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Maritime Law

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Book Review

Edgar Gold, Aldo Chircop, Hugh Kindred, *Maritime Law* (Toronto: Irwin Law, 2003) 806 pp.

This substantial work, written by three members of the faculty of the Marine and Environmental Law Institute at Dalhousie University, is part of the Irwin Law, *Essentials of Canadian Law* series. Running to just over 800 pages of text, it covers the waterfront, so to speak, of its subject matter. An indication of the scope of the text is reflected in the division of labour among the three authors. They co-authored an introductory chapter and each took responsibility for writing different chapters of the rest of the book. Edgar Gold, a former ship captain and a Master Mariner, has been associated with the Faculty of Law at Dalhousie University for over twenty-five years and brings to the subject-matter a wealth of practical knowledge, as well as first-hand familiarity with the international legal and regulatory regimes. Professor Gold wrote the chapters on the Shipping Industry, Safety Management of Ships, Marine Insurance, Maritime Collisions, Maritime Salvage and Wreck and Marine Pollution. Professor Chircop, who teaches and writes in the fields of maritime and environmental law, administrative law and coastal and ocean management, was responsible for the chapters on Admiralty Jurisdiction, Ownership and Registration of Ships, Maritime Liens, Personal Injury and Death Claims, Pilotage, Towing and Limitation of Liability. Hugh Kindred, a teacher at Dalhousie Law School since 1971, dealt with Carriage of Goods under Charterparties and Bills of Lading, the Carriage of Passengers, General Average and Marine Mortgages. Finally, although not a named co-author, experienced Halifax admiralty lawyer Will Moreira, Q.C., wrote the chapter on Admiralty Procedure.

The authors set out to write a book to fill the lack of a “distinctively Canadian text” on Canadian maritime law. While there are some general Canadian works on maritime law,¹ and a few on specific aspects of the

1. R.M. Fernandes, *Boating Law of Canada* (Toronto: Carswell, 1989); *Shipping and Admiralty Law*, (Toronto: Carswell, 1995), *Transportation Law*, (Toronto: Aerospace Press, 2001). There is, as well, the extraordinarily comprehensive and internationally-respected work of Professor William Tetley of McGill University, including: *Marine Cargo Claims*, 3d ed. (Cowansville, Que.: Yvon Blais, 1988); *International Conflict of Laws*, Cowansville, Que.: Yvon Blais, 1994); *Maritime Liens and Claims*, 2d ed. (Cowansville, Que.: Yvon Blais, 1998); *International Maritime and Admiralty Law* (Cowansville, Que.: Yvon Blais, 2002).

subject² the authors have, by and large, achieved their goal and their book is a welcome addition to Canadian scholarship.

The book is true to its title – it covers the *Essentials* and provides an excellent overview of the subject. It is an eminently readable introduction for student, practitioner, regulator or maritime industry professional. While there is a good deal in the book that is not “Law,” and concerns the practical aspects of the shipping business, the authors appreciate that to understand maritime law, one must first understand ships, the sea and the shipping business. Admiralty law is a practical subject, forged over the centuries to meet the needs of the shipping industry. Only by understanding these needs and the environment in which ships and mariners operate, can one comprehend the unique principles and practices of maritime law. This is one of the few texts to make the necessary connection between legal principles and the practice of international shipping.

That being said, from the perspective of a practising lawyer and a teacher, the book suffers at times from a disproportionate emphasis on practical matters, to the detriment of legal analysis. For example, the chapter on marine insurance covers at considerable length the history of marine insurance, the evolution of the marine insurance market, the technical aspects of various forms of marine insurance (hull and machinery, loss of hire, protection and indemnity, defence cover, war risk and cargo insurance) and the various marine insurance clauses. This is good practical material and provides useful background. Yet the analysis of some of the key legal issues in modern Canadian marine insurance is rather superficial. The important question of disclosure in marine insurance contracts is given limited coverage and virtually no analysis. It is made to appear that English authorities on the subject are the law of Canada³ when it is by no means clear that Canadian courts have adopted the tests laid down in England. The significant body of Canadian case law surrounding the subject of warranties and the consequences of a breach of warranty is given very little study. The difference between a “true” warranty, a “suspending condition” and a “promissory” warranty is identified, but not explained, nor are the consequences of the breach of each. Lawyers and students grappling with

2. See R.M. Fernandes, *Marine Insurance Law in Canada*, (Toronto: Butterworths, 1987); J.D. Buchan, *Mortgages of Ships: Marine Security in Canada* (Toronto: Butterworths, 1986); G.R. Strathy, & G.C. Moore, *Law and Practice of Marine Insurance in Canada* (Toronto: LexisNexis Butterworths, 2003); G.R. Strathy, *The Law and Practice of General Average in Canada* (Toronto: the author, 1995).

3. *Container Transport International Inc v. Oceanus Mutual U/W Association (Bermuda) Ltd.*, [1984] 1 Lloyd's L.R. 476; *Pan Atlantic Insurance Co. v. Pine Top Insurance Co.*, [1995] 1 A.C. 501

the sometimes confusing substantive law in these areas will find the issues identified, but will have to find the statutory and case law for themselves.

