

*Goldby
Mistelis*

The Role of Arbitration in Shipping Law



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THE ROLE OF ARBITRATION IN SHIPPING LAW

Edited by

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THE ROLE OF ARBITRATION IN SHIPPING LAW

FOREWORD

Much of transnational commercial law evolved from maritime law, in particular through rules dealing with cargo claims, the transfer of goods while afloat, the localization of payment through the development of precursors of the modern banking system, and marine insurance and joint ventures. From time to time, practices were embodied in codes such as the Rhodian Sea Laws, the Rolls of Oléron, and the Consulate of the Sea. In England in the time of Elizabeth I the government strongly favoured arbitration as the means of dispute resolution, preferring to have disputes resolved by panels of experienced merchants rather than by the common law judges. The international character of shipping law, with its emphasis on commercial usage as the foundation of the mediaeval *lex mercatoria*, has always made arbitration a particularly suitable means of resolving shipping disputes.

This new work, skilfully edited by Professor Loukas Mistelis and Dr Miriam Goldby of the Centre for Commercial Law Studies, Queen Mary University of London, who have also contributed to it, is based on papers presented at the inaugural International Shipping Law Roundtable organized by the CCLS in 2014. *The Role of Arbitration in Shipping Law* provides a rich harvest of ideas from leading scholars and practitioners around the globe. It is a matter for regret that—in contrast, for example, to ICSID awards on investment disputes—most awards in shipping arbitrations remain unpublished. Papers such as those contained in this book therefore perform an invaluable service in revealing the thinking and experience of those involved in shipping arbitrations.

As these essays show, debate continues to rage over the nature, and even the existence, of a modern delocalized *lex mercatoria* and, as a subset, a *lex maritima*, a subject of never-ending fascination both to academics and to practitioners and one which features in several of the papers. But this is only part of the rich bill of fare we are offered. One of the many strengths of this book is its combination of rigorous theoretical analysis with attention to highly practical issues, such as the impact on national law of a substantial reduction in recourse to the courts and the use of private law-making techniques and standard-term contracts; the factors influencing the choice of seat; and arbitration under the Rotterdam Rules.

Foreword

This is a book which should be widely welcomed by all those involved in shipping arbitration, providing an invaluable reference point for modern thinking on the resolution of maritime disputes.

Roy Goode

Oxford

11 March 2016

PREFACE

The rules governing shipping developed transnationally over a number of centuries. They are in the main non-state in derivation, originating in the agreements, practices and usages of the mercantile community. Historically, transnational norms relating to shipping were absorbed into domestic laws through legislative processes, and/or, in the case of the common law, through judicial decision-making. Thus as nation states emerged as the primary agents of law-making and law-enforcement, the shipping industry remained to a large extent self-governing and able to adapt the legal framework within which it operated to the demands of the times.

Today, arbitration has emerged as the dominant choice for resolving disputes in the world of shipping, with the establishment of maritime arbitration centres in major cities such as London and New York. At the same time, the immense advances that have been made and continue to be made in engineering, technology and communications have led to the emergence of innumerable new standard agreements, trade practices, common understandings and usages within the framework of which goods are carried by sea across the world, but which, in view of the widespread use of private and confidential processes for the resolution of disputes, may be invisible to and unrecognized by domestic laws.

This state of affairs led to the questions explored in this book, namely, what are the implications of widespread use of arbitration for the continued development of shipping law? Are national laws on shipping destined to become ossified and obsolete? Is a new *lex maritima* emerging? And would it be beneficial to introduce a system of 'soft precedent' in maritime arbitration to bring emerging rules to light?

The research that ultimately led to the writing of this book developed from the Centre for Commercial Law Studies' inaugural International Shipping Law Roundtable held at the Baltic Exchange in 2014. Thus we owe a debt of gratitude to many people who participated in and contributed to the organization of this event. First among them are the event's sponsors, the Baltic Exchange, Oxford University Press and 20 Essex Street Chambers, to whom we are extremely grateful for their generous support. In particular, Jeremy Penn at the Baltic Exchange, Rachel Holt and Faye Mousley at OUP and Sir Bernard Rix and Marie Sparkes at 20 Essex Street were unstinting in their support and encouragement. We would also like to thank all of the speakers at the event, including those who, for various reasons were unable to develop their conference contribution into a chapter for this book. They include Tomotaka Fujita, David Martin-Clarke, Jan Ramberg and Alexander Von

Ziegler. We would also like to thank Katherine Zaim and Vivian Marangoni, the Events Team at CCLS, and Jill Bradford at the Baltic Exchange, who provided us with invaluable organizational support for the event.

In addition to contributors who spoke at the event, we are also very lucky to be able to add to the list of contributors to this book, Leng Sun Chan, Yu Guo, John D. Kimball, Annika Klopp and Michael Sturley.

Finally, we are extremely grateful to Jamie Berezin at OUP and Jeevitha Sivasankaran at Newgen KnowledgeWorks for their understanding, patience and assistance.

Miriam Goldby and Loukas Mistelis
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May 2016

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