ADMIRALTY LAW & PRACTICE BY TOH KIAN SING [Singapore: Butterworths Asia. 1998. lxxx + 637 pp including index and appendixes. Hardcover: S$280 (excluding GST)]

IN a book comprising 504 pages of text, the author has managed to cover the basis of admiralty jurisdiction in Singapore and Malaysia, the nature of the various maritime claims and the enforcement of such claims.

The added feature of the book is that it covers the entire range of issues which usually arise in connection with enforcement of maritime claims. The shipping practitioner will be grateful to find that subject matter in rem jurisdiction, invocation of in rem jurisdiction and procedural matters leading to arrest and release of a vessel, sale and distribution of the sale proceeds are exhaustively covered in the book. The book also dedicates a separate chapter to Maritime Liens, Possessory Liens and Priorities. There is also coverage on the Admiralty In Personam Action, Limitation Periods, Limitation of Liability and Forum Selection. In a sentence, this book is a comprehensive treatise on admiralty law and practice in Singapore and Malaysia.

Any reader would be impressed with the case law covered by the book as the author has referred to Canadian, Australian and New Zealand authorities to illustrate the different or identical positions taken by the various courts on the particular issue discussed. This is commendable as there is a large measure of similarity in the laws of these countries and the laws of Singapore and Malaysia. In this connection, the author could also have referred to Irish decisions as there are a number of decisions from that jurisdiction which are relevant. For example, in *Targe Towing Ltd* v *The Von Rocks* [1997] ILRM 542, Barr J held that a dredger under tow which takes no part in the towing operation *per se* cannot be regarded as being "used in navigation" and consequently was not a "ship" capable of arrest. Further, his Honour held that even if such a dredger could be described as being capable of navigation when towed for minute distances during the course of the dredging operations, or while towed at sea from one contract site to another, the dredger was not a "ship" since

its primary purpose was to be a rigid platform for dredging. In such a case, any use in navigation put to the dredger was merely incidental. Such reasoning would lead to the conclusion that hulks of vessels used as floating hotels and floating restaurants which are anchored to *terra firma* would not be "ships" within the meaning of the High Court (Admiralty Jurisdiction) Act.

Wherever there is local case law on any particular point, the author has striven to inform the reader of the existence of such case law. However, a local decision which is not referred to by the author is the Singapore Court of Appeal's decision in *Middle East Shipyard Pte Ltd* v *Sin Chin Seng Shipbuilding Pte Ltd*, Civil Appeal No 58 of 1986, judgment delivered on 6 October 1988 and reported at [1988] 3 MLJ 361. This appeal was from an order made by Sinnathuray J relating to the vessels built for the Government of Burma which had been the subject of earlier litigation (reported in [1979] 2 MLJ 8). In fact, both Middle East Shipyard Pte Ltd and Sin Chin Seng Shipbuilding Pte Ltd were involved in an earlier appeal before the Singapore Court of Appeal in Civil Appeal No 82 of 1978. Judgment in the earlier appeal was delivered on 1 August 1979 and the appeal arose from Admiralty in Rem & in Personam No 186 of 1978 with the vessel "San 007" named as the first defendant. In *Middle East Shipyard Pte Ltd* v *Sin Chin Seng Shipbuilding Pte Ltd* [1988] 3 MLJ 361, the writ in rem named several vessels and the shipyard as the defendants in the action in rem. In other words, despite the view expressed in *The Nagasaki Spirit (No 2)* [1994] 1 SLR 445 (that it is impermissible to bring a hybrid writ conjoining an action in rem and an action in personam in Singapore), there have been two cases of such hybrid writs before the Singapore Court of Appeal without that court expressing any disapproval of the combination of in rem and in personam claims in a writ in rem.

