

6. RECENT PUBLICATIONS

A. ARTICLES

“Australian Intervention in American Shipping Investigation Proceedings” (1983) 57 *A.L.J.* 258.

J. Gold, “The Fund Agreement in the Courts — XVIII: The S.D.R. in the Courts” (1982) 29 *International Monetary Fund Staff Papers* 647.

From: *Lloyd's Maritime and Commercial Law Quarterly* for February 1983 which may be cited as [1983] 1 *L.M.C.L.Q.*

P. A. Stone, “The Recognition and Enforcement in England of Foreign Personal and Proprietary Judgments” [1983] 1 *L.M.C.L.Q.* 1.

P. Kapoor, “Definition and Classification of Maritime Fraud” [1983] 1 *L.M.C.L.Q.* 29.

Dr D. Abecassis, “I.M.O. and Liability for Oil Pollution from Ships: A Retrospective” [1983] 1 *L.M.C.L.Q.* 45.

J. Kodwo Bentil, “Crimes Committed On Board Foreign Ships on the High Seas and the Jurisdiction of the English Courts” [1983] 1 *L.M.C.L.Q.* 60.

Dr S. H. Amin, “Legal Systems in the Gulf States” [1983] 1 *L.M.C.L.Q.* 71.

S. T. Harley, “The Sea Law Changeth” [1983] 1 *L.M.C.L.Q.* 86.

D. Owles, “The U.S. Tax Collector and the Foreigner” [1983] 1 *L.M.C.L.Q.* 93.

P. B. Matthews, “Releasing Ships from Arrest” [1983] 1 *L.M.C.L.Q.* 99.

N. R. McGilchrist, “Can the U.S. Courts Denounce the Warsaw Convention?” [1983] 1 *L.M.C.L.Q.* 111.

D. Rhidian Thomas, “Judge-Arbitrators” [1983] 1 *L.M.C.L.Q.* 120.

From: *Lloyd's Maritime and Commercial Law Quarterly* for May 1983 which may be cited as [1983] 2 *L.M.C.L.Q.*

R. W. Pritchett, “The Implied Warranty of Seaworthiness in Time Policies: The American View” [1983] 2 *L.M.C.L.Q.* 195.

I. J. Dawson, “Negligence in the Commercial Sphere” [1983] 2 *L.M.C.L.Q.* 209.

R. M. Merkin, “Registration Defences and the Restrictive Trade Practices Act: Three Recent Cases” [1983] 2 *L.M.C.L.Q.* 224.

D. A. McIntosh, "The Practice of Maritime Arbitration in London: Recent Developments in the Law" [1983] 2 *L.M.C.L.Q.* 235.

Dr S. H. Amin, "Iran-U.S. Claims Settlement" [1983] 2 *L.M.C.L.Q.* 248.

J. Kodwo Bentil, "The Foreshadowed Global Legal Regime of Deep Seabed Exploration and Mining" [1983] 2 *L.M.C.L.Q.* 260.

S. J. Hazelwood, "The Peril of 'Pirates' — All 'at Sea'" [1983] 2 *L.M.C.L.Q.* 283.

C. Lewis, "When Arbitration Proceedings Become Stale" [1983] 2 *L.M.C.L.Q.* 289.

A. Arora, "Receiver's Liability for Negligence" [1983] 2 *L.M.C.L.Q.* 294.

N. R. McGilchrist, "Limitation of Liability Under the Warsaw Convention — Further Developments in the U.S." [1983] 2 *L.M.C.L.Q.* 308.

D. Rhidian Thomas, "The Legal Remedies for Dilatoriness in the Pre-hearing Arbitral Procedure" [1983] 2 *L.M.C.L.Q.* 315.

D. Ipp, "Personal Liability and the Admiralty Action *In Rem*" (1979-82) 14 *U.W.A.L. Rev.* 500.

B. BOOKS AND PAPERS

Speakers' Papers from recent Lloyd's of London Press conferences include:

- Insurance in the Arab World;
- Marine Claims (Hull) for Indemnity;
- War Risks;
- Charterparties.

The Papers may be ordered from Lloyd's of London Press, 20 Artillery Lane, London E1 7LT.

J. Gold, *The Fund Agreement in the Courts* (Publications Unit, International Monetary Fund, Washington D.C., Vol. I (1962), Vol. II (1982).)

C. BOOK REVIEW

The Law of Tug, Tow and Pilotage, by ALEX L. PARKS; Adjunct Professor (Admiralty), Willamette University College of Law. (Cornell Maritime Press, Centreville, Maryland, 1982, 2nd edition), pp. i — cxxvi, 1 — 1208, Index 1209 — 1228. Cloth recommended price U.S.D. 00.00 (ISBN 0-87033-265-1).

We publish here, with kind permission of The Australian Law Journal, a book review contributed to that Journal by Mr S. W. Hetherington.