By the same token, the chapter on maritime collisions has what might be considered disproportionate emphasis on the technical analysis of the *Collision Regulations* ("ColRegs") and fairly thin examination of the overriding principles governing collision liability. Some twenty-four pages are spent on the *ColRegs* and only eight pages on the principles of liability, negligence, statutory provisions, the Collision Avoidance Rules, defences, division of loss and finding of fault. While the *ColRegs* are undoubtedly of critical importance in the analysis of marine collisions, it might be easier for the reader to learn about general principles first, before getting into the intricacies of narrow channels, traffic separation schemes and who has the right of way in various situations.

The important subject of "perils of the sea," which arises in both marine insurance and in the carriage of goods by water, is the source of some confusion and may reflect the division of work between different authors. In the chapter on marine insurance, it is said that perils of the sea means "those which are peculiar to the sea, which are of an extraordinary nature or arise from an irresistible force or overwhelming power and which cannot be guarded against by the ordinary exertions of human skill and prudence." The authority for this proposition is a 1971 decision of the United States Court of Appeals for the Second Circuit dealing with the carriage of goods by water.⁴ One wonders why the authors found it appropriate to cite an American case on the subject when there are leading Anglo-Canadian authorities on the subject.⁵ More to the point, the use of a carriage of goods definition in a marine insurance context is misleading as the tests are not really the same. While the authors eventually state the test correctly in the marine insurance context ("the term only includes fortuitous accidents or casualties of the seas, but not the ordinary action of the winds and the waves") the juxtaposition of the two apparently contradictory statements, without any explanation, is confusing and potentially misleading.

The chapter on carriage of goods under bills of lading contains an equally confusing statement with respect to perils of the sea. The authors state that a peril of the sea "is a danger from water, wind, and weather of such a degree that the risk of damage to the cargo could not have been foreseen or guarded against as one of the probable incidents of the voyage." While this statement is accurate as far as it goes, the authors continue

4. *J. Gerber & Co. v. S.S. Sabine Howaldt*, [1971] A.M.C. 539.

5. *Canada Rice Mills Ltd. v. Union Marine and General Insurance Co.*, [1941] A.C. 55, [1941] 1 D.L.R. 1 (J.C.P.C.); *Century Insurance Co. of Canada v. Case Existological Laboratories Ltd.*, [1983] 2 S.C.R. 47.

by suggesting that “the degree of severity of the weather, according to Canadian courts, need not be great.” They suggest that this is in contrast with courts in the United States and the United Kingdom which “permit only extraordinary weather conditions to constitute a peril of the sea.” Yet the authors do not cite one of the leading Canadian cases on the subject, *Kruger Inc. v. Baltic Shipping Co.*,⁶ in which it was held that a hurricane in the North Atlantic in the winter months did not give rise to the perils of the sea defence because the ship’s defective construction rendered it unseaworthy and unfit to sustain the contemplated voyage. In reality, perils of the sea and seaworthiness are two sides of the same coin – a seaworthy ship is one that is fit to withstand the foreseeable perils – an unseaworthy ship is one that does not. While the severity of the weather is not the only touchstone for a peril of the sea in the carriage of goods context, it is certainly an important one.

The foregoing comments perhaps highlight the strengths of the text as well as its main shortcoming. Its focus on the practical and technical aspects of the world of international shipping sets it apart from recent Canadian and international maritime law texts, and for that reason alone it is an extremely useful work. At times, however, this is to the detriment of a more thorough examination and analysis of the statutory and judge-made law. For a relatively minor player in the international maritime community, Canada has generated an impressive body of legislation and case law, much of it unique. In light of the authors’ desire write a distinctively Canadian text, it is unfortunate that there has not been a more in-depth analysis of the Canadian case law.

In fairness, most of the chapters are concise, well-written and very useful summaries of the principles of maritime law and are eminently readable and interesting. Recent developments at the international level are explained in the Canadian context. There are excellent summaries of most of the important pieces of Canadian maritime legislation as well as the major international conventions. For the uninitiated, each chapter will provide a good introduction to the subject. For more experienced readers, the book provides a good overview and an interesting perspective. Some very complex subjects such as admiralty jurisdiction, general average, limitation of liability and the regimes governing maritime pollution have been clearly explained and simplified. The chapter on admiralty procedure is a thorough introduction to a complex subject. In these and other respects the authors have accomplished their goal with distinction.

6. [1988] 1 F.C. 262, (T.D.), aff’d. (1989) 57 D.L.R. (4th) 498 (F.C.A.), application for leave to appeal to S.C.C. discontinued, [1989] S.C.C.A. No. 220.

It is far easier to review a book than to write it. The preparation of a work of this significance, even when shared amongst three authors, is a massive undertaking and a labour that only those who truly love and understand their field could undertake. There are no three individuals in a single institution in Canada who were better equipped to undertake the task and those who practise and teach in the area owe them a debt of gratitude for having written this book.

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