetus following the sinking of the oil tanker *Erika* in 1999. The book ends with a brief Epilogue on risk management, although it has to be stressed that this particular concern of the author figures rather prominently throughout the text.

Although in parts this book reads more like a collection of index cards than a cohesive treatment of the subject, it contains much of interest as well as a wealth of case summaries. It should be of considerable interest to those practicing in the field as well as to many in the shipping industry. Unfortunately, its price will put it out of the reach of many potential readers.

Simon Baughen, *Shipping Law*. 2nd ed. London: Cavendish, 2001. lxxvi, 444 pp. £ 34.95. [ISBN 1 85941 661 6]

Dr Michael Underdown

This is the second edition of a well-known textbook, first published in 1998. The new edition became necessary to take account of recent House of Lords and Court of Appeal decisions, as well as new legislation, the *Arrest Convention 1999* and industry specific developments, such as the SCOPIC clause.

The author uses the expression 'shipping law' to cover many, but not all, civil disputes arising from shipping. Not covered to any great extent are such topics as international contracts of sale, letters of credit, marine insurance, towage contracts and ship finance. Specifically excluded are the international aspects of maritime law.

The book is divided into three parts: dry shipping, wet shipping and an examination of three topics applicable to both types of claim: jurisdiction and choice of law, security and interlocutory relief, and limitation of liability. This is quite an elegant division between contractual issues involving charterparties and cargo claims on the one hand, and the law applicable to marine disasters on the other.

Shipowners are primarily concerned with facilitating the sale of goods. It is necessary to understand the commercial background of the industry in order to deal with claims. Bills of lading overcome the problem of payment when the buyer and seller are in different countries. The author looks at the functions of bills of lading, as well as at other documents used in shipping such as sea waybills. Title to sue for loss or damage to goods is now regulated (in the United Kingdom) by the *Carriage of Goods by Sea Act 1992*, although some claims fall outside the legislation (pp 46-7). Having established title to sue, a claimant must next prove that the defendant was responsible for the lost or damaged goods. In Chapter 3, the author discusses the evidentiary character of bills of lading, as well as statutory modifications under the Hague-Visby Rules. The next question is whether the defendant was liable for the loss or damage. The express and implied terms in bills of lading impose a number of obligations on a carrier. In addition, the Hague-Visby Rules impose further, modified duties on carriers: seaworthiness and proper loading, stowage and discharge.

It is now increasingly important that those in the industry have an understanding of the law as it applies to multimodal transport. Chapter 6 examines received for shipment and through bills of lading, while the following chapter deals with the application of the CMR (Convention Relative au Contrat de Transport International de Marchandises par Route) to carriage by road, where goods are seldom sold while in transit unlike the situation in shipping.

Chapter 8 is concerned with voyage and time charterparties, which are contracts for the use of the ship rather than for the carriage of goods. The discussion of the Inter-

Club Agreement on pp 183-8 is quite useful. The next chapter deals with payment of freight under voyage charterparties, while Chapter 10 explains the nature of laytime and demurrage. With respect to time charters, the author considers the right of a shipowner to withdraw from the charter for non-payment of hire and the allocation of risk using an 'off-hire' clause when there is a delay.

Finally, having established a breach of contract causing loss or damage, damages will be determined by applying general tort and contract principles. This is irrespective of whether the claim arises under a bill of lading or charterparty.

The shorter Part 2 on 'wet shipping' deals with collisions, salvage, general average and marine pollution, or marine disasters and their consequences. The author looks at collisions as an application of the ordinary law of negligence to the "car crashes of the sea." Salvage, as we all know, is unique to maritime law. After discussing the use of Lloyd's Open Form (LOF), the author considers the property that can be salvaged, a salvor's duties, services qualifying for salvage, the salvage agreement and salvage awards. Chapter 15 looks at general average, or the form of insurance that apportions contributions between the different interests in shipping. Marine pollution is now of growing concern and is regulated by international conventions, enacted in part into English domestic law (ss. 128-170 *Merchant Shipping Act 1995*).

Chapter 17 on jurisdiction considers the Brussels Convention 1968, *in personam* proceedings in the Commercial Court, *in personam* and *in rem* claims in the Admiralty Court, the *Arrest Convention 1999* and challenges to jurisdiction. A judgment that cannot be enforced is of little value; therefore a claimant will seek to have the court either arrest a vessel or cargo, or grant a *Mareva* injunction preventing the removal of assets out of the jurisdiction. The final chapter in the book looks at the limitation of cargo claims under the two main international conventions in this area.

The author has written a student textbook, which integrates the various aspects of shipping law. It is not as detailed as, for example, Martin Davies and Anthony Dickey, *Shipping Law*, but is up to date and refers to an extensive range of cases and conventions. Many working in the industry may also find it a useful first reference book.