

THE LAW OF SHIPBUILDING CONTRACTS

FOURTH EDITION

SIMON CURTIS

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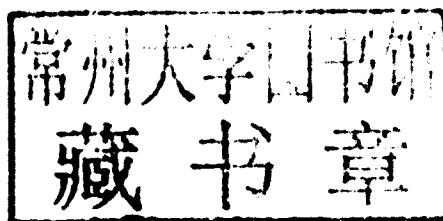
FOURTH EDITION

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*To my parents,
Sheila and Frank*

Foreword

The first edition of this book was published in 1991. A copy has been on my shelves for over 20 years. Its battered cover and well-thumbed pages are the best possible testimony to the huge value that the book was to me over many years; as too have been the two later editions which are in similar condition. I have no doubt whatsoever that they have been equally invaluable to all practitioners throughout the world who are involved in legal matters concerning shipbuilding—whether in the course of negotiating a shipbuilding contract, during construction itself or in the unhappy event of dealing with disputes between builder and buyer.

The legal principles applicable to shipbuilding contracts are, of course, no different from those applicable to contracts generally. However, the various wordings used in the industry and the specific features of the business of shipbuilding frequently present particular problems which require careful consideration and handling often against a background of having to give prompt advice in a difficult commercial context involving high stakes. In such circumstances, this book is a godsend. As the legal guru of shipbuilding, Simon Curtis has succeeded once again in combining his legal scholarship and immense practical experience in a clear updated text—providing a detailed analysis and comparison of the different standard form contracts (including, where appropriate, that recently published by The China Maritime Arbitration Commission) as well as identifying the problems and pitfalls and (even better) possible solutions.

So I very much welcome this latest edition and I am sure that it will continue to be of great value.

*The Hon Mr Justice Eder
Royal Courts of Justice, London*

Preface

It is ten years since I wrote the third edition of this book in 2002 and much in the shipbuilding world has changed in this period.

For a large part of the so-called “noughties”, substantial demand for modern shipping tonnage, fuelled by global economic growth and rocketing freight rates, led to very significant competition for newbuilding slots. In consequence, and for the first time in several decades, the world’s leading shipbuilders could demand significant price increases for their products, develop large long-term order books and even “pick and choose” their customers from among the many shipowners wishing to contract with them. Many countries responded by developing and implementing significant expansion plans for their national shipbuilding industries. In particular, China, whose already huge economy had been growing by 10% or more per annum, generating massive demand for the importation of raw materials and exportation of manufactured goods, embarked upon a shipyard construction programme intended to make it the world’s largest shipbuilder by 2016.

This period of shipbuilding prosperity ended, of course, with the economic collapse that followed the global financial crisis beginning in September 2008. Within months, many shipowners who had committed themselves at newbuilding prices that had become hugely overvalued faced the prospect of crippling losses; in extreme cases, and as the shipping banks retreated from the finance marketplace, some owners were unable to secure the funding needed to complete the purchase of their newbuilds, thereby exposing them to the loss of their previously paid instalments of the contract price. The period since 2008 has seen numerous attempts by owners to renegotiate the prices and/or delivery dates of such tonnage, and an enormous increase in the level of “vessel rejection” and cancellation disputes, a phenomenon not previously seen since the very early part of the decade.

World shipbuilding markets remain deflated, with limited demand, and with the major shipyards concentrating their marketing efforts on promoting the fuel-saving and/or environmental, rather than the direct commercial, benefits of purchasing new tonnage.

The “roller-coaster” ride of the last decade has, however, had no appreciable effect upon the much longer-term process of the transfer of shipbuilding economic power from Europe to northern Asia, which has been continuously evident since the 1960s. Within the civilian (as opposed to the naval) sector, more than 80% by deadweight tonnage of the world’s new ships are now constructed in South Korea and China,¹ with most of the remainder being built in Japan.² The major shipyards in these countries have furthermore developed the expertise not merely to produce cheaper, low value tonnage, but also to successfully

¹ According to Clarksons Research Services.

