

INTERNATIONAL MARITIME AND ADMIRALTY LAW

WILLIAM TETLEY,
B.A., LL., C.M., Q.C.

Faculty of Law & Institute of Comparative Law
McGill University

The Distinguished Visiting Professor
of Maritime and Commercial Law,
Tulane University

Counsel to Langlois, Gaudreau, O'Connor

with the assistance of:

Robert C. Wilkins