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## The Purpose of Admiralty Law

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### **Introduction**

Admiralty lawyers face a challenge. On the one hand admiralty law is the impressive result of experience gained over many centuries. On the other, the law must keep pace with modern needs. The thesis of this article is that in this area developments should be guided by the underlying purposes of admiralty law. Before that can happen, the underlying purposes have to be identified. Only when they have been identified will we have proper criteria against which to measure proposals for reform. Areas in which admiralty law has developed in obscure or anomalous ways are notable for the absence of any clear articulation of underlying purpose.

### **Why do purposes matter?**

#### *Value of the status quo*

Of course the law should be left alone unless there is clear reason for changing it. Preference for the status quo is even stronger than usual in the case of admiralty law. Its lineage is awe-inspiring, both in its antiquity and in the diverse sources from which it has been drawn.<sup>1</sup> Added to this is its international nature. Individual countries should be slow to depart from that general body of law to which other countries adhere.<sup>2</sup>

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<sup>1</sup> For an interesting account see Wiswall, F.L., *Development of Admiralty Jurisdiction and Practice Since 1800: An English Study with American Comparisons*, Cambridge University Press, 1970.

<sup>2</sup> *Det Norske Veritas AS v The Ship "Clarabelle"* [2002] 3 NZLR 52, at pp 56-57 (CA).

*The need to adapt*

But no area of the law can remain frozen for long. Even without reform, existing legislation and judicial decisions can never hope to provide a clear prescription for all situations that can arise. The courts constantly face the need for fresh legal choices. Recent examples in admiralty law include the questions whether redundancy claims fall within the wages maritime lien,<sup>3</sup> and the circumstances in which shipboard personal injury accidents fall within the scope of the damage maritime lien.<sup>4</sup>

In addition, admiralty law must operate in a constantly changing world. The ability to contact a vessel anywhere in the world has substantially diminished the powers of masters.<sup>5</sup> Owners and charterers now exercise significant control over the running of the ship. Consequently, although once regarded as bailees for the owners, masters are now regarded as merely the servant custodians of owners for bailment purposes.<sup>6</sup> Another example is that growth in the number, size and speed of ships in the late 19<sup>th</sup> century was seen as a reason for interpreting the rules of maritime liability in a manner best fitted to secure careful and prudent navigation, and hence to expand the scope of the damage maritime lien.<sup>7</sup> So admiralty law must keep pace with the changes that are going on around it.

Changes in the court environment are another impetus for change. Early admiralty procedures, such as the judge sitting with two assessors in collision cases,<sup>8</sup> evidence solely by deposition and affidavit, arrest of the person, and a special procedure known as “monition” whereby a person was commanded to appear on pain of contempt, have passed into history. More modern procedures, particularly drawn from common law, have been brought to bear.

*Decline in formalism*

These developmental pressures have been accompanied by a growing tendency to look beyond formalism for the answer to new problems. Formalism focuses upon form and precedent as distinct from practical consequences.<sup>9</sup> The modern trend is to place less emphasis upon formalism and more upon an articulation of the purposes for which a law exists. De-personification of ships illustrates the point. In an earlier age it was useful to personify ships as a metaphor. The metaphor made it easier to apply to ships a bracket of liabilities and procedures drawn from the more familiar treatment of humans and other legal entities. By treating the ship as if it were the actual wrongdoer, an action could be brought *in rem* against the ship itself. On this rationale, concurrent *in personam* liability of the owner or charterer was not a pre-condition to liability of the ship.

Procedural theory, on the other hand, recognises that the action *in rem* is really an indirect action against the person or persons who would be liable *in personam*. On that approach arrest of a ship is simply a way of inducing the owner to appear and defend his or her property. Procedural theory is now dominant in English law, although not in the

<sup>3</sup> *Mobil Oil New Zealand Ltd v The Ship “Rangiora” (No 2)* [2000] 1 NZLR 82.

<sup>4</sup> *Fournier v The Ship “Margaret Z”* [1999] 3 NZLR 111.

<sup>5</sup> Grotmol, F., ‘The Master – Is He Still in Command?’ (1995) 145 *New Law Journal* 1534.

<sup>6</sup> Wiswall, above n 1, at p 143.

<sup>7</sup> *Currie v M’Knight* [1897] AC 97, at p 106 (PC).

<sup>8</sup> In England, the Admiralty judge can still sit with nautical assessors (see CPR 61.13). However, in New Zealand, expert evidence on collision matters is the same as for civil proceedings generally.