The first edition of this work was published in 1971 and the second edition last year. As is pointed out in the Foreword by Nicholas J. Healy, Snr, another United States attorney with enormous experience in maritime matters, there have been considerable developments affecting shipping in both international and municipal law in the interim and a second edition of this work is therefore timely.

The latest edition is a far more ambitious project than its predecessor. The author explains in his Foreword that he considered it desirable to expand the scope of the book by including United Kingdom and Commonwealth cases and statutes. The author has expressed thanks to leading solicitors and attorneys practising in maritime affairs in London, Vancouver, Sydney and Wellington, and who assisted in the writing of the book. He has, however, limited himself primarily to decisions and statutes from Great Britain, Australia, Canada and New Zealand. A further significant development has been an expansion of the chapter on "Marine Insurance". This chapter, the author tells us, forms the nucleus of a two-volume edition on the single topic of marine insurance which is currently in preparation. That work is also intended to refer to important marine insurance decisions in the United States, the United Kingdom and the Commonwealth.

Alex Parks is well known to members of The Maritime Law Association of Australia and New Zealand. He presented a paper at the Association's last annual conference in Singapore in which he discussed the new Lloyd's cargo clauses and at the Association's forthcoming conference in Sydney in September 1983 he is making a return appearance and will be discussing the new Lloyd's hull clauses. For those who have not had the pleasure of meeting Alex Parks it is pertinent to know that he has been a practising attorney for more than thirty years and is a member of the Oregon State Bar and the senior partner in a firm of attorneys in Portland, Oregon.

Enough has probably been said to indicate that the author has a wide interest in shipping and insurance matters. The esoteric title of this work should not deter those with an interest in shipping from acquiring the book or referring to it in order to obtain assistance in much wider areas of maritime affairs than the title suggests. There are, for instance, chapters, in addition to that dealing with marine insurance, on the subjects of collision and limitation of liability, maritime liens, charters and salvage. As an example of how the author is able to cover a wide range of topics he has cleverly taken the opportunity to recite the heads of cover in a standard P. & I. Club policy which has enabled him to refer to a wide range of cases

and statutory provisions which, although relevant to tug, tow and pilotage would not in the ordinary course of events find their way into a work bearing such a title.

It will come as some surprise to Australian readers to appreciate that the Marine Insurance Act 1906 (U.K.) which was enacted by Australia in 1909 and which has, of course, never been enacted by the Congress of the United States forms a very important foundation for the United States jurisprudence on marine insurance. The author explains this on the basis that as the Act was almost in its entirety a codification of the common law of marine insurance, any decisions upon which each section of the Act is predicated *a fortiori* are and, as the author states "certainly should be", highly persuasive authority in the courts of the United States (see p. 508). Thus, there is a very real commonality between the United States jurisprudence on marine insurance and the jurisprudence which has developed and continues to develop in the United Kingdom and Australia.

The book has been criticised for concentrating on narration of what the law has been declared to be, rather than analysing the reasons for decisions in a critical way, in the light of what the law ought to be. Even if such a criticism has any merit, the benefit to the practitioner of having references to such a wide-ranging number of cases from diverse countries far outweighs the lack of any academic dissection of the cases.

It is, for instance, of great interest to see a comparison, in this one work, of the manner in which the English, American and Canadian courts have grappled with the problems of limitation of liability in a flotilla situation; that is, where a tug towing a barge or barges causes damage to a third party. This particular area of law has clearly caused difficulties on both sides of the Atlantic.

For those who are required to decide, from time to time, what is a "ship" there is also useful commentary of the law of various countries dealing with this difficult question. (One commentator has referred recently to the "extraordinary variety of hardware" being towed about our oceans, particularly in relation to offshore oil drilling rigs.) As an example of the almost infectious joy the author obtains from his work, readers need only read the quotation (at p. 344) from Scrutton L. J.'s judgment in *Merchants' Marine Insurance Co. Ltd v. North of England Protecting and Indemnity Association* (1926) 32 Com. Cas. 165; 43 T.L.R. 107), where his Lordship said:

I find myself in the not very courageous position of saying that all the contribution I can make is to say that I am not convinced that the learned Judge below was wrong. One might possibly take the position of the gentlemen who dealt with the elephant by saying he could not define an elephant but he knew what it was when he saw one; and it may be that this is the foundation

of the learned Judge's judgment; that he cannot define "ship or vessel" but he knows this thing is *not* a ship or vessel.

Although the Australian reader might have wished to see more emphasis on the Australian position in some areas (for instance oil pollution which is covered in respect of the United States, Canada, the United Kingdom and New Zealand) it must be accepted that this is primarily a work for American practitioners. To an Australian practitioner, however, it offers an immensely readable source of reference for a large body of law which would previously have been difficult to locate. Mr Parks is to be congratulated in bringing together so much of the statutory and case law from the English-speaking world in the spheres of maritime and insurance law. This writer looks forward to reading his next work on marine insurance.