

BRICE ON MARITIME LAW OF SALVAGE

4th edition
Edited by
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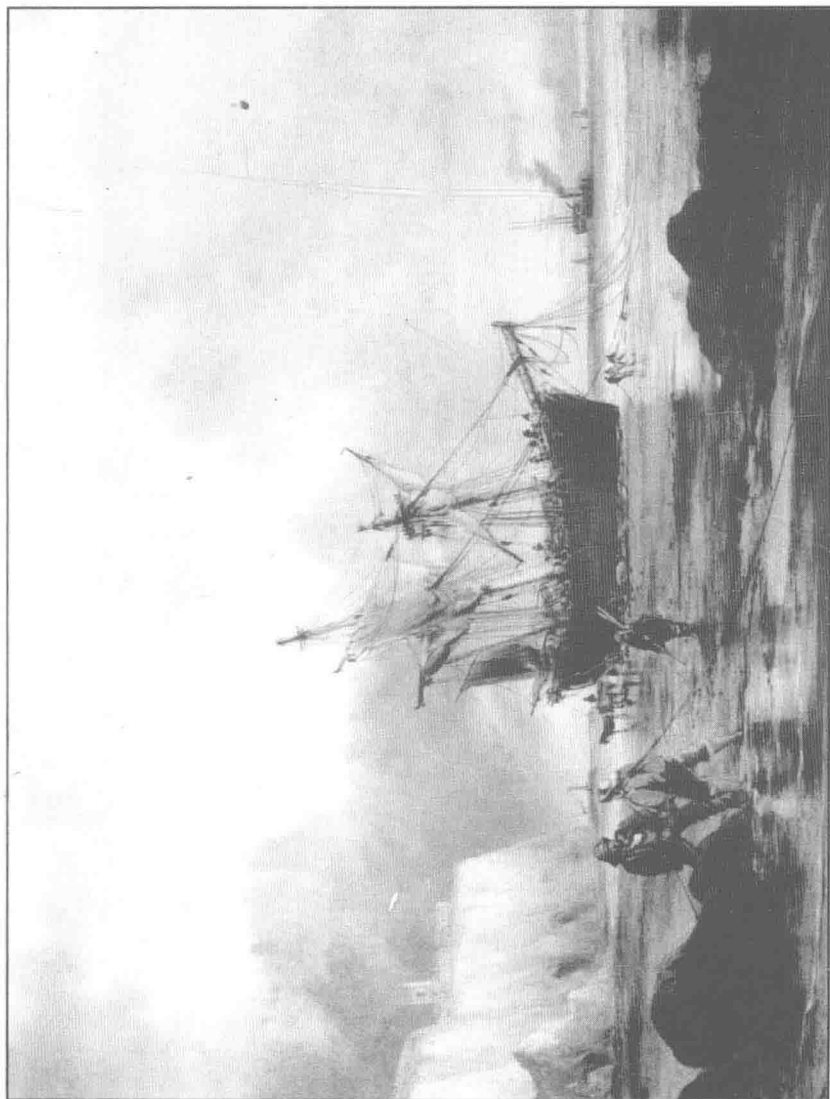
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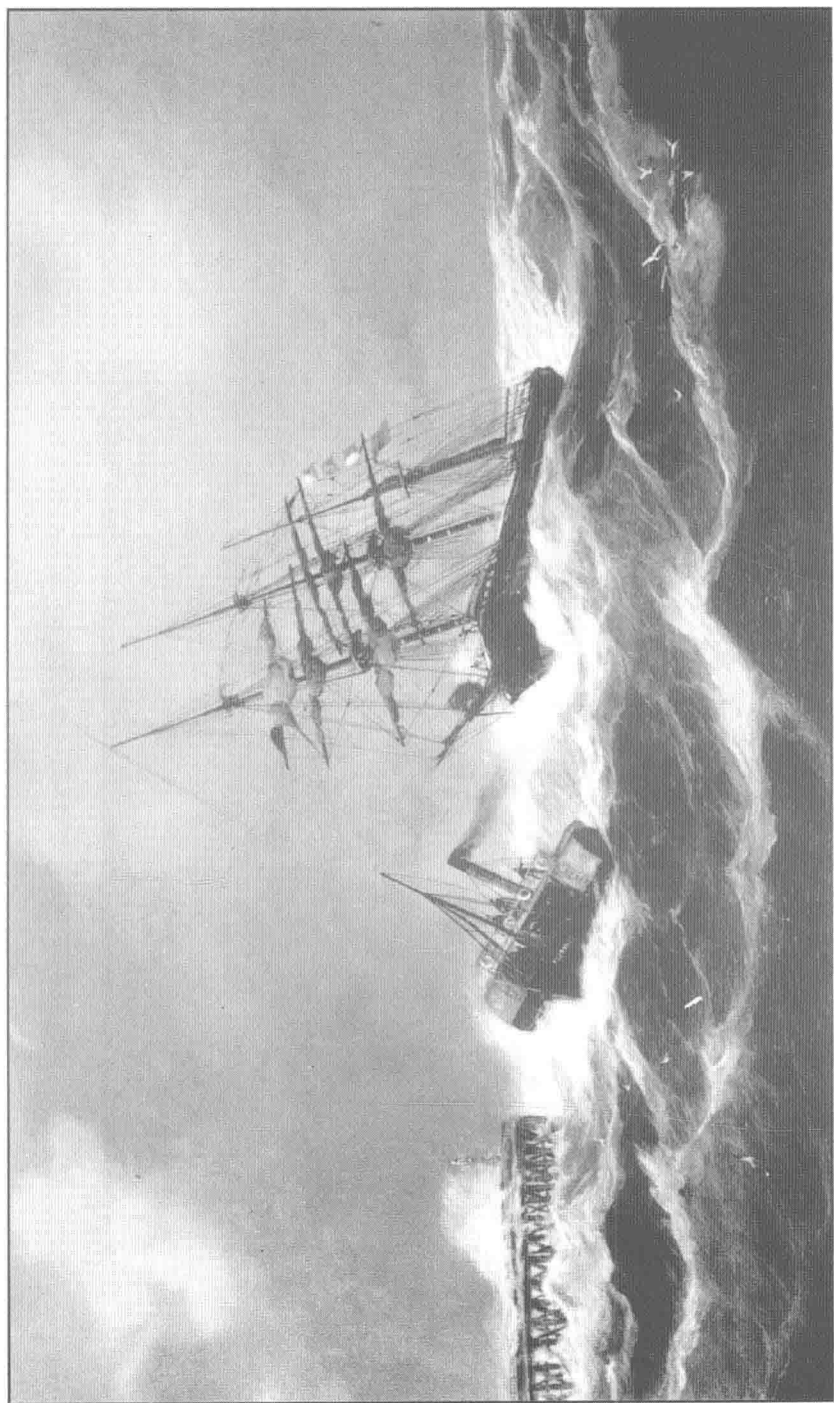