<sup>9</sup> Bigwood, R., (ed), *Legal Method in New Zealand*, Butterworths, Wellington, 2001, at p 36.

United States. In *The Indian Grace (No 2)*<sup>10</sup> it was held that, at least in the context of English procedural legislation unconcerned with liens,<sup>11</sup> issue estoppel precludes an action *in rem* following an action *in personam* on the same cause of action. Lord Steyn, with whom the other Law Lords concurred, said at p 913:

The role of fictions in the development of the law has been likened to the use of scaffolding in the construction of a building. The scaffolding is necessary but after the building has been erected scaffolding serves only to obscure the building. Fortunately, the scaffolding can usually be removed with ease: Fuller, *Legal Fictions* (1967) p70. The idea that a ship can be a defendant in legal proceedings was always a fiction. But before the Judicature Acts this fiction helped to defend and enlarge Admiralty jurisdiction in the form of an action *in rem*. With the passing of the Judicature Acts that purpose was effectively spent. That made possible the procedural changes which I have described. The fiction was discarded.

Looking beyond fictions of that kind has practical implications for the way in which the law is developed. An example is the question whether shipboard personal injury claims fall within the damage maritime lien.<sup>12</sup> Traditionally, the requirement that the damage be “done by” the ship was thought to lie at the heart of the damage maritime lien. To modern eyes this makes as much sense as the medieval practice of putting animals on trial for criminal behaviour. Much obscurity followed.

Belatedly it was recognised that the damage maritime lien was aimed at the behaviour of humans, not ships. The purpose of the lien was to encourage humans to be careful about the way in which they navigated. Ships came into it only to the extent that they were the physical instruments through which the targeted human behaviour was manifested. They also happened to be available as an expeditious means of enforcing any judgment obtained. Ships were and are no more responsible for the human behind the wheel than motor cars. But by then much damage had been done to the clarity and consistency of the law relating to damage liens.<sup>13</sup> Contrary to the anthropomorphism much beloved by earlier admiralty lawyers, to qualify for a damage maritime lien the damage in question must have been done by a human, not by a ship.<sup>14</sup> The danger of legal fictions is that they divert lawyers away from the balancing of rights between human beings in a just and rational manner.

The decline in formalism has coincided with the rise of a purposive approach to understanding and applying the law. It is true that in admiralty law a purposive approach must be balanced against other considerations. One cannot overlook the international nature of admiralty law, the reciprocity upon which it depends, the case for international uniformity in the absence of pressing reasons to the contrary, and the centuries of experience upon which admiralty law has been built. Above all, a purposive approach is possible only if the purposes which admiralty law is designed to serve have been identified, a topic to which I now turn.

### General approach to purposes

Understanding the purposes of admiralty law is made no easier by the lack of any clear statements on the subject from Parliament. *The Admiralty Act 1973* (NZ) contains no

<sup>10</sup> [1998] AC 878 (HL) but not followed in *Raukura Moana Fisheries Ltd v The Ship “Irina Zharkikh”* [2001] 2 NZLR 801 (HC).

<sup>11</sup> Section 34 of the *Civil Jurisdiction and Judgments Act 1982* (UK).

<sup>12</sup> *The “Margaret Z”* above n 4, at pp 124-125.

<sup>13</sup> See discussion in part 4(c) of this paper *infra*.

<sup>14</sup> See further *The “Margaret Z”*, above n 4, at pp 124-125.

equivalent, for example, to section 3 of the *Shipping Act 1987* (NZ) which sets out the purpose of that Act (broadly to promote competition in international shipping serving New Zealand). Nor have the courts always been forthcoming in stating why they have preferred particular values over others in their choice of principle.

However, at least the principal purposes of admiralty law have been either articulated by the Courts or can be inferred. The quest begins with the conditions which justified a special system of law for admiralty matters. A creditor's recovery from a shipowner or charterer is inherently difficult. In general the courts have jurisdiction over their own territorial jurisdiction alone. Reciprocal enforcement of judgments between different countries is limited. Shipowners and charterers can be incorporated or resident anywhere in the world. Locations chosen often include countries like Liberia where it can be difficult or impossible to trace the human investors ultimately responsible for the venture. Frequently the only asset of a ship-owning company is the particular ship in question. A ship in port is an asset of large value from which to satisfy debts. Claims arising in connection with ships are likely to be numerous and substantial. A relatively large number of parties are likely to be involved with implications for procedures designed to co-ordinate multiple claims. There is a need to maintain a reasonable level of international reciprocity and uniformity due to the peripatetic nature of the ship and of those having some legal connection with it.

