

CHINESE-ENGLISH
EDITION
中英文对照本

上海海事法院 海事案例精选

SELECTED MARITIME CASES
of SHANGHAI MARITIME COURT CHINA

主编 应新龙

Chief Editor YING Xinlong



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前 言

20 世纪 90 年代以来,全球经济一体化进程不断推进,国际贸易、航运交往日益频繁。国际海商立法和世界各国的海事司法处于历史活跃期。中国的海商立法虽然起步较晚,但在借鉴国际海商立法的基础上,发展很快。《中华人民共和国海商法》作为专门的综合性海商法典,连同《中华人民共和国民事诉讼法通则》、《中华人民共和国合同法》、《中华人民共和国物权法》、《中华人民共和国侵权责任法》等民事基本法以及与之相配套的《中华人民共和国海事诉讼特别程序法》、《中华人民共和国民事诉讼法》等程序规则,共同构成了中国海商法律的基本体系。

法律的生命在于实施,而法律实施的要义和精髓则往往体现在法院的司法裁判之中。成文法的滞后性、原则性、抽象性同社会生活的多元、复杂和现实相比,时常会给人们带来矛盾与困惑。要使相关法律规定有效作用于鲜活而具体的社会实践,并取得既符合法律精神,又合乎世俗情理的结果,无疑是对法官司法智慧的考验与挑战。区别于一般民商法从法学理论演进到实在法律的过程,海商法是从航运实践的习惯做法和海事司法的规则确认中逐步发展起来,这种开放、实践、与时俱进的渊源品格,决定了时至今日,海商法律制度的完善仍然对海事司法保持着高度依赖。虽然中国不是判例法国家,但司法裁判中所体现出的法律解释、利益衡量、规则续造,无不凝结了法官的经验、智慧和创造力。将这些宝贵财富以典型案例的形式加以提炼、固定、发布,对于统一司法裁判标准、发挥法律指引功能、彰显社会公平正义,都具有十分重要的意义。

上海处于中国改革开放的前沿,早在 20 世纪 90 年代就开始规划建设国际航运中心的宏伟目标。2009 年 3 月 25 日,国务院通过《关于推进上海加快发展现代服务业和先进制造业、建设国际金融中心和国际航运中心的意见》,又为上海国际航运中心的建设注入了新的动力。2010 年,上海港的进出口货物吞吐量已达到 6.5 亿吨,集装箱吞吐量突破 2905 万标准箱,双双位居世界第一;与航运金融、航

运保险、航运经纪有关的航运高端服务业也发展迅速。在此背景下,与航运有关的各种纠纷不可避免地相伴而生。上海海事法院顺应国际航运中心建设的客观需求,为追求法律真谛与司法正义,推动中国海事法治不断进步做着不懈的努力。

2003年,上海海事法院曾编辑出版了《涉外海事案例精选(中英文对照本)》,受到普遍欢迎,尤其是在对外海事司法交流中引起了国际同仁的高度关注。但随着时间的推移,无论是案例的新颖性、法律规定的明确性,还是法院、法官的认知水平都发生了诸多变化。为此,我们对2003年以后(主要是近五年)上海海事法院审结的案件又进行了筛选,从中选取出37件具有一定典型性、示范性、创新性的案件,再次以中英文对照的方式集结出版。希望能够为业内同行开展研究交流、为社会大众了解海事司法,也为促进海事法律适用的规范统一提供有益的参考,并希望借此在更广的范围内展示、宣传中国海事司法的最新成果,增进国际社会对中国海事司法的认识和认同。

法律是一门精深的社会科学。司法则是人的主观判断与法律相结合的意识活动过程。法律的形成和实施与其所处的特定时空密不可分,中外司法制度的差异也可能产生观点上的不同认识,我们并不笃信书中的论述都一定是唯一的、最好的答案。如果读者中的有识之士有更好的见解或批评意见,我们真诚地欢迎大家不吝赐教。