As for unreported decisions of the Singapore courts, a particularly significant decision of the Singapore High Court which, inexplicably, is omitted from the book is *Marcoship Agencies Sdn Bhd* v *The Owners of The Ship or Vessel "Song Da 2"*, Admiralty In Rem No 212 of 1994 (judgment delivered on 30 March 1995). In that case, Warren Khoo J refused to award the costs of arrest to the plaintiff who did not demand payment before issuing the writ in rem and arresting the vessel to enforce a paltry sum of M$3064.06.

The author has stated the law as at 31 July 1997. However, on sham transfers, the author made no reference to *The Tjaskemolen* [1997] 2 Lloyd's Rep 465, presumably because the decision (delivered on 1 August 1996) was only reported in the mainstream law reports in the second half of 1997. Suffice it to say that since early 1997, Clarke J's decision in *The Tjaskemolen* was reported in CCH Commercial Law Cases and a transcript of the decision was available on *LEXIS* since early 1997.

Such is the nature of admiralty law and practice that since July 1997, there have been a number of significant judicial decisions which indicate the trends in the areas which are open to debate. For instance, in connection with claims for wrongful arrest, the Canadian Supreme Court in *Armada Lines Ltd (now Clipper Shipping Lines)* v *Chaleur Fertilizers Ltd* [1997] 2 SCR 617 has affirmed that the rule in *The Evangelismos* remains good law in Canada. In Australia, the High Court has decided in *Laemthong International Lines Co Ltd* v *BPS Shipping Ltd* (1997) 72 ALJR 129 to follow *The Permina 108* [1978] 1 Lloyd's Rep 311 instead of *The Evpo Agnic* [1988] 3 All ER 810 at 814 on the import of the word "charterer" in section 19 of the Australian Admiralty Act 1988 (Cth) which is the corresponding provision to section 4(4) of the High Court (Admiralty Jurisdiction) Act. In the United Kingdom, there has been further elucidation on sovereign immunity as a defence to the availability of an action in rem, see *The Guiseppe Di Vittorio* [1998]

1 Lloyd's Rep 136.

In the book, the author takes the view that "the question of 'sweeping up' legislation remains open in Singapore." The author makes the point that unlike the position in the United Kingdom, there is no reference in section 3(1) of the High Court (Admiralty Jurisdiction) Act to any previous legislation touching on admiralty jurisdiction. However, this reviewer takes the view that since section 8(2) of the Courts (Admiralty Jurisdiction) Act (Act No 32 of 1961) provided that section 17(c) of the Courts Ordinance (No 14 of 1955) "shall have effect subject to the provisions of this Ordinance", all subject matter jurisdiction available under the Colonial Courts of Admiralty Act, 1890 remains extant. Under section 2(2) of the Colonial Courts of Admiralty Act, 1890, it was provided that the jurisdiction shall "be over the like places, persons, matters, and things, as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise, and the Colonial Court of Admiralty may exercise such jurisdiction in like manner and to as full an extent as the High Court in England ...." That being the case, the reference to "any other jurisdiction connected with ships ... as may be vested in the High Court apart from this section" in section 3(1) of the High Court (Admiralty Jurisdiction) Act must, in this reviewer's opinion, include whatever jurisdiction conferred by the Colonial Courts of Admiralty Act, 1890 which is not inconsistent with the High Court (Admiralty Jurisdiction) Act.

In regard to whether cargo may be arrested to enforce a claim for unpaid freight, the author relies on *The Ocean Jade* [1991] 2 MLJ 385 as holding that such an arrest is not permissible under section 3 of the High Court (Admiralty Jurisdiction) Act. The author does not discuss *The Zigurds* [1932] P 113 at 116 where Langton J clearly ruled that it was permissible to arrest cargo to enforce a claim for freight. In that case, the plaintiffs were necessaries men to whom the freight on the cargo had been assigned. Langton J upheld the arrest of the cargo to enforce the plaintiffs' claim to freight and on appeal, both the Court of Appeal and the House of Lords proceeded on the basis that such arrest was permissible – see [1933] P 87 and [1934] AC 209. If arrest of cargo to enforce a claim for freight is not permissible under the admiralty jurisdiction of the High Court, the plaintiffs' arrest of cargo in *The Zigurds* would certainly have been held by the appellate courts to be *dehors* the jurisdiction and power of the High Court. Thus, *The Zigurds* is direct support for the proposition that cargo may be arrested to enforce a claim for freight payable on the cargo.