That combination of circumstances suggested the need for a procedure to seize and sell ships and divide their proceeds among creditors. The action *in rem*, the associated powers of arrest and realisation, and maritime liens, were the result. The liens attach regardless of changes in ownership.<sup>15</sup> Deferring distribution of the proceeds of the ship until all creditors have had a reasonable opportunity to lodge claims promotes fairness as between creditors.<sup>16</sup>

So the principal purpose of admiralty law is to provide an effective debt collection system focused upon the proceeds of a ship. But a glance at the scope of admiralty jurisdiction and maritime liens shows that the position is considerably more refined than that. By selecting the particular forms of debt that will qualify for recovery under admiralty law, and allocating priority between them, the law has pursued a variety of competing policy objectives. It has chosen to promote such purposes as investment in voyages, mutual assistance at sea, and the responsible use of ships, and to a much lesser extent, the use of ships by passengers and shippers and investment in ships by owners, mortgagees, and charterers.

Among those classes of claim that qualify, the law has chosen to promote some at the expense of others. All qualifying claimants are given access to a specialised forum, the High Court sitting in its Admiralty jurisdiction, as well as the District Court for claims *in personam*.<sup>17</sup> Virtually all are eligible to bring actions *in rem*.<sup>18</sup> But in case of a shortfall, the claims rank in a preconceived priority. Access to sister ships is also available in only some cases. Broadly speaking, investment in voyages, mutual assistance at sea, and the responsible use of ships, have been given priority over the use of ships by customers and investment in ships by owners, mortgagees, and charterers.

It should also be recognised that a deliberate decision has been made to foster the interests of one group of commercial players at the expense of another. In Australasia,

<sup>15</sup> *The Bold Buccleugh* (1851) 7 Moo PC 267; 13 ER 884.

<sup>16</sup> Rule 791 of the *High Court Rules* provides for publication of the sale of the vessel as well as a presumptive 90 day period before the proceeds of sale can be distributed.

<sup>17</sup> *Admiralty Act 1973* (NZ), section 3.

<sup>18</sup> Non-salvage claims in respect of aircraft appear to be an exception.

for example, there is a tendency to prefer the interests of shippers over shipowners.<sup>19</sup> Claimants with preferred admiralty status tend to be preferred at the expense of shipowners and their financiers. Maritime liens take precedence over the claims of those reliant upon the more general laws of property, insolvency, corporate law, and other areas of commercial law. These points are illustrated in the discussion of particular purposes that follows.

### Particular substantive purposes

#### (a) *To promote investment in voyages*

One of the key purposes of admiralty law is to encourage master, crew and shore services to commit their labour and resources to a given voyage. Entitlement to wages is a matter of contract between the seafarer and his or her employer, but it is admiralty law that provides the maritime lien necessary for security of payment. Wages rate highly in the order of substantive priorities, normally<sup>20</sup> being subordinated only to realisation expenses and a harbour authority's possessory entitlement to harbour dues.<sup>21</sup>

The need to encourage crew to participate has also been recognised as the rationale for adopting a wide interpretation of "wages". Thus the priority of a wages lien has been taken to extend beyond the basic wage itself to sums due in lieu of notice, paid leave, sick leave, damages for wrongful dismissal and the right to a redundancy payment.<sup>22</sup>

The last point illustrates the significance of the particular purpose or rationale thought to underlie the admiralty law in question. Historically, freight was regarded as "the mother of wages," with the result that a seafarer was not entitled to payment until the end of the voyage.<sup>23</sup> The notion was that a seaman "... should have a remedy against the ship which he has served because it is reasonable that in whatever thing a person invests his services or his labour that very thing ought to pay him, therefore everyone who shall buy such a ship must be aware ...".<sup>24</sup> But more recently it was recognised that the underlying purpose of the lien was not to share in the fruits of the voyage but to encourage crew to sign on in the first place. Approached on that basis, there was justification for the widest possible interpretation of "wages" for lien purposes. Lien priority is similarly afforded to master's wages and disbursements.<sup>25</sup> Crew wages, master's wages, and master's disbursements, give access to sister ships as well as to the ships in respect of which the liability was incurred.<sup>26</sup>

The provision of shore-based goods and services is also promoted by the law, but to a lesser level. Creditors can bring *in rem* actions and these extend beyond the particular

<sup>19</sup> For candid acknowledgment, see Australia Law Reform Commission *Report No 33: Civil Admiralty Jurisdiction*, AGPS, Canberra, 1986, at para 129.

