

HOW DO YOU TRAIN A SEA LAWYER?

THE PRACTITIONER : KENNETH J. CARRUTHERS, Q.C.

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"A whale ship was my Yale College  
and my Harvard."

Herman Melville, "Moby Dick" Ch. 24.

It occurred to me that the most helpful contribution which I could make to this discussion is to suggest ways in which a maritime lawyer may train himself for practice in the field of maritime law.

Until 1978 there were no basic or post graduate courses in Australia designed for training in this field of the law. Therefore the budding sea lawyer was restricted to self training unless he was fortunate enough to obtain tutoring from a lawyer or lawyers experienced in the field. However the year 1978 saw the commencement of a postgraduate course in International Transport Law at the University of Sydney, under the tutelage of one of our members - Patrick J. O'Keefe B.A., LL.B. (Qld.), LL.M. (A.N.U.) M.A. (Business Law), C.N.A.A.

To quote from the Law Postgraduate Handbook -

"This course will cover the law regulating international transport of people and goods by sea, air and land. Primary emphasis will be on the carriage of goods by sea and air as this is of major economic importance to Australia. Carriage of people by the same modes will be treated but not to the same extent. Carriage by road will be regarded as relevant only for the purpose of a multimodal shipment which includes road transport. The organisation of transport by sea and air (e.g., IMCO, ICAO, shipping conferences and IATA) will be examined. The course will involve detailed study of applicable Australian legislation and relevant international conventions. A comparative analysis of judicial interpretation of these conventions will also be made as well as an examination of any proposals for amending them."

This course constituted a landmark in the study of maritime law in Australia and has the happy result of bringing us into line with New Zealand, which provides a Maritime Laws Option LL.B. (Hons.) Course at the Victoria University of Wellington.

The existing basic courses of training in law at Australian universities and colleges provide a grounding

in the areas of legal study which provide the foundation for legal practice.

Thus one obtains a basic grounding in the law of torts, contract, agency, sale of goods, constitutional law and criminal law and the like. To these are added a basic training in practice and procedure in courts of equity, common law, commercial law and criminal law.

Not only does the embryonic maritime lawyer have to build upon these basic foundations by the study of specialised areas of the law but he must also familiarise himself with the vast areas of specialized knowledge required of the maritime lawyer.

The specialist areas of maritime law are many. They can be conveniently categorised as follows:-

Carriage of goods by sea. (This involves multimodal transport, freight forwarding, charter parties and CIF and FOB contracts.

Carriage of passengers by sea.

Marine insurance.

Salvage.

Collisions at sea.

Marine pollution.

General average.

Shipbuilding contracts and the sale and mortgage of ships.

Tug and tow.

Conflict of laws.

This is by no means an exhaustive list.

So far as procedure is concerned it is necessary to be familiar with the practices and procedures of the admiralty jurisdiction in particular, the arrest of ships and the enforcement of maritime liens. The arrest of ships presents special problems for lawyers. See e.g.

The "Lastrigoni" (1974) 48 A.L.J.R. 295.

It is also necessary to be familiar with the practices and procedures relating to maritime arbitration.

To these traditional areas of maritime law and practice must now be added the related problems of the law of the sea and of the coastal zones which have in recent times attained much greater significance than in the past.

The Australian maritime lawyer has a particular problem in that he is still reliant upon much of the English statute law, which was introduced into this country at the time of the foundation of the colonies and which is still applicable in its original or amended form.

In addition to a study of these purely legal matters, it is necessary for the sea lawyer to attain a working knowledge of the shipping industry and its ancilliary services such as insurance.

This is a vast area and a lifetime's work.

It involves familiarisation with the structure of the industry and the various types of ships which are used for the transportation of cargo and passengers. The design of ships and the mode of carriage of cargo on these ships, together with the loading and discharge methods, have undergone dramatic changes in recent years. Reference need only be made to container vessels, RO RO and LASH vessels, livestock carriers, car carriers, LPG carriers and the like.

Much sophisticated machinery is now being used for the purpose of containing the cargo, facilitating its loading and facilitating its discharge. An understanding of the various methods of working cargo is important.

It is necessary to be familiar with the practices and procedures of shipbrokers and charterers, particularly so far as the fixing of vessels is concerned.

It is also necessary to be familiar with the day to day practices relating to voyage charters, time charters and bareboat charters. This involves familiarisation with the particular language used by brokers much of which is used in telexes which are often the subject of scrutiny in legal proceedings. This introduces one to the world of MOLOO and SHEX and other esoteric acronyms.

Insofar as collision work is concerned it is necessary to be familiar with the basic principles of coastal and stellar navigation and the general crewing and working of a ship, together with the Rules of the Road.