As is usual with any book, there are a number of typographical errors. At page 110, in footnote 86, one finds the misspellings "The Andres Bonafacio" and "Karthegesu". At page 190, footnotes 23, 24 and 25, the case of *The Mare del Nord* is printed as *The Mare del Nore* and at page 193, one finds *The Soeraya Emas* spelt incorrectly as *The Seoraya Emas*. However, what is particularly striking of the errors in this book is that most of the errors appear in the Table of Cases. Some examples of the typographical errors in the Table of Cases are *The Kommunsar (No 2), The Kommunsar (No 3)* and *The Kommunsar* which should all be spelt *The Kommunar*. The case of *Gosse Milliard* v *Canadian Government Merchant Marine* has also been misspelt as *Gosse Millerd* v *Canadian Government Merchant Marine*. Other examples of the errors are *The Andres Bonifacio* which is listed as *The Andres Bonafacio*, *The Antonis P Lemos* listed as *The Antois P Lemos*, *The Bengal* printed as *Thel Benga, The Caspian Trader* listed as *The Caspain Trader* and *The Miranda* printed as *Tje Miranda*. One of the most amusing typographical error is *Curry* v *McKnight* when every shipping lawyer knows that the correct spelling of the first-named party in that case is *Currie*. These typographical errors extend to the description of unreported cases, for example, *The Oceanic Trader* is described as *The Ocean*

*Trader* and *The Ronjay Victory* is described as *The Ronjoy Victory*.

In the Table of Cases and at pages 102 and 113 of the book, *Uni-France Offshore Engineering Pte Ltd* v *The Owners of the Ship or Vessel 'Interippu'* is said to be unreported. The case is in fact reported in Malaysia and Singapore Securities Cases (MSSC) 1991-1993 at 95,494. Another error in connection with unreported cases which appears in the Table of Cases relates to *The San 007*. The case is said to be an unreported decision of the High Court of Singapore, Suit No 186 of 1978 but in truth, the case (referred to at page 278 of the book, footnote 113) is the decision of the Singapore Court of Appeal. This decision was given in Civil Appeal No 82 of 1978 which arose from certain orders made by Wee Chong Jin CJ in Admiralty in Rem & in Personam No 186 of 1978.

Where cases have been correctly spelt in the Table of Cases, there are repeat entries of these cases – see, for example, *Adams* v *Cape Industries, The Bazias 3, The Brihope, The Brihope (No 2), El Du Pont de Nemours* v *Agnew, The El Amria, The Eleftheria, The Eschersheim (misspelt as The Escherschiem), The Joogoo, The I Congreso del Partido* and *The Arantzazu Mendi* (with another entry which erroneously describes the case as *The Azantzazu Mendi*).

This reviewer also found the Table of Cases peculiar as it contains references to articles published in journals. One would have thought that there should be a separate bibliography of published works and articles referred to by the author.

As for the Contents, this reviewer found them too detailed. For instance, there does not appear to be any reason for the reproduction of the *ipsissimis verbis* of the various lettered sub-paragraphs of section 3(1) of the High Court (Admiralty Jurisdiction) Act. Further, it does seem odd for the Contents to list all sub-headings used in the book. One would have thought that the listing of major sub-headings would be more than sufficient to enable any reader to get an idea of the material covered in any particular chapter of the book.

It is hoped that in the next edition, the typographical errors and presentation of the Table of Cases and Contents may be improved.

The above blemishes do not detract from the quality of the work. This reviewer has no hesitation in recommending the book to any person desiring to learn and practise admiralty law. Needless to say, any law firm engaged in shipping litigation should not be without a copy of this book.

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