<sup>20</sup> In some circumstances salvage (*The Lyrma (No 2)* [1978] 2 Lloyd's Rep 30) and damage (*The Ruta* [2000] 1 Lloyd's Rep 359) may take priority over wages.

<sup>21</sup> Sections 28 and 29 of the *Maritime Transport Act 1994* (NZ). For a helpful summary of priorities in general see Perkins, M.E., "The Ranking and Priority of In Rem Claims in New Zealand" (1986) 16 *VUWLR* 105 at p 116, approved in *ABC Shipbrokers v The Ship "Offi Gloria"* [1993] 3 NZLR 576 at p 582 and *The "Margaret Z"*, above n 4, at pp 116 and 117.

<sup>22</sup> *The "Rangiara" (No 2)*, above n 3; *The "Arosa Star"* [1959] 2 Lloyd's Rep 396; *The Halcyon Skies* [1976] 1 All ER 856; *The "Tacoma City"* [1991] 1 Lloyd's Rep 330; *Wallace v Proceeds of the ship "Otago"* [1981] 2 NZLR 740; *The Great Eastern* (1867) LR 1 A & E 384; *The Blessing* (1878) 3 PD 35.

<sup>23</sup> *Hawkins v Twizell* (1856) 5 El & Bl 883, at p 890; 119 ER 709, at p 712.

<sup>24</sup> "The Customs of the Sea" cited in *Roscoe's Admiralty Practice* (3<sup>rd</sup> ed.), 1903, in turn cited in *The "Tacoma City"*, above n 22, at p 335.

<sup>25</sup> Section 29 of the *Maritime Transport Act 1994* (NZ).

<sup>26</sup> *Admiralty Act 1973* (NZ), section 5(2)(b).

ship to sister ships.<sup>27</sup> For this purpose shore-based goods and services extends to towage, pilotage, goods and services, construction, repair, equipment, dock port and harbour charges and dues.<sup>28</sup> Presumably a provider is more likely to offer its support if it knows that, however transient or insecure the owners or charterer, it can if necessary execute a judgment against the ship itself or its sister ships.

The rationale for allowing *in rem* claims<sup>29</sup> against the ship while in use by the owner extends equally to charterers during the period that they are using, or have immediate responsibility for, the ship. At first sight it may be less clear why *in rem* proceedings have to be commenced by the provider before the charter ends. Inferentially, however, the time limit is to ensure that if there are to be claims against the ship arising from debts incurred by charterers, the proceedings will be brought promptly. Such promptitude will protect others who might otherwise have ordered their affairs on the assumption that the ship was free of any such claims. The time limit enables owners to embark upon further ventures, and to make further commitments, in reliance upon the assumption that the ship is clear of debts incurred by charterers. It also enables other creditors to extend credit to the owner or new charterer safe in the assumption that the ship is not already burdened with debts from a previous charter. This emphasis upon the protection of owners and other third parties dealing with the ship after termination of a charter suggests that an emphasis upon objective and observable events and conduct evidencing an end to the charter is the key, rather than subjective intentions and decisions made behind closed doors. Accordingly, to terminate a charter for the purposes of jurisdiction under section 5(2) of the *Admiralty Act 1973* (NZ), there must be both an end to the contractual right to possession and a return of possession to the owner, whether physical, constructive or symbolic.<sup>30</sup>

It will be noted that the object of attracting shore-based goods and services is rated lower than the vessel-based services of the master and crew. Consequently no lien attaches in favour of the former unless the provider has a common law possessory lien or lien under the *Mercantile Law Act 1908* (NZ).<sup>31</sup>

*(b) To promote mutual assistance at sea*

Another purpose given high weighting in admiralty law is to encourage mariners to assist in the saving of lives and ships in peril at sea. High priority is therefore given to life salvage, and only slightly less to property salvage. Both attract maritime liens, *in rem* actions, and access to sister ships.<sup>32</sup>

*(c) To promote responsible use of ships*

Claimants who suffer loss due to damage effected through the use of a ship enjoy a maritime lien, *in rem* actions, and access to sister ships.<sup>33</sup> The scope of the lien has not always been clear, due almost entirely to uncertainty over purpose. The historical

<sup>27</sup> Ibid, section 4(1)(l); section 5(2)(b).

