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Maritime Law in China

Emerging Issues and Future Developments

EDITED BY
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**Johanna Hjalmarsson and
Jingbo Zhang**

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Maritime Law in China

The Chinese maritime and shipping market has been expanding enormously in recent times as its commercial capacity to perform shipping, ship building, banking and insurance activities grows and the role of the State as guarantor of commerce is gradually reduced.

This book provides a detailed guide to current Chinese maritime law, written by an expert team of contributors and systematically covering key areas such as carriage of goods by sea, international trade, vessels and seafarers and maritime liabilities. The authors explore cutting-edge issues within each topic, and analyse current trends in law reform.

The book will be of interest to academics researching commercial and maritime law, as well as maritime law practitioners and shipping industry professionals working with aspects of Chinese maritime practice.

Johanna Hjalmarsson is the Informa Associate Professor in Maritime and Commercial Law at the University of Southampton.

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Contemporary Commercial Law

Maritime Law in China: Emerging Issues and Future Developments

by

Johanna Hjalmarsson and Jingbo Zhang

(2016)

Insurance Law in China

by

Johanna Hjalmarsson and Dingjing Huang

(2015)

Causation in Insurance Contract Law

by

Meixian Song

(2014)

Foreword

On behalf of the University of Southampton Confucius Institute, I am pleased to offer a short foreword to these proceedings. Our key mission as a Confucius Institute is to deliver Chinese language learning and cultural events at the university, schools, colleges and in the wider community. However, we also take great pleasure in supporting the academic work undertaken by our colleagues in partnership with Chinese Universities. We have funded conferences and symposiums in various subject areas and this was our second joint activity with Southampton Law School.

Our first conference in 2013 on UK-China Insurance Law was an outstanding success, bringing together a diverse audience of scholars and practitioners from China and the UK for two days of presentations and debate at Lloyd's of London and the University of Southampton respectively. This rare opportunity for inter-cultural communication and knowledge exchange was very well received and the feedback strongly positive.

Inspired by this success, we were very keen to support a follow-on initiative in maritime law. China's growing importance as an economic power on the world stage and a major UK partner in international trade makes a comparative discourse in this field an essential element in the future development of trading relations between our two countries.

The event was ambitious with three full days of discussion featuring eminent academics and leading practitioners from China and the UK. Delivered in three different locations, the University of Southampton, Norton Rose Fulbright and the China Maritime Centre, Greenwich, the conference attracted a mixed audience of academics, legal practitioners and representatives from the shipping industry.

The quality of the presentations is best appreciated in the proceedings.

Mark Cranshaw

Director, University of Southampton Confucius Institute

Preface

The collection of papers presented here arose out of the Chinese and English Maritime Law Conference held in April 2014 at three venues in Southampton and London. The vision for the book has been to present particularly significant issues in contemporary Chinese maritime and commercial law to an audience familiar with English law, the common law or international law, but largely unfamiliar with Chinese law. The chapters all take a critical approach to the current state of the law, explaining the direction in which the law needs to develop. We hope that the book gives some indication not just of what China's maritime law is today, but of what is to come.

The papers of Professor Yvonne Baatz, Professor Jason Chuah, Professor Tingzhong Fu, Johanna Hjalmarsson, Professor James Zhengliang Hu, Dr Meixian Song and Dr Jenny Jingbo Zhang were all presented in some form at the conference. The remaining papers have been sourced after the conference and complete a rounded view of Chinese commercial and maritime law. Meanwhile, some papers presented at the conference have been published elsewhere, including 'Delivery of Goods Under a Straight Bill of Lading: Chinese Judicial Practice and Perspective' by Professor Lixin Han in (2015) 7 *Journal of Business Law* 573–586 and Pengfei Zhang's presentation, for which see Zhang, P. and Phillips, E., 'Safety first: Reconstructing the concept of seaworthiness under the maritime labour convention 2006' (2016) *Marine Policy*, 67, pp. 54–59.

Professor Hu's initial chapter foreshadows much of what follows. He discusses the state of modern Chinese maritime law and identifies where the reform needs are greatest. Professor Fu's chapter addresses the core issue of carrier's liability and the concept of the actual carrier as implemented in Chinese law. Dr Song then discusses the rules surrounding crew liability and protection in carriage cases. Dr Zhang focuses on examining bills of lading and the subsequent effects to bank's security. Mr Liu examines the position under SAFE guarantees and potential conflicts with English law. Mr Peng considers the P3 merger, now a historical endeavour but one that permits interesting conclusions to be drawn about Chinese competition law. Dr Huang clarifies the position of maritime liens in the context of

insolvency under Chinese law, noting that the law may need to evolve further. Professor Zhang explains the law and commonly used contract terms applicable to sea towage. Mr Wu and Professor Han tackle the law on direct action for oil pollution damage, making recommendations on the reform of the law. The chapter by Ms Hjalmarsson and Ms Wu deals with the treatment of spot market contracts under Chinese law. Professor Chuah's chapter addresses the philosophy and approach of Chinese private international law, and the chapter is immediately followed by Professor Baatz's chapter which reflects on issues raised by a case where Chinese and English courts both asserted jurisdiction over a dispute based on bills of lading.

Although maritime law is traditionally taken to include marine insurance, we have opted not to cover that subject here. We refer interested readers to Hjalmarsson and Huang (eds), *Insurance Law in China* (Informa, 2014), which contains several chapters on marine insurance; not least by some of the authors contributing to the present volume.

