

BOOK REVIEW

MODERN MARITIME LAW (3rd Edition) Vol. 1 - Jurisdiction and Risks. Vol. 2 - Managing Risks and Liabilities. Dr Aleka Mandaraka-Sheppard, Chairman of the London Shipping Law Centre (LSLC) - Maritime Business Forum and practising Maritime Arbitrator and Mediator. Informa Law from Routledge, Oxford (2013) 357 & 885 pp plus 45 p Index.

The contribution of Dr Aleka Mandaraka-Sheppard to English and International maritime law has long been recognised and appreciated and she has successfully combined an intellectual background with the practical education of legal practitioners specialising in maritime law (and others with an interest in the subject). Aleka Mandaraka-Sheppard has perhaps done more than any other individual in recent years to provide those interested in shipping law with a club-like atmosphere in which to gain further knowledge of the subject. A large number of students and qualified lawyers are indebted to her for founding the London Shipping Law Centre. It is due to her drive and personality - her reputation - that over the years so many prominent lawyers and other maritime experts, from London and other parts of the world, have agreed to give lectures on current topics at a variety of venues in the City, which are invariably followed by questions and informal lively debate, with generous hospitality thereafter provided by supportive firms or chambers. The younger generation have particularly benefited from the LSLC, which has not only enabled them to become more proficient lawyers (and collect CPD points in the process!), but has provided a forum to meet with others engaged in the various aspects of the field of shipping - and to give them and their colleagues the opportunity to get to know fellow case handlers in other firms, whom they might not otherwise have the chance to meet at that stage in their careers. The LSLC is a unique institution which has maintained a consistently high standard, but it would not have existed, let alone thrived, without the energy, foresight and dedication of one person.

That is the mantle of Aleka Mandaraka-Sheppard, and it provides a fitting backcloth against which she has completed the 3rd Edition of Modern Maritime Law which is fittingly dedicated in part to the younger generation of shipping law practitioners.

Some 14 years have elapsed since the first Edition was published. A consideration of the forewords to the editions is proof of the consistent quality and high standards which have been maintained throughout. In the foreword to the 1st Edition in 2001, Lord Mustill described the book as new and comprehensive, a work of which the late Prof Cadwallader would have been proud; in the foreword to the 2nd Edition in 2007, Lord Clarke wrote “this is by any standards a magnum opus” which will serve to “educate future Admiralty judges”; and Sir Bernard Rix in writing the foreword to this 3rd Edition in 2013 endorsed the views of his predecessors, and stamped his seal of approval on what he described as “this splendid work”.

This Edition is the latest in the Maritime Transport Law Library published by Informa Law from Routledge, but it stands alone, not only in that series but also those of Stevens' and Lloyd's, since it tackles the science of risk management, and is written for the guidance of ship owners/managers although, in view of the comprehensive nature of the work, it is clearly intended for the primary consumption of those in the business of providing advice or studying the plethora of regulations which beset owners/managers.

Volume I deals with Jurisdiction and Risks in 8 comprehensive chapters.

It starts by setting out, with clarity and in detail, the history and jurisdiction of the Admiralty Court, and it is explained in such a way as to make it understandable to any student of reasonable intelligence. It deals with the difference between truly in rem claims and those maritime claims which do not give rise to a proprietary right in the ship, but have been made statutory rights in rem by the Admiralty Court Acts. Jurisdiction under s. 20 Senior Courts Act 1981 is dealt with by a detailed consideration of each head of claim, and there is comprehensive coverage of the enforcement of maritime claims. There follows a section on freezing injunctions and Rule B attachment (the latter contributed by the ubiquitous Alan Van Praag of New York. That apart, save for comments and suggestions from a few well-chosen experts, the book remains the sole authorship of Aleka Mandaraka-Sheppard).

When dealing with conditions of arrest, the authoress clarifies and distinguishes between those claims which constitute maritime liens, and those claiming proprietary rights in the ship (principally, ownership/possession disputes or mortgagee enforcement claims), which enjoy the same status but not the nomenclature of maritime liens. On beneficial ownership and piercing the corporate veil, the authoress considers the recent cases of *VTB Capital v Nutritek* and *Petrodel Resources v Prest*, and it is clear that when this book went to press the statements of the law were as up to date as possible. The chapter on the arrest of ships (including the procedural steps to be taken) is similarly comprehensive, with a useful comparison being made of the differences between priorities under English and US law. The dismissal or stay of proceedings for breach of jurisdiction, or for breach of an arbitration agreement (including other arbitration law issues) are dealt with comprehensively, as is forum non-conveniens. It is reasonably clear to the writer of this review that the authoress preferred the minority views expressed by Lords Clarke and Reed on jurisdictional issues in *VTB Capital v Nutritek*. There then follows an analysis of the EU jurisdiction regime including the Recast Regulation, and anti-suit injunctions, from *Turner v Grovit* to *The Front Comor* and the subsequent developments in the English courts.