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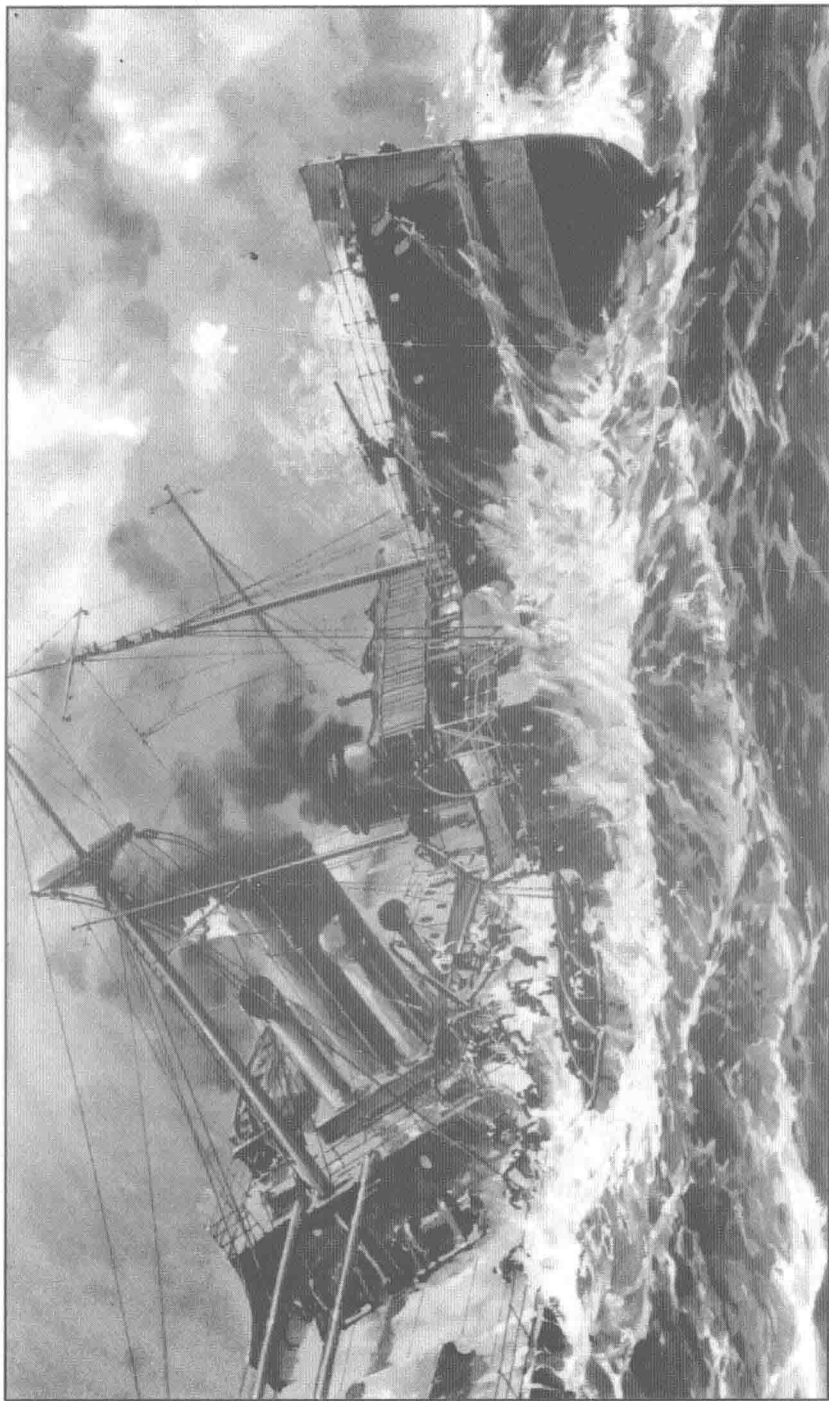
Dr Nuala Brice and John Reeder Q.C.
2003



