
Book Reviews

D C Jackson, *Enforcement of Maritime Claims*. 3rd ed. London: LLP Professional Publishing, 2000. lxxxiv, 892 pp. [ISBN 1 85978 583 2]

Michael Underdown*

As in other areas of the law, it is one thing to have a claim, but it is another to be able to enforce it. This book deals with the practice of enforcement of maritime claims in English courts, something that is increasing in complexity due to legislative changes and the influence of EU law. As a consequence, it should come as no surprise that this work has doubled in size since the first edition in 1985.

This edition follows the general structure of the two earlier editions, with extensive discussion of the nature of maritime claims, issues of jurisdiction, interim relief, security interests in assets (liens) and the impact of foreign law. The author's underlying approach is to consider the "enquiries which would sensibly be made by a potential claimant." The book is thus clearly designed for practitioners, who need to consider any claim in a systematic way, paying special attention to the jurisdictional, remedial and security implications of Admiralty actions.

While the types of claims that may be pursued under Admiralty jurisdiction in Australia and New Zealand do not differ from those described in this work, the issue of jurisdiction is now much more complex in England because of the application of EU law, including directives relating to recognition and enforcement of judgments, and the impact of the Brussels and Lugano Conventions. These aspects are well covered by the author and will also be of interest to those involved in conflict of laws matters. Actions in rem and actions in personam are well covered, and there is a useful chapter on arbitration.

Practitioners will be interested in the part on interim relief, which deals with ship arrest, security, judicial sale and injunctions. Arrest is, of course, a powerful tool to secure an asset and make it available for enforcement of a judgment. For this reason, it is important to be thoroughly aware of the procedure and its consequences. Bound up with the idea of security is the idea of a lien, or proprietary interest in an asset that is enforceable against third parties. The author covers in a clear manner the maritime and statutory liens, the creation of liens and the principles concerning priority between the various liens.

The two final parts deal with limitation of liability, a topic only briefly touched upon in Cremean, *Admiralty Jurisdiction*, although also well covered by the editor in White, *Australian Maritime Law* (Chapter 10), and the enforcement of foreign judgments and arbitral awards, both under the Brussels and Lugano Conventions and outside them.

This is a useful book for both practitioners and academic lawyers in the field. It contains a wealth of practical information and extracts from the more important legislation, conventions and court rules are provided as appendices.

* DipDrComp (Stras), LLB (Deakin), GradDipLegalPrac (W Syd), MA (Bonn), PhD (Melb). Dr Underdown is a solicitor with the Fisheries and Maritime Team at Fletcher Vautier Moore, Nelson.

Julian Cooke et al, *Voyage Charters*. 2nd ed. London: LLP Professional Publishing, 2001. cxvi, 1185 pp. [ISBN 1 85978 599 9]

This book is a companion to *Time Charters*, also published by LLP. It covers, of course, one of the four principal kinds of charterparties, namely voyage, time, demise (bareboat) and slot (actually a form of time charter), and is a contract for the carriage of goods as distinct from a contract for the use of a ship. This edition differs from the first both with regard to style and by the addition of a new section on the Gencon Charter 1994. However, it retains the original focus throughout on both English and United States practice, with the latter clearly indicated, and on the Gencon and Asbatankvoy forms.

Written by a team of practitioners for those working in this field, the present work covers practically everything that needs to be known about voyage charters, from the formation of the charterparty and the governing law to the effect of the Hague and Hague-Visby Rules on the charterparty.

There are, of course, features common to both voyage and time charters, but there are also distinctive aspects. Most importantly, in a voyage charterparty, the ship is chartered for a particular voyage (or voyages) rather than for a fixed period of time. It is helpful to consider the maritime adventure (the voyage) as involving several stages, and the authors look at these: proceeding to the loading port, loading the cargo, proceeding on the cargo voyage and discharging the cargo. Looking at the voyage in this way allows the different responsibilities of the charterer and owner to be considered. Three very important issues arise in connection with the loading stage (laytime and demurrage) and the cargo voyage stage (deviation and delay), which are thoroughly treated. Other important topics include bills of lading, cancellation, general average and damages for breach.