We owe thanks to the speakers, chairs and audience who contributed to the conference and made it an exciting event: Dr Minghua Zhao and our hosts the China Maritime Centre at the University of Greenwich; and Dr Wenhao Han and Norton Rose Fulbright. Gratitude is owed to the Confucius Institute at the University of Southampton, without whose generous funding and confidence the event would not have taken place. Last but by no means least, we thank the team of postgraduate researchers, especially Dingjing Huang and Haihua Song as well as administrative colleagues at all three venues and at the Institute of Maritime Law and wider University of Southampton who helped make the three events happen. We would also like to thank our publishers and others who have contributed to the editing process.

The law is mostly stated as it was in June 2015.

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Jingbo's research interests lie in international trade law; carriage of goods by sea; marine insurance; and WTO law. Her research outcomes have been successfully presented at both international and national conferences and subsequently turned into academic articles, such as 'Bank's

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Zhengliang Hu is a Professor of Maritime Law and Director of the Institute of Maritime Law of Shanghai Maritime University. He is also a visiting professor to the Dalian Maritime University and Swansea University. He is a lawyer with the law firm, Wintell & Co Law, based in Shanghai. He is an arbitrator for the China Maritime Arbitration Commission and the Shanghai International Shipping Arbitration Chamber. He works as a member of the Standing Committee of China Maritime Law Association and is a member of Standing Committee of China Maritime Experts Commission. He is also a draftsman of the Chinese Maritime Code, the Chinese Port Law, the draft Chinese Shipping Law and the revision of the Chinese Maritime Traffic Safety Law as well as various shipping regulations. He was a member of the Chinese delegation to UNCITRAL Working Group III when the Rotterdam Rules were negotiated.

Professor Tingzhong Fu

Professor Fu taught at Dalian Maritime University prior to 2000 and he was the Dean of the DMU Law School. From 2001, he has been a professor of Tsinghua University, China. In 2002, he successively visited Oxford University and Cambridge University as a visiting professor. During his teaching career, he has published more than 90 papers as well as the standard works: 'The Theory of Maritime Law', 'The Theory of Insurance Law', and his recent book *Maritime Law: Concepts, Principles and System* published in 2015.

Professor Fu is also an arbitrator of the China Maritime Arbitration Commission, Managing Director of the China Maritime Law Association, Managing Director of the China Institute of Insurance law and Managing Director of the China Institute of the WTO Rules.

Dr Meixian Song

Dr Meixian Song's main research interest is maritime law, primarily the commercial sector, not least marine insurance law, carriage of goods by sea and contract law. Meixian gained her LLB specialising in maritime law at Dalian Maritime University (China). Later she studied maritime law at University College London for an LLM and completed her PhD at Southampton Law School in 2012. Thereafter, Meixian joined the

University of Exeter, first as a research fellow, then as a lecturer since 2013. Her first monograph, *Causation in Insurance Contract Law*, was published in 2014 by Informa Law from Routledge. She is a qualified lawyer in China where she worked on marine insurance and carriage cases.

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Edward Yang Liu is an associate at Reed Smith Richards Butler (RSRB). After graduating from Shanghai Maritime University with a Bachelor of Laws in 2008, he studied at the University of Southampton and obtained a Master of Laws in maritime law in 2009. He specialises in shipping and commercial litigation and arbitration. His practice covers all areas of maritime and commercial law, including charterparty and shipbuilding contract disputes, MOA matters, cargo claims, general average, marine insurance, sale of goods disputes and all aspects of dry shipping. He is a regular contributor to the English shipping law newsletter *Shipping & Trade Law* (Informa) and has published numerous articles and case commentaries journals and newsletters in England, China and Hong Kong.

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Mr Peng mainly handles shipping cases for shipowners and P&I Clubs, and also provides legal solutions regarding international trade, arbitration, antitrust, and foreign direct investment. Mr Peng was involved in handling three of the Top Ten Important Cases from China's 30 Years of Maritime Trials published by the Chinese Supreme Court in September 2014. He has authored the chapter 'Movement of Goods (Transport and Shipping)' in *Doing Business in Asia* (Thomson Reuters, 2014), and is the owner of the Chinese Maritime and Commercial Law Group on LinkedIn (URL: <http://www.linkedin.com/grp/home?gid=4354380>). Mr Peng's past cases include the *Conoco Philips 'Penglai 19-3'* oilfield pollution case; the *P3 Network (Maersk, MSC, CMA CGM)* antitrust review case; and several international, high-value disputes.

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Dr Huang finished his PhD in maritime law in May 2015. His research focuses on the enforcement of maritime claims. During his PhD study, Dr Huang was involved in various academic activities, including organising the Chinese-English Maritime Law Conference held in April 2014. Dr Huang also worked as a tutor in admiralty law at the University of Southampton.

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Lixin Han was a senior visiting professor at the Institute of Maritime Law, Tulane University from August to November 2006. She is also a visiting professor at the School of Law, University of Hong Kong, a visiting professor at the International Shipping Law School, East China University of Political Science and Law and a distinguished overseas research fellow at the Institute of Maritime Law, Waseda University.

Professor Lixin Han has published nearly 90 papers and more than 10 books during the past 25 years. Her key publications include: *Private International Maritime Laws*, *Study of the Legal System of Compensation for Oil Pollutions Damage Caused by Ships*, *Study of Torts at Sea*, *New Development Regarding the Liability of Classification Society* and various works on bills of lading and admiralty law.

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Professor Jason C. T. Chuah

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Yvonne Baatz is a Professor in the Law School at the University of Southampton. She qualified as a solicitor in 1981 and practised with two leading firms of solicitors in the City of London, specialising in shipping litigation, until 1991 when she became a lecturer at the University of Southampton. Yvonne has published numerous articles and chapters on carriage of goods by sea; conflicts of law in maritime and insurance disputes; and marine insurance. She is a Member of the Institute of Maritime Law and served as Institute Director for three years from 2003. She has edited the third edition of *Maritime Law*, published in August 2014, contributing two chapters on conflict of laws and charterparties.

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