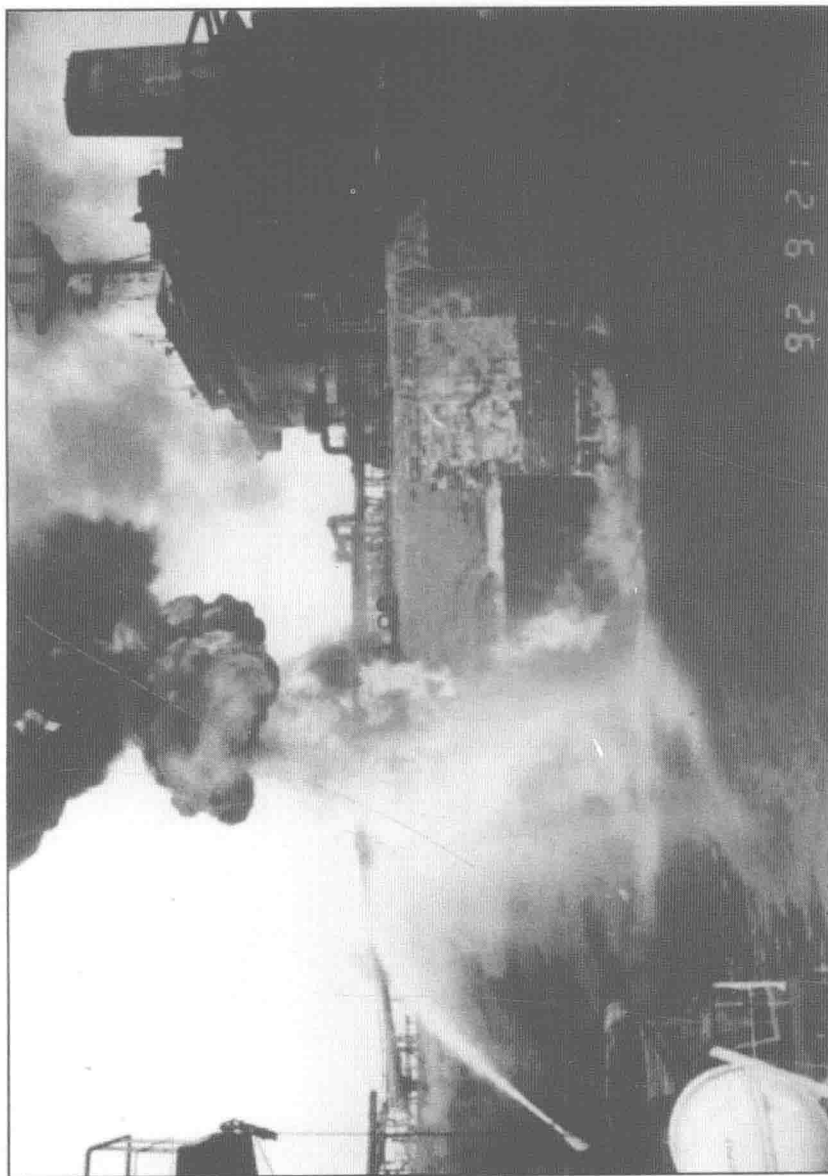
Stranded off Margate, 1840 (Oil painting by George Chambers).