Volume II is entitled Managing Risks and Liabilities, in 16 chapters.

This is double the length of the first volume and may perhaps be described as the cornerstone of the risk management thesis justifying the science, where each of the four parts making up the Volume contains a useful introduction to the topics being discussed.

Part I is a unique overview of managing risks and the significance of the subject, covering the landmark casualties from 1980 onwards, from The Derbyshire to the Costa Concordia. It covers the Regulatory Regime and latest developments, steps taken in the light of The Erika to implement stringent safety measures, and how the need for those steps were further reinforced when The Prestige casualty occurred some three years later. The ship-source pollution directive and the decision against its challenge is critically examined (Ch 2). The context of Regulatory enforcement (Ch 3) is of particular interest explaining the role of the flag states and of recognized organizations with recent developments from both the EU and IMO. It also covers the latest amendments to the ISM Code, its intended deterrent effect, and the introduction of electronic chart systems whereby the mandatory carriage of ECDIS is planned to be phased in by July 2018. The legal implications of the ISM upon liabilities of owners and managers is extensively analyzed in Ch 4 and, in this edition, the subject is given special treatment after a succinct explanation of attribution of liability under English law, including criminal law.

Part II covers Ownership Aspects and Management of Risk, dealing with acquiring ownership, ship management, including new developments in the law as to the meaning of 'best endeavours', duties and liabilities of managers (Ch 5); mortgages and the respective rights and obligations of both mortgagors and mortgagees (Ch 6), including new developments as to interference with third party contracts and reformulation of economic torts (*OBG v Allan*); chapter 7 on shipbuilding contracts and risks deals comprehensively but succinctly (for the purpose of this volume) with the most important issues that owners, shipyards and lawyers are faced with, covering the latest developments in the law, including the new BIMCO standard terms contract, Buildcon; risks in ship sale and purchase (Ch 8) are equally dealt with comprehensively, including a comparison between some important clauses under the various standard contract forms and the new BIMCO contract 2012, paying particular attention to important decisions on misrepresentation and the effect of exception clauses in a contract, with a warning to brokers to manage their risks. Other current issues and developments in the law of S & P are most clearly analysed, including the effect of the clause in the contract 'as is where is' or 'as she was', buyers and sellers remedies, measure of damages issues, remoteness, mitigation of loss, and risk management for buyers. This chapter ends with a useful summary of civil liability of classification societies.

Part III covers Ship and Port Risk Liabilities, which include such matters as risks and liabilities arising from collisions at sea (Ch 9), issues of fault, specific analysis of the law on liability of the employer for a malicious or criminal act of his employee, damages and remoteness, assessment of damages; limitation periods for the bringing of suit; salvage and The Salvage Conventions (Ch 10) including the operation of SCOPIC; the authoress' views on proposals for a separate environmental salvage award for salvors are of particular interest; the law of towage, including off-shore towage and off-shore supply time charters (Ch 11); General Average, including piracy issues (Ch 12); risk

management by harbour authorities and matters relating to pilotage, as well as wreck removal (Ch 13).

Part IV is entitled Compensation for Liabilities and Limitation under International Conventions, including analysis of the LLMC and comparison of this Convention with limitation of liability under other Conventions with regard to breaking the limit (Ch 14); liability and compensation under the Athens Convention and the 2002 Protocol, which has come into force within the EU member states, and regulations relating to passenger ships, are dealt with succinctly and clearly in Ch 15; oil pollution legislation together with an overview of IOPC and the compensation regime, including the HNS and Nuclear Material Convention, (with acknowledged assistance from Mans Jacobsson) (Ch 16).

Finally, there is an Appendix dealing with the IMO procedures for the adoption or implementation of conventions, and how conflicting conventions are to be dealt with in terms of precedence.

Dr Aleka Mandaraka-Sheppard describes in the foreword the great burden of completing this new edition, the copious and insurmountable new legislation, EU directives, Regulations and IMO Conventions, coupled with the new case law which has developed since the publication of the last edition in 2007 and its reprinting in 2009. One can only sympathise with her and be even more appreciative of the task she has completed so ably. Moreover, there is a sparkle to the writing and, no matter how potentially dull the subject may appear, Aleka Mandaraka-Sheppard contrives to keep the subject matter alive and interesting throughout.

In view of the ever-changing pattern of regulations referred to above, a loose-leaf version would have accommodated the regular updating - which will be an inevitable necessity in due course, or perhaps updating via the internet.

This book is a monumental work, which should grace the shelves of all shipping law firms, P&I Clubs and shipping law chambers with an interest in modern maritime law and/or risk management.

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