² Owing to the strength of the Japanese Yen, most of Japan’s shipbuilding capacity is, however, directed towards the fulfilment of domestic orders.

undertake the most sophisticated and substantial newbuilding projects, including those for the offshore oil and gas sector.

There have in parallel been a number of developments in the last decade regarding the contractual terms on which export newbuilding projects are normally based. Much of the world's export newbuilding is still undertaken on the so-called "SAJ Form", first published in 1974 by the Shipbuilders' Association of Japan, and its near variants, which are widely used in a number of Asian shipbuilding jurisdictions. The SAJ Form has, however, for many years been viewed by shipowners as unduly favourable to the shipbuilding community and, in an important development in this sector, in 2007 BIMCO published its so-called "NEWBUILDCON" Form of shipbuilding contract, which seeks to address the perceived imbalances in the Japanese form. Additionally, in October 2011, and reflecting the country's growth towards ascendancy in the newbuilding sector, a new version of a standard form Chinese shipbuilding contract was published by the China Maritime Arbitration Commission (CMAC). The various European forms of shipbuilding contract previously in use have, in parallel with commercial developments, significantly declined in importance.

This edition, therefore, retains the previous practice of commenting in detail upon the SAJ Form, but now contrasts this with the NEWBUILDCON and CMAC Forms where these are significantly different.

Fortunately for a number of professionals in London, English law continues to represent the most commonly chosen law for large-scale export newbuilding contracts,³ and this edition therefore again focuses exclusively upon the interpretation and application of English law principles to the business of shipbuilding. The last decade has seen the handing down of a number of English judicial decisions of importance to the shipbuilding community, including, in particular, the application of non-marine construction law principles in complex disputes relating to delay in delivery of the vessel.⁴

In connection with the preparation of this fourth edition of my book, I should (as with previous editions) like to thank Genrong Yu and Lynn Chen of Sloma & Co. in Shanghai and Makoto Hiratsuka of Hiratsuka & Partners in Tokyo for their considerable assistance in addressing, respectively, issues of Chinese and Japanese law and shipbuilding practice. I am also indebted to David Owen of the London insurance brokers, Robert Fleming Marine, and Paul Culham of Kiln Group plc for their help in relation to various newbuilding insurance issues, to Panos Zachariadis of Atlantic Bulk Carriers in Piraeus for reviewing and amending my commentary on various technical matters and to Grant Hunter of BIMCO for his guidance and encouragement at an early stage of the project. Ian Gaunt, Secretary of The London Maritime Arbitrators' Association commented on various issues and I am equally grateful for his input.

It would have been impossible for me to complete this edition, whilst also managing a busy legal practice, without the support of numerous of my colleagues at Curtis Davis Garrard LLP. I would like to thank in particular Glenn Kangisser, Helen Conybeare Williams, Keith Krut, Dimitrios Vourakis, Affaan Sattar, Andreas Silcher, Andreas Dracoulis, Fiona Cain, Amanda Larrington, Marco Potenza, Rasha Jassim, Mansour Jama and Louise Elmes, each of whom assisted me in researching the authorities and preparing

³ The laws of certain other jurisdictions, in particular Singapore, are, however, increasingly chosen for international shipbuilding contracts.

⁴ See pages 66–68, *supra*.

first drafts of parts of the revised text; two of my partners also working in the shipbuilding and offshore construction sectors, Will Cecil and Justin Turner, were willing and very useful sounding boards on certain issues. Sarah Bailey, CDG's Head of Administration and my PA, helped me enormously with the logistics and covered for me as needed during several weeks of absences, in mind and/or body, from the office. Any remaining mistakes in the text are nevertheless my responsibility alone.

As in the third edition, references are made throughout this book to the "1979 Act" and the "1994 Act". These again relate, respectively, to the Sale of Goods Act 1979 and the Sale and Supply of Goods Act 1994. The law is stated as at 31 August 2012.

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September 2012

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