

BOOK REVIEW

**Dr Damien Cremean, *Admiralty Jurisdiction* 5th ed. Federation Press
(2020) ISBN: 9781760022389**

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Australians have to a large extent neglected the development of scholarship in admiralty law but there is one scholar who has been writing admirably on the topic for over 25 years and this is Dr Damien Cremean. He commenced his scholarly contribution as one of the research team for the Australian Law Reform Commission reference for Admiralty, chaired by Professor James Crawford of Adelaide University, now H.E. Judge James Crawford of the International Court of Justice, when the ALRC produced its excellent research papers and final report in 1986.¹ This Report resulted in the passage of the *Admiralty Act 1988 (Cth)*, which is the statutory foundation for the current Australian maritime law.

Dr Cremean has just published his 5th edition of *Admiralty Jurisdiction*, by Federation Press, 2020. The 5th ed is comprised of five chapters which, with the forewords, tables, bibliography and index comes to nearly 400 pages. Like the maritime industry itself, this edition truly covers an international field as Dr Cremean has dealt with not only Australia and New Zealand, but also England, Singapore, Hong Kong, Malaysia, South Africa, India and Canada. The result is that anyone who is looking for the most favourable jurisdiction in which to arrest a ship, or a person who needs to know what the law is in a relevant country if a client has had a ship arrested there, will do well to start with consulting this book. The author published his 1st edition of *Admiralty Law* in 1997 and it dealt only with the Australian law² but each subsequent edition has gradually expanded the jurisdictions being covered until it now encompasses nine countries.

Chapter 1 is entitled 'Introduction' and is a foundation chapter in setting out the nature of Admiralty Jurisdiction and its development, first in England and then in Australia and New Zealand and the six other countries named above. All of the nine countries covered are based on the law from international conventions and the British admiralty law under the common law operating with the local legislation for the respective countries. This gives the coverage a sound connection between one jurisdiction and another for any reader seeking a wider knowledge beyond the local jurisdiction.

Chapter 2 of the book deals with 'Courts and Jurisdiction' and sets out the law about admiralty actions *in rem* and *in personam* for all nine countries. It also deals with what vessels and aircraft come under the admiralty jurisdiction in various countries.

Chapter 3 on 'Admiralty Claims' is long and thorough, covering 100 pages. It contains the detail about and differences between proprietary and general maritime claims and develops topics such as oil pollution claims, cargo loss or damage, salvage, General Average, insurance and Pilotage. Chapter 3 then turns to related matters, such as wrongful arrest, piracy and wreck. The chapter concludes with a helpful section on the defences to an arrest in the different jurisdictions.

Chapter 4, deals with the all-important topic of 'Practice and Procedure' the failure of which to get right has brought many an arrest unstuck. It covers topics that are vital to admiralty, such as the jurisdiction of the arresting court and arguments about a stay based on *forum non conveniens* and/or international arbitration clauses. For Australian practitioners this chapter discusses in depth the jurisdiction of the court to deal with 'associated matters' so that, even if only part of the claim is in the admiralty jurisdiction, the court has jurisdiction to deal with the whole claim.

Chapter 5 of the book deals with 'Procedural Rules' which is another long and detailed chapter, 140 pages in this case. The author covers the rules to commence an action, arrest the ship, set out the claim etc. He also deals clearly and well with the trap about entering an appearance for a defendant, starting with the point that an appearance for

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¹ The final ALRC Civil Report leading to the *Admiralty Act 1988 (Cth)* was ALRC Report No. 33 "Civil Admiralty Jurisdiction" AGPS 1986.

² *Admiralty Jurisdiction: Law and Practice in Australia*, Federation Press, 1997.

a personal client is an action *in personam* even if the original action is *in rem* for the arrest of the ship or cargo.³ This is important as it means the action *in personam* continues along with but separately from the action *in rem* and the plaintiff can seek to enforce any judgment against the defendant over and beyond the value of the *res* (the ship, cargo etc). The author includes the law about when to enter a conditional appearance to advance an argument only that the court has no jurisdiction. This is, of course, in contrast to an unqualified appearance which makes the client subject to the whole jurisdiction of the court for all purposes, including being liable for the whole of any judgment.⁴

Chapter 5 also covers the numerous other steps through which the action may proceed, namely the claim, identification of the property arrested, caveats against arrest, custody of the *res* and release of the *res* on provision of security. Also covered is the requirement of the parties to file Preliminary Acts where the action arises out of a collision, which requirement is oft-forgotten as Preliminary Act documents are unique to admiralty collision cases. The chapter concludes with sale and distribution of the net proceeds and the numerous other aspects of law and practice that can arise in admiralty matters.

The writing is thorough, scholarly, thoughtful and based on the substantive law of the international conventions, the relevant national legislation and the decisions of the superior courts.

If one had to select any criticisms of this excellent book some may point to its arrangements of topics where the topic is often selected and then the law in some or all of the nine jurisdictions is discussed under that particular topic. A critic may say that this makes it difficult for a reader to ascertain the whole law relating to any one jurisdiction without trawling through the whole book. However, this may be answered by the current arrangement being very helpful to the reader who wishes to know the law on that particular topic in the different countries by a comparative analysis.

Others may point to the text being a little discursive about the law and practice rather than setting out clearly what the law and practice are in the various jurisdictions and leaving the rest to the footnotes. This critic may say that a discursive discussion makes it more difficult for the practitioner who only seeks to know the current law. On the other hand, a person seeking to have a deeper and wider knowledge of the admiralty law from its British foundations and how since dealt with in the various countries would much prefer the way in which the author has arranged this book.

Dr Cremean has produced a book that is sound and practical as well as deep and wide in the compass of the admiralty law and he is to be congratulated on it. This is a book that every practitioner, regulator, judge, mariner, freight forwarder and maritime business should have on their book shelves. Apart from being an essential book for routine work, Admiralty crises often occur quickly with accidents ashore or at sea through collisions, groundings, oil spills and cargo losses suddenly needing attention. In such cases having this book immediately available is essential and it is highly commended.

³ Chapter 5, p. 302.

⁴ Chapter 5, pp.303-4.