Towage into Maryport, 1883 (Oil painting by William Mitchell).



Life salvage, Western approaches, 1943. (Drawing by Wm. McDowell).
By courtesy of the Imperial War Museum.



Fighting the fire on the laden tanker 'Nagasaki Spirit', Malacca Strait, 1992.
By courtesy of Semco Salvage Ltd.

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GEOFFREY BRICE Q.C. 1938–1999

Geoffrey died in November 1999 at the age of 61. He had been my pupil master, my colleague and, above all, my friend of 24 years. As a pupil master, his busy practice ensured there was plenty for a pupil to do. Geoffrey always gave praise for a piece of work well done, constructive criticism where it fell short of the mark and always encouragement and support. These qualities he showed me as his colleague, and as a friend he was always immensely kind. When there were difficult times, he was there with his support, advice and guidance. Perhaps there is one thing about him above all that so many of those whose lives he touched will remember: his kindness. He did much for young lawyers, whether students, barristers or solicitors. He genuinely cared about their future and helped whenever he could.

As a lawyer, his enquiring mind refused to accept that the law was apparently powerless in the face of injustice. When Mr Justice Donaldson (as he then was) refused an injunction in the *Karageorgis* case, Geoffrey went straight round to the Court of Appeal and successfully obtained what he wanted. What became known as the *Mareva* injunction had been born. Milestones in the development of the law of salvage include the *Goring* and the *Nagasaki Spirit*; in the first he represented the successful party and in the second he was on the losing side. Geoffrey firmly believed his contentions in the *Nagasaki Spirit* were correct, but it is typical of his modesty that there is no real criticism of the judgments in his book, although the implications of the decision have not had much appeal. In the *Popi M*, a case of total loss, Geoffrey took his stand on the burden of proof, the vessel having sunk in a near calm in the Mediterranean. Both at first instance and in the Court of Appeal he lost on the basis that the vessel had sunk as a result of contact with an unidentified submarine. After the Court of Appeal decision he declared it was the first case he had lost when not called upon in reply! Matters were put right by Lord Brandon in the House of Lords.

On November 22, 1999 a packed court assembled to honour Geoffrey's memory. Of Geoffrey the lawyer, Mr Justice Steel said:

"Geoffrey . . . demonstrated in so many ways all the best qualities needed of a successful member of the Bar. Intelligent, of course, but Geoffrey was also intellectually inquisitive. Objective, naturally, but blessed with a thorough and inventive style of advocacy. Confident, of necessity, but entirely without swank or side. Hard-working, but always apparently with time to help others, whether it be a colleague or a competitor. Even-tempered, but with a bubbling sense of the ridiculous."

As a leader, he worked his juniors hard, but consistently acknowledged their

contribution to the case. As an opponent, he was not to be underestimated, but was always courteous, correct and fair. As a tribunal, he was polite, thorough and practical, and at times rather diffident in prompting counsel to pursue some point that might be troubling him—probably because counsel had not spotted it!