This is a convenient time to mention the law of pilotage and tug and tow - not to forget wrecks and salvage.

Marine insurance is an enormous field of its own and it is necessary to obtain a working knowledge of the various Institute clauses and their particular application. The practice and procedure and general principles relating to cargo and hull insurance should be mastered.

It is also of importance to be familiar with the activities of the great P. & I. Clubs with the enormous proliferation of activities undertaken by these associations.

Maritime pollution has in recent times attained importance because, amongst other things, of the increased use of super tankers.

At the moment the main source of maritime pollution is oil pollution and the ability to handle oil pollution cases involves a knowledge of the construction of tankers and other vessels and the practical methods that are available to eliminate or minimise the possibility of spillages. It also requires a knowledge of the characteristics of oil.

General average is a specialist field but nevertheless the maritime lawyer must be familiar with the practice of general average adjusters.

Disputes relating to shipbuilding contracts require a knowledge of the basic methods of ship construction and practices within the industry.

A knowledge of the classification societies and their requirements and procedures is helpful.

The complexities relating to the ownership of vessels, their sale and mortgage must also be mastered.

The registration of ships presents interesting

and varied problems - particularly in this day of the flags of convenience - which leads one into the area of industrial problems.

Few industries provide the proliferation of industrial problems presented by the maritime industry. Of course the current industrial climate in Australia and New Zealand and indeed in many other countries cannot be divorced from the history of the industry.

Therefore one must be familiar with the industrial history of the industry and the industrial figures who have played and still play a vital role therein.

Then, of course, there is the Conference System, which is an accepted part of modern trading. The maritime lawyer is therefore, in Australia, required to be familiar with Part X of the Trade Practices Act.

From time to time, maritime lawyers are required to present themselves before Courts of Marine Inquiry, where their expertise will be subjected to the acid test for it is common for lay assessors to sit with the Judge in such Inquiries. They will soon determine whether the lawyers know the blunt from the sharp end of a ship.

In the overseas situation it is as well to know what is happening at UNCITRAL and UNCTAD and C.M.I. and the myriad other international organizations connected with maritime law.

There is an endless amount of documentation involved in shipping transactions. The documentation often varies with the trade in which the ship is involved. Regrettably most of the documentation is set out in microscopic print but one must overcome the physical problems of reading it and so become familiar with every type of document used in the industry - from a mate's receipt to a charter party for a super tanker.

Herman Melville believed that there was no better form of education than to serve upon a whaling ship.

This occupation is denied to most of us but,

on the other hand, I assert that it is invaluable for a maritime lawyer to obtain practical experience within the industry - e.g. a period of employment in a shipping company, P. and I. Club, shipbrokers or the Marine Department of an Insurance Company.

All this effort is worthwhile, because it will result in your becoming a member of the international family of maritime lawyers.

There is a universality about this area of the law which gives it a charm and an attraction of its own.

Irrespective of where you are in the world you will find that maritime lawyers have a great common interest, which unites them.

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I have set out in the annexure a list of books which are helpful to the maritime lawyer.

It is by no means an exhaustive list and any recommended additions would be welcome.

GENERAL.

SHIPPING LAW	CHORLEY & GILES
SHIPPING PRACTICE (WITH A CONSIDERATION OF RELEVANT LAW)	STEVENS
CASEBOOK ON SHIPPING LAWS	IVAMY
ADMIRALTY DIGEST (2 VOLUMES)	PRITCHARDS
LAW OF MERCHANT SHIPS AND SEAMEN (Out of Print)	ABBOTT
LAW OF MERCHANT SHIPPING (Out of Print)	MACLACHLAN
THE MERCHANT SHIPPING ACTS	TEMPERLEY VOL. 11 B.S.L.
BUSINESS AND LAW FOR THE SHIPMASTER	HOPKINS

ADMIRALTY PRACTICE

ADMIRALTY PRACTICE	WILLIAMS & BRUCE
ADMIRALTY PRACTICE	ROSCOE
SHIPPING ENQUIRIES & COURTS	McMILLAN
ADMIRALTY JURISDICTION IN NEW SOUTH WALES	JORDAN C.J.
ADMIRALTY PRACTICE	VOL. 1 B.S.L.
THE MERCHANT SHIPPING ACTS	VOL. 11 B.S.L.
STUDIES OF THE HISTORY OF THE ADMIRALTY AND PRIZE COURTS	ROSCOE

CARRIAGE OF GOODS

CARRIAGE BY SEA	CARVER VOLS. 2/3 B.S.L.
MARINE CARGO CLAIMS	TETLEY
CARRIAGE OF GOODS BY SEA	PAYNE & IVAMY
COMMON CARRIAGE OF CARGO, DAMAGES, JURISDICTION, LIABILITY AND NEGLIGENCE	LONGLEY
CARRIAGE OF GOODS BY SEA ACT, 1924	COLINVAUX
CASEBOOK ON CARRIAGE BY SEA	IVAMY

CHARTER PARTIES - BILLS OF LADING.