<sup>28</sup> Ibid, s 4(1)(j)–(m).

<sup>29</sup> That is, those claims not founded upon a maritime lien.

<sup>30</sup> *Mobil Oil New Zealand Ltd v The Ship "Rangiora"* [2000] 1 NZLR 49, at p 77; *Bridon New Zealand Ltd v The ship "Wybia" and Network Shipping NZ (1994) Ltd* (Unreported, High Court, Auckland Registry, AD926, 13 June 2000, Fisher J).

<sup>31</sup> See further Perkins, above n 21, at p 116.

<sup>32</sup> *Admiralty Act 1973* (NZ), sections 4(1)(j) and 5(2); *Maritime Transport Act 1994* (NZ), section 219A; Perkins, above n 21, at p 116.

<sup>33</sup> *Admiralty Act 1973* (NZ), sections 4(1)(d), (f) and 5(2); Perkins, above n 21, at p 116, subject, however, to limitation of liability under Part 7 of the *Maritime Transport Act 1994* (NZ).

rationale for the damage lien appears to have been that it would encourage careful navigation if those suffering loss due to negligent navigation were allowed direct access to the ship as a means of securing redress without the attendant difficulties of finding and suing those personally responsible.<sup>34</sup> Such considerations were articulated by Lord Watson in *Currie v M'Knight*:<sup>35</sup>

The great increase which has taken place in the number of sea-going ships propelled by steam-power at high rates of speed has multiplied to such an extent the risk and occurrence of collisions, that it has become highly expedient, if not necessary, to interpret the rules of maritime liability *in the manner best fitted to secure careful and prudent navigation*. And in my opinion it is a reasonable and salutary rule that when a ship is so carelessly navigated as to occasion injury to other vessels which are free from blame, the owners of the injured craft should have a remedy against the corpus of the offending ship, and should not be restricted to a personal claim against her owners, who may have no substantial interest in her and may be without the means of making due compensation.

Whether the lien extended to personal injury as well as property damage was not always clear but can be answered by reference to purpose. If a lien of this kind is intended to encourage careful navigation, it would be difficult to draw any useful distinction between the two forms of loss. The anxiety to navigate carefully in order to avoid priority claims against the ship will scarcely diminish if the claims in contemplation are personal injury ones rather than damage to property. Nor could one draw any useful distinction between those two forms of loss when considering the justice of compensating the wronged by allowing a lien. In other areas of the law personal injury is treated at least as solicitously as property loss. It would be curious if the reverse were true in the field of admiralty.<sup>36</sup>

Clearly a damage lien is justified if the defendant ship collides with another ship or with fixed property such as a wharf. In either case the purpose of encouraging careful navigation justifies the lien. Less easy to understand are cases in which the damage lien has been extended well beyond cases of inadequate navigation. In a recent New Zealand case<sup>37</sup> it was argued with some justification that it is difficult to see why the lien was extended to cases in which all the material persons and objects had been within the envelope of the ship at the time of the accident. How does this promote careful navigation?

The "damage done by a ship" concept has been taken to extend to the indirect consequences of abandoning another vessel during salvage operations (one vessel engaged in salvaging another; former cast off the latter in such a way as to beach her upon exposed shore; pollution from latter's cargo and oil; admiralty jurisdiction upheld on basis that damage done by former vessel),<sup>38</sup> damage to another ship and equipment caused by equipment failure during cargo operations (plaintiff's grain elevator barge damaged by portion of elevator falling onto deck owing to breaking of wire on derrick of defendants' steamship on which barge had been discharging cargo; while transferring half the grain elevator from the ship the grain elevator was hoisted by the ship's derrick, before grain elevator placed on board the plaintiff's ship the wire broke and half the elevator fell on to the plaintiff's ship causing damage to ship and elevator; held

<sup>34</sup> *The "Margaret Z"*, above n 4, at p 118.

<sup>35</sup> *Currie v M'Knight*, above n 7, at p 106 (emphasis added).

<sup>36</sup> *The "Margaret Z"*, above n 4, at p 122.

<sup>37</sup> *Ibid.*

<sup>38</sup> *The Eschersheim* [1976] 2 Lloyd's Rep 1 (HL).