Charterparties may include special clauses, dealing with strikes, ice, and so forth. One of these clauses (Voywar 1950), covering war risks, is potentially of increased significance at the present time and it may be useful for practitioners to read Chapter 26 (as well as Chapters 44 and 77).

The Gencon Charter 1994 and the Asbatankvoy Charter (a reissue of the Exxonvoy 1969 Charter) are comprehensively covered in the second and third sections. There is extensive coverage of US law in relation to the latter since it is an American charterparty. As already indicated, the work concludes with a thorough examination of the application of the Hague and Hague-Visby Rules to charterparties, either through incorporation in a standard form or expressly by means of a Paramount Clause.

This book is really meant for practitioners and is quite indispensable.

Baris Soyer, *Warranties in Marine Insurance*. London: Cavendish, 2001. lviii, 438 pp. [ISBN 1 85941 615 2]

The author of this work believes that there is a need to reformulate certain provisions in the *Marine Insurance Act 1906* (UK) in order to correct perceived unfairness in the operation of English marine insurance.

The problem in marine insurance is that there must be strict compliance with warranties, whether express or implied (such as the warranty of seaworthiness and the warranty of legality) and that a breach affords the marine insurer a defence even if there

is no causal link between the breach of warranty and the loss that occurs. Furthermore, a breach cannot be remedied.

These questions were considered at length by the Australian Law Reform Commission [ALRC] in its recent review of the *Marine Insurance Act 1909* (Cth), which has identical provisions to the UK Act with regard to warranties. The ALRC went much further than the author of the present work in its recommended changes to the marine insurance regime. Basically, the ALRC recommended abolition of the concepts of express and implied warranties and their replacement by express terms in contracts of marine insurance. Insurers would only be liable for losses proximately caused by breach of an express term.

Such changes would overcome the principal problems identified by the author: unfairness and formalism.

The author comprehensively discusses the nature of warranties, but his treatment of the defences available to marine insurers and the relationship between other affirmative defences and a breach of warranty defence is less thorough. It might have been instructive to have looked at the way such a case was actually argued in court. As mentioned, the work concludes with the author's recommended redrafts of the warranty provisions in the UK Act (pp. 314-6).

This is not a practitioners' handbook, but it does contain food for thought, even if it has been superseded by the much more comprehensive (if more concise) treatment of the subject in ALRC Report 91 (April 2001).

Simon Rainey, *The Law of Tug and Tow (and Allied Contracts)*. 2nd ed. London: LLP, 2002. xliii, 406 pp. [ISBN 1 84311 169 1]

Collisions involving vessels being towed occur often, both at sea and in navigable rivers, and not infrequently the vessels concerned are a tug and a barge. This particular subject makes up only one chapter of this excellent book, but of course any maritime lawyer involved with one of these collision cases must also understand contracts of towage because of the crucial importance of who is in control of the towage operation.

The author exhaustively covers all the main standard form contracts: "Towcon," "Towhire," "Supplytime 89," "Salvcon," "Salvhire" and the various BIMCO/ISU contracts, looking at them clause by clause. These contracts are used not only in connection with standard towage (such as, towage of a barge), but also for the provision of tugs to salvors, for wreck removal and for general marine work.

Having been involved in many towage cases, the author can draw on a wealth of practical experience of the problems that arise in this area of maritime law. Of particular interest is the extensive discussion of Clause 18 of the "Towcon" contract covering "knock for knock" liabilities (pp. 120-145).

Apart from the already mentioned consideration of the law relating to collisions, other general concerns covered in the book include limitation of liability, general average and Admiralty jurisdiction. Necessarily, these topics are only discussed in so far as they relate to tugs and towage.

Examples of most of the standard form contracts are contained in the appendices, along with the Netherlands and Scandinavian tugowners' standard conditions.

The latest edition of this standard work is indispensable for maritime lawyers dealing with towage cases as well as for all those involved in negotiating contracts of towage.