CHARTER PARTIES	SCRUTTON
CHARTER PARTIES	STEVENS
CHARTER PARTIES AND OCEAN BILLS OF LADING	POOR
DEMURRAGE	STEVENS
THE LAW OF DEMURRAGE	TIBERG
LAYTIME	SUMMERSKILL

GENERAL AVERAGE

LAW OF GENERAL AVERAGE AND  
YORK-ANTWERP RULES

LOWNDES & RUDOLF VOL. 7 B.S.L.

NOTES ON GENERAL AVERAGE FOR  
MASTERS AND SHIPS AGENTS

CRUMP (RICHARDS, HOGG  
INTERNATIONAL)

MARINE INSURANCE

MARINE INSURANCE

ARNOULD VOLS. 9/10 B.S.L.

MARINE INSURANCE

IVAMY

MARINE INSURANCE AND LOSSES

TYSER

IMPORT AND EXPORT TRADE

THE EXPORT TRADE

SCHMIDDHOFF

INTERNATIONAL TRADE LAW

RYAN

CIF AND FOB CONTRACTS

SASSOON VOL. 5 B.S.L.

COMMERCIAL LETTERS OF CREDIT

PURVIS

COLLISIONS AT SEA

COLLISIONS AT SEA

MARSDEN VOL. 4 B.S.L.

THE MEASURE OF DAMAGES IN  
MARITIME COLLISIONS

ROSCOE

THE LAW OF PILOTAGE

GEEN

A GUIDE TO THE COLLISION LAWS

COCKCROFT

TOWAGE

THE LAW OF TUG, TOW AND  
PILOTAGE

PARKS

THE ARREST OF VESSELS )  
THE ENFORCED SALE OF VESSELS )

VOLS. 1 and 2  
INTERNATIONAL BAR ASSOCIATION

SALVAGE

CIVIL SALVAGE

KENNEDY

ASSESSING OF SALVAGE AWARDS

SUTTON

FORMS AND PRECEDENTS

FORMS AND PRECEDENTS

COLINVAUX VOL. 6 B.S.L.

PRECEDENTS OF PLEADING

BULLEN & LEAKE & JACOBS

Masters Handbook

Ocean Freight & Chartering - Corby,

Shipping & Chartering Terms - Ben

REGISTRATION AND MORTGAGE OF VESSELS

REGISTRATION OF VESSELS	VOL. 3 INTERNATIONAL BAR ASSOC MARITIME LAW
MORTGAGE OF VESSELS	VOL. 4 " " " "
SHIPOWNERS	SINGH & COLINVAUX VOL. 13 B.S.
TONNAGE MEASUREMENT OF SHIPS	FAIRPLAY REPORT

FREIGHT FORWARDERS

FREIGHT FORWARDERS	HILL
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PRACTICAL

CARGO HANDLING IN MODERN PORTS	ORAM
NOTES ON CARGO WORK	KEMP & YOUNG
LLOYDS REGISTER OF SHIPPING	
LLOYDS CALENDAR	
THE SHIPS THAT SERVE AUSTRALIA AND NEW ZEALAND	VOL. 1. AUSTRALIAN & NEW ZEALAND FLAG VESSELS
	VOL. 2 OVERSEAS FLAG VESSELS
X MERCHANT SHIPS (A PICTORIAL STUDY)	LA DAGE & OTHERS (CORNELL MARITIME PRESS)

SHIPBUILDING CONTRACTS

THE LAW OF BUILDING ENGINEERING AND SHIPBUILDING CONTRACTS	HUDSON
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MARINE POLLUTION

OIL POLLUTION PROTECTIVE MEASURES (2 VOLUMES)	SKULD
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THE LAW OF THE SEA

THE LAW OF THE SEA	LUMB
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PERIODICALS

LLOYDS MARITIME AND COMMERCIAL LAW QUARTERLY  
JOURNAL OF MARITIME LAW AND COMMERCE (U.S.)  
THE SHIPBROKER  
FAIR PLAY

HISTORICAL

BLACK BOOK OF THE ADMIRALTY (2 VOLUMES)	
THE ENGLISH NAVIGATION LAWS (A 17TH CENTURY EXPERIMENT IN SOCIAL ENDEAVOUR)	HARPER
A MARITIME HISTORY OF AUSTRALIA	BACH
THE RESTLESS WATERFRONT	GABY