

## BOOK REVIEW

**Damien J Cremean, *Admiralty Jurisdiction Law and Practice Australia, New Zealand, Singapore, Hong Kong and Malaysia*. Federation Press (4<sup>th</sup> ed, 2015). 352 pp  
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Damien Cremean is to be commended for the latest edition of his ever expanding Asia Pacific focused account of Admiralty law. In 7 years he has enlarged his original Australian work (the first edition) to include the laws of neighbouring New Zealand (the second edition) and thence to Hong Kong and Singapore (the third edition) and now in the Fourth edition to take in Malaysia. By so doing he has created a very useful account of the various statutory provisions of this region, together with an examination of the local case-law. Although the Admiralty law in these jurisdictions stem from the same English law rootstock, the courts in this region they have not hesitated to depart from English case law where they consider it is necessary to do so. For this reason it is necessary to have a work such as this to highlight these differences not only as there may be from English law, but also as between the different jurisdictions. Although the advent of the internet has made access to case law in different jurisdictions easier, it is of no use simply to pluck a decision from one jurisdiction without understanding the context in which it has been given. This context may include subtle differences in the statutory provisions or some divergence in the case law. It is these features which Cremean is able to highlight in this very useful book.

The structure of the book follows a conventional approach and is divided into four chapters. Chapter 1 is an Introduction covering the nature and origin of Admiralty Jurisdiction and then providing an overview of the five jurisdictions. Chapter 2 covers Courts and jurisdiction before turning the meat of the subject in Chapter 3 Admiralty Claims and Chapter 4 Practice and Procedure. It is perhaps an interesting observation that each Chapter gets progressively longer which highlights just how important practice and procedure are to this area of the law, arguably more so than in any other area of the law.

In Chapter 1 section 3 “Local Development” explains how these 5 jurisdictions obtained their current jurisdiction, and how their respective Admiralty jurisdictions had developed through their differing colonial history. However of more relevance are the following sections which deal respectively with the present day and provide a jurisdictional overview of Australia and New Zealand (section 4) and Singapore, Hong Kong and Malaysia (section 5). Thus in section 4 there is a discussion of the principles of statutory construction which have been applied by courts in Australia to the construction of the Admiralty Act 1988 (Cth) as well as noting that the Australian Act distinguishes “proprietary” maritime claims from “general” maritime claims. In section 5 it is observed that Malaysia is unique in that it defines its Admiralty jurisdiction by reference to the English 1981 Act. Finally section 6 covers the constitutional issues which may arise in Australia, which will of course be of particular importance to Australian practitioners.

Chapter 2 entitled “Courts and Jurisdiction” delves into greater detail of the themes established in sections 4 and 5 of Chapter 1. There is an interesting discussion of the problems thrown up by the English House of Lords decision in *Republic of India v India Steamship Co. Ltd. (no.2)* [1988] AC 878 regarding the nature of an Admiralty action *in rem* and how courts in Australia, New Zealand and Singapore have not felt obliged to follow that decision.

The book really comes into its own in Chapters 3 and 4. Chapter 3, “Admiralty Claims”, identifies in each of the 5 jurisdictions being considered the various heads of claim which give rise to claims within the Admiralty jurisdiction. In relation to each one it provides the statutory head of jurisdiction and compares the wording of each across the different jurisdictions. It notes that the position in Australia is different to the other jurisdictions which more closely follow the English heads of jurisdiction. Thus in Australia alone there is Admiralty jurisdiction in respect of the following claims:

- (i) Mortgage of a ship’s freight;
- (ii) A claim for the satisfaction or enforcement of a judgment given by a court (including the court of a foreign country) against a ship or other property in a proceeding *in rem* in the nature of a proceeding in Admiralty;<sup>1</sup>

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<sup>1</sup> Although a similar jurisdiction exists under the inherent jurisdiction in the others: *The “City of Mecca”* (1897) 5 P.D. 28

- (iii) A claim for interest;<sup>2</sup>
- (iv) Oil pollution under Part II or IV the Protection of the Sea (Civil Liability) Act 1981 or equivalent State of Territory legislation;<sup>3</sup>
- (v) A levy in relation to a ship including under the Protection of the Sea (Shipping Levy) Act 1981, being a levy in relation to which a power to detain the ship is conferred by a law in force in Australia or in a part of Australia;
- (vi) A claim for insurance or for a mutual insurance call in relation to a ship;
- (vii) A claim for the enforcement of a claim arising out of an arbitral award made in respect of a claim otherwise within the Admiralty jurisdiction.

There is then a discussion of other matters such as claims for wrongful arrest. In this regard Australia has a statutory remedy where there has been an arrest or demand for excessive security “unreasonably and without good cause” whereas in the other jurisdiction the English test of “mala fides or crassa negligentia” still applies.

Chapter 4 is the largest Chapter and provides comprehensive cover of the procedural aspects in the various jurisdictions and highlights some of the differences in approach to matters such as *forum non conveniens*.

Finally, at the end of the book are few precedents which is really the least useful part of the book.

Overall this is very welcome new edition of a work which has become an essential point of reference for Admiralty law in the Asia-Pacific region and which I am sure will prove as popular as the previous editions. Its key features are its readable style and comprehensive yet concise coverage of the subject matter.

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<sup>2</sup> Again a similar jurisdiction exists under the inherent jurisdiction in the others: *The “Northumbria”* (1869) L.R. 3 A. & E. 6

<sup>3</sup> Although it would fall within the broad “damage done by a ship” jurisdiction in the other jurisdictions.