“damage done by a ship” for jurisdictional purposes),<sup>39</sup> plaintiff crew member falling through space between two hatch covers into hold due to negligence of fellow crew member in moving cover on which plaintiff was about to step without waiting for signal to do so,<sup>40</sup> and a number of other situations in which it has been assumed or held that the ship could be regarded as the cause of the injury where the injured crew member or visitor was in or on it at the time of the accident.<sup>41</sup>

Although most of these cases involved “damage done by a ship” for jurisdictional purposes rather than the purposes of a maritime lien, it would be difficult to accept that different meanings could be attached to the expression “done by a ship” for those closely related purposes. Nor do the authorities recognise any such distinction.<sup>42</sup>

On closer analysis the expression “done by a ship” turns out to be positively misleading. It seems clear that a physical part of the ship or its gear must play an essential part, that the part played by the ship or its gear must be a significant and active one, and that the activity involved must be an operational one in the sense that the ship or its gear is actively used for its designed operational purpose. What is misleading, however, is that far from placing dominance upon the role of the ship or its gear in causing the accident, it is human conduct which must play an essential part before there is deemed to be “damage done by a ship”. The mere fact that the injury could not have occurred without the environment provided by the ship is not enough. Thus injury to a seaman tripping on ropes negligently left on the barge deck is held not to be damage “done” by the barge but merely “on” the barge.<sup>43</sup> And accidents resulting from the condition of the ship, without more, do not qualify.<sup>44</sup>

This is one of those areas in which historical personification of the ship, and failure to articulate purpose, has served to obfuscate the real policy decisions involved. The current purpose of the damage lien is probably best described as the promotion of careful use of ships in general, not merely “careful navigation” as Lord Watson had originally envisaged.

*(d) Other in rem claimants*

Admiralty law has a series of further implicit purposes which rate lower in priority than the ones discussed up to this point. They include assisting authorities with forfeiture and condemnation,<sup>45</sup> promoting the use of ships by its customers,<sup>46</sup> and promoting investment in ships. Investment in ships is presumably encouraged by the admiralty jurisdiction for claims relating to possession or ownership,<sup>47</sup> co-owners,<sup>48</sup> mortgages and charges,<sup>49</sup> damages received by one’s own ship,<sup>50</sup> and the use and hire of ships.<sup>51</sup>

<sup>39</sup> *The Minerva* [1933] P 224.

<sup>40</sup> *Union Steamship Co of NZ Ltd v Ferguson* (1969) 119 CLR 191 (HCA).

<sup>41</sup> See for example *Mersey Docks and Harbour Board v Turner: The Zeta* [1893] AC 468 (HL); *Wyman v The Steamship Duart Castle* (1899) 6 Ex CR 387; *The “Queen Eleanor”* (1899) 18 NZLR 78.

<sup>42</sup> *The Bold Buccleugh*, above n 15; *The Veritas* [1901] P 304; *The Sylph* (1867) LR 2 A & E 24; *Berliner Bank AG v C Czarnikow Sugar Ltd (The Rama)* [1996] 2 Lloyd’s Rep 281; *Union Steamship Co*, above n 40; *The “Queen Eleanor”*, above n 41; *The Eschersheim*, above n 38.

<sup>43</sup> *Mulvey v The Barge “Neosho”* (1919) 47 DLR 437.

<sup>44</sup> *The “Queen Eleanor”*, above n 41; *The Zeta*, above n 41; and *Union Steamship Co*, above n 40.

<sup>45</sup> *Admiralty Act 1973* (NZ), section 4(1)(s), access being confined to particular ship only: section 5(2)(a).

<sup>46</sup> That is, through the *in rem* jurisdiction for claims arising from loss of, damage to, or carriage of, goods: *ibid*, sections 4(1)(g) and (h), and with access to sister ships: section 5(2)(b).

<sup>47</sup> *Ibid*, section 4(1)(a).

<sup>48</sup> *Ibid*, section 4(1)(b).

<sup>49</sup> *Ibid*, section 4(1)(c) and for bottomry (essentially a charge to secure money advanced to enable completion of a voyage) see section 4(1)(f).

Claims under all these heads fall within the *in rem* jurisdiction combined, in some cases,<sup>52</sup> with access to sister ships. None attracts a maritime lien.<sup>53</sup>

### **Administrative and procedural purposes**

The foregoing appear to represent some of the main substantive purposes of admiralty law and the interrelationship between them. Also to be considered are administrative and procedural purposes encountered in the process of giving effect to the substantive purposes. The administrative and procedural purposes appear to include encouraging creditors to preserve and maximise the proceeds of the ship for the benefit of the creditors as a whole, reimbursing taxpayers for services provided to creditors, fostering international cooperation, maintaining an optimum set of procedural rules for resolving maritime issues, and making the best use of the scarce human resources available to give effect to admiralty law. These will be briefly mentioned in turn.