编 者

二〇一一年十月

PREFACE

Since 1990s, with the furtherance of global economic integration, international trade and shipping have become more and more vibrant. International maritime legislation and maritime judicial administration in all countries has experienced an active period in history. Though it started later, the maritime legislation of China has been developing fast. The Maritime Law of the People's Republic of China, which is a dedicated comprehensive maritime code, together with such civil basic laws as the General Principles of Civil Law of the People's Republic of China, the Contract Law of the People's Republic of China, the Property Law of the People's Republic of China, and the Tort Liability Law of the People's Republic of China, and their procedural rules, such as the Special Maritime Procedure Law of the People's Republic of China, and the Civil Procedure Law of the People's Republic of China, constitutes the fundamental framework of Chinese maritime laws.

The life of the law lies in its implementation, and the essentials of the implementation are usually seen in the judgments of courts. Written statutes, which are lagging, principled and abstract in the multiple, complex and real social life, often bring contradictions and perplexities to people. It is a test and challenge to judges and courts how to apply the law effectively to the vivid and in concrete social practice, in a way that complies with the spirit of the law and suits the senses of the world. Different from common civil and commercial laws which evolve from legal theories to tangible laws, the maritime law has developed gradually from shipping usage, practice and maritime judicial administration. Due to its open, practical and progressive origin, the perfection of the maritime law system is highly dependent upon maritime judiciary. Although China is not a case law country, the interpretation of laws, balancing of

interests and continuation of rules in judicial decisions have reflected the experience, wisdom and creativity of judges. The great wealth, once extracted, fixed and published in the form of typical cases, will be significant in that it helps unify the criteria to be applied, develop the guiding function of laws, and demonstrate fairness and justice in society.

In the front line of the reform and opening up of China, Shanghai has planned to build an international shipping center as early as in 1990s. On March 25, 2009, the State Council passed the Opinion on Promoting the Modern Service Sector and the Advanced Manufacturing Industry, and the Construction of an International Financial Center and an International Shipping Center in Shanghai, which inject new vitality to the international shipping center construction. In 2010, the import/export throughput of Shanghai ports reached 650M metric tons, and the container throughput exceeded 29.05M standard containers, both of which ranked No. 1 in the world. High-end service sectors in relation to shipping finance, insurance and brokerage have been growing up quickly. In this background, inevitably various disputes in relation to shipping have emerged. Conforming to the objective demands for the international shipping center construction, Shanghai Maritime Court have strived continuously to pursue the truth of law and judicial justice, and to promote the rule of law in the maritime area.

In 2003, the court compiled and published the *Selected Foreign-related Maritime Cases (Chinese-English)*, which was widely welcomed, and attracted much attention from its foreign counterparts in judicial exchanges with other countries on maritime justice. However, as the years have passed, many changes have taken place in novel cases and explicit legal provisions, and the knowledge and perception of courts and judges. For this sake, now we select 37 typical, demonstrative and innovative cases from those judged by Shanghai Maritime Court since 2003 (mostly in the recent five years), and have them published in this book in both Chinese and English. We hope that the book will be a useful reference for our peers in their studies, for social public as a source of maritime justice, and for unification of doctrines in the application of

maritime laws. We wish that it would help introduce and publicize the latest achievements of China to a wider range, and improve the knowledge and recognition of international society on Chinese maritime justice.

The law is a profound discipline of social science, and judicial administration is a process to combine man's subjective determinations with the law. The formation and implementation of a law is inseparable from its given time and space. The differences between Chinese and foreign judicial systems will possibly lead to different views and opinions. We never think that the points and discussions in this book are the only best answers. Your opinions or comments will always be appreciated.

Editor
October 2011

本书引用各类法律文本缩略用语索引

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| 中华人民共和国民法通则 | 《民法通则》 |
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| Interpretations of the Supreme People's Court on Several Law Application Issues in the Trial of Cases Concerning Compensation for Personal Damage | Interpretations on Personal Damage Compensation |
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