In the early 1980s Geoffrey embarked upon the task of writing *The Maritime Law of Salvage*. It has become a standard textbook upon the law of salvage and in successive editions has grown in stature and diversity. The book reflects Geoffrey's extensive knowledge of the law and practice surrounding salvage cases, and, in particular, the workings of Lloyd's Form and its arbitration system. He was rightly proud of the reception it has received. For my part, I have to acknowledge the privilege accorded to me by Dr Nuala Brice and the publishers in being permitted to edit the supplement to the third edition of this significant work.

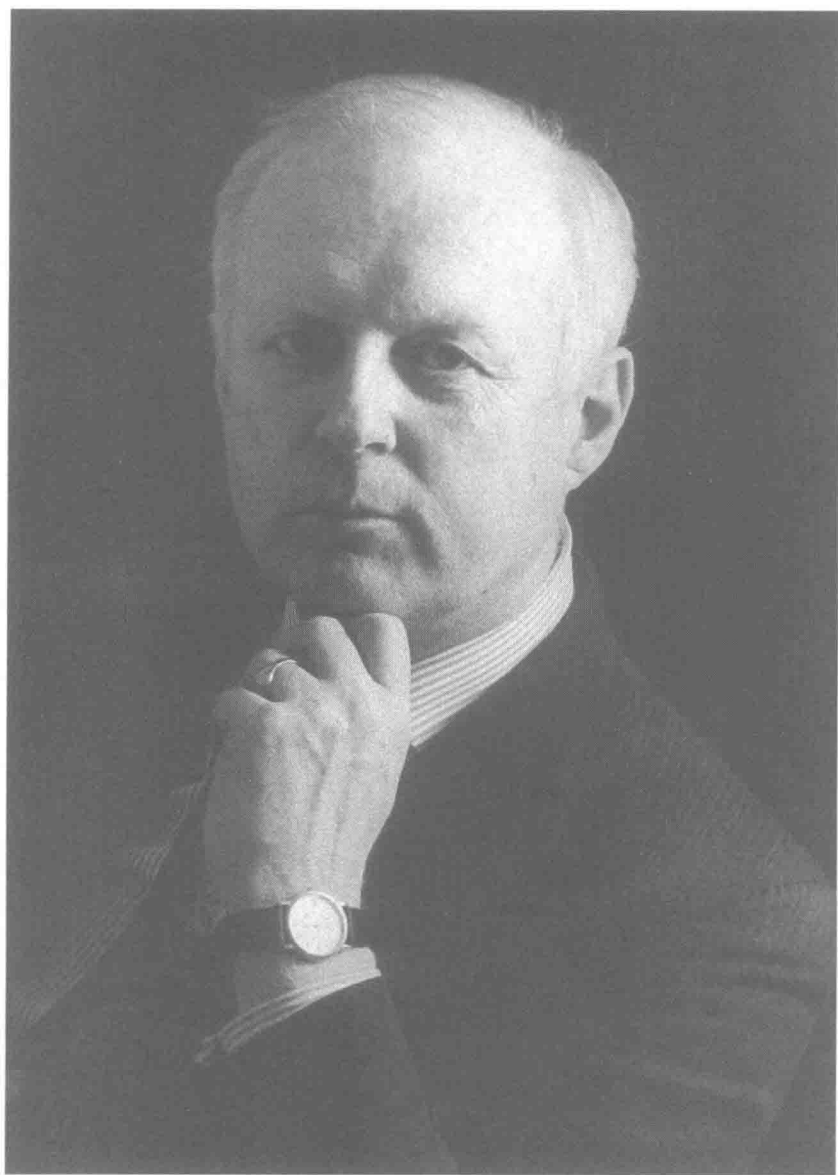
Before his death Geoffrey had contributed very considerably to the content, style and format of LOF 2000. The majority of the commentary in this supplement on LOF 2000 and SCOPIC was written by Geoffrey. It is appropriate that what he wrote is fully reproduced.

As well as the demands made upon him by a busy practice, his positions of Lloyd's arbitrator, deputy High Court Judge, leader of the Admiralty Bar, and head of his chambers, he travelled to the United States and South Africa to teach as visiting professor at Tulane and Natal Universities. Nuala held a visiting chair at those universities too. In short, Geoffrey was tireless and gave freely of his time, knowledge and experience in his chosen field to all.

In his passing Geoffrey will be greatly missed by all who knew him.