#### *(a) To encourage creditors to preserve and maximise proceeds of ship*

At the core of admiralty law is the need to provide a just and efficient debt collection system for maritime creditors by facilitating execution against the ship or ships concerned. Subsidiary purposes include the need to encourage a creditor to act for the common good in effecting the initial arrest, preserving the vessel, and maximising the net proceeds for creditors.<sup>54</sup> Where there is a shortfall in funds available for creditors, the costs of the producer of the fund therefore rank as one of the highest in the priority.<sup>55</sup>

As a general principle, a creditor has a priority claim against a ship and its proceeds for such costs.<sup>56</sup> This includes, in appropriate circumstances, steps which prevent proceedings from being struck out in circumstances where there would otherwise be no fund for the creditors as a whole.<sup>57</sup> A creditor who incurs expenditure necessary for preservation of the ship after arrest takes priority, but not where the expenditure related to fuel provided to the ship immediately prior to arrest.<sup>58</sup>

#### *(b) To reimburse taxpayers for services rendered to creditors by the state*

Also ranking high in the priorities is reimbursement of any expenses incurred by the Registrar of the High Court.<sup>59</sup> Normally the Registrar obtains the necessary funds in advance from the arresting creditor but any shortfall after realisation would otherwise fall on the taxpayer.

#### *(c) To foster international cooperation.*

Legislative and judicial choices must take into account the international nature of admiralty law. Any temptation to favour local litigants at the expense of their overseas counterparts would be short-sighted, given the reciprocity expected of other countries

<sup>50</sup> Ibid, section 4(1)(e).

<sup>51</sup> Ibid, section 4(1)(h).

<sup>52</sup> See *ibid*, sections 4(1)(e), (g), (h) and (r).

<sup>53</sup> None except for bottomry which, for all intents and purposes, is obsolete.

<sup>54</sup> *Mobil Oil New Zealand Ltd v The Ship "Rangiora"* (1999) 13 PRNZ 563, 568.

<sup>55</sup> *The Falcon* [1977] 2 Lloyd's Rep 243.

<sup>56</sup> *The World Star* [1987] 1 Lloyd's Rep 452.

<sup>57</sup> *Mobil Oil New Zealand Ltd*, above n 54.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

on similar occasions. Individual countries should also be slow to depart from that general body of law to which other countries adhere.<sup>60</sup>

*(d) To maintain the best procedure for resolving maritime issues.*

In New Zealand the admiralty rules used to be contained in a stand-alone form.<sup>61</sup> In 1998 they were moved into Part 14 of the *High Court Rules*. So long as incorporation into general rules does not result in the sacrifice of values special to admiralty it has its advantages for a largely non-specialist bar, judiciary and court staff. It also means that advances in case management, technology and civil procedure can be shared among all jurisdictions including admiralty.

*(e) To make the best use of available human resources*

Jurisdiction and procedure in New Zealand must be structured to make the best use of those few lawyers, judges and registrars that are familiar with admiralty law and practice. In the High Court, Registrars in Auckland, Wellington and Christchurch have a level of expertise, as have a few of the High Court Judges. The specialist Bar is small. It is no criticism of the District Court to say that, with rare exceptions, there is no body of admiralty expertise in that Court. It is difficult for non-specialist court staff, non-specialist judges and non-specialist practitioners to gain much expertise in admiralty given the infrequency of their forays into that field. My own view is that any steps which might dilute the admiralty specialisation we do have in this country should be approached with caution.

### **Conclusion**

The fundamental purposes of admiralty law are reasonably clear. Legislative reform should be guided accordingly. Subject to binding precedents, the courts should follow suit. On the odd occasion past failure to think about purposes has led to haphazard and anomalous law. In cases where underlying purposes are unclear, counsel could usefully devote more time to the policy issues involved and less to the dissection of non-binding precedents. The law is not an end in itself. It is there to serve the purposes of humankind.

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<sup>60</sup> *The Ship "Clarabelle"*, above n 2, at pp 56-57.

<sup>61</sup> *Admiralty Rules 1975*, SR 1975/85.