September 1, 2000

John Reeder



Geoffrey Brice Q.C.
1938–1999

FOREWORD

Geoffrey Brice was a phenomenon. I had the great privilege of knowing him from 1965 when I was called to the Bar until he tragically died in November 1999 at the modest age of 61. I appeared many times against Geoffrey and, win or lose, always enjoyed the battle. During the 34 years I knew him he was unfailingly courteous and generous. He had many interests outside maritime law, but there was no-one who knew more about the law of salvage than he did. How he had time to write the first edition of his book I will never know, but his boundless enthusiasm and hard work were legendary. The result was a leading textbook from the day the first edition was published in 1983.

Not many works of this kind (if such a thing can be imagined) have reached a fourth edition in 20 years. Geoffrey would be very pleased with the fourth edition and with all the hard work that John Reeder has put into it. It is a considerable feat to take over such a comprehensive work and ensure that it will retain its place in the maritime firmament. I am sure that all readers of this edition will agree that John has done just that.

This edition, like its predecessors, will be an essential part of every maritime lawyer's library. Unfortunately, I now see very few salvage cases, but if and when I do I shall as ever turn to the latest edition of Brice in the certain knowledge that I shall find the answer to every conceivable question of salvage law. More importantly perhaps, this edition will provide the solution to many of the practical problems which face all those concerned in salvage, whether they be salvors, salvaged interests, underwriters, clubs or lawyers. For that we all owe a considerable debt both to Geoffrey Brice and to John Reeder.

Anthony Clarke

Royal Courts of Justice
November 8, 2002

PREFACE

It is now almost ten years since the first edition of this book appeared. The third edition was published in 1999 and in that year Geoffrey Brice died. The supplement to the third edition appeared the following year and incorporated much of what Geoffrey had written about LOF 2000 and SCOPIC. The fourth edition, following as it does hard on the heels of the supplement to the third edition, has retained the format of the third and earlier editions of this work. Naturally, large sections remain unaltered.

There have, however, been substantial revisions. Chapter 8, dealing with Lloyd's form and arbitration has seen the greatest changes. There is now a commentary upon LOF 2000 and SCOPIC, introduced as a contractual alternative to Article 14 of the 1989 Salvage Convention. Preparation of the fourth edition was in hand when yet further changes were made to the Civil Procedure Rules, Part 49 being replaced by Part 61 and a new Admiralty Practice Direction issued. The new provisions, where relevant are reflected in Chapter 2. The discussion of the criteria to be applied in fixing a salvage award has also been expanded to take into account their application in particular types of case which have come before Lloyd's arbitrators, though confidentiality has, of course, been respected. In the same chapter the section on life salvage has been rewritten to reflect a change of view as to the impact of Article 16 of the 1989 Salvage Convention. In Chapter 5 there is included reference to the important decision of the Court of Appeal in the *Great Peace*, which is concerned with mistake in the law of contract. The commentary on Articles 6 and 7 of the 1989 Salvage Convention has been revised in the light of the decisions of Lloyd's arbitrators on their true interpretation and effect.

Recently, attention was focussed on the question of ports of refuge by the plight of (amongst other vessels) the *Castor*. Caught in fierce weather in the Mediterranean, the *Castor* developed a large crack in her deck which caused a great deal of concern not only for her safety and that of her crew but also as to how she was to be salvaged. Her cargo was 30,000 tonnes of gasoline and no littoral state wanted her in their waters. The issue of safe havens is now receiving the attention of CMI with a view to a Convention dealing with this problem. For the present, however, a section is included in Chapter 6 on the role and powers of SOSREP (an acronym for Secretary of State's Representative) who, so far as the United Kingdom is concerned can control salvage operations within his jurisdiction to the potential benefit of serious casualties and those seeking to salvage them. Public services, such as the fire brigade, from time to time participate in salvage operations. The views expressed in the third edition as to the ability of the fire brigade to claim salvage has required revision in the light of a recent LOF decision.

These are a few of a number of changes that have been made in this

Preface

edition. I have endeavoured to relate existing principle to current experience, but I should stress that some of the conclusions are tentative only: the conclusions could well change after the benefit of full argument!

Finally, I would like to express my gratitude to the staff of the Lloyd's Agency and Salvage Arbitration Branch for keeping me abreast of the decisions of Lloyd's arbitrators and more, to the ISU and Mike Lacey for the provision of statistical information and to Sweet & Maxwell for all their assistance in the preparation of the latest edition of Geoffrey Brice's book.

John Reeder,

Gray's Inn, London WC1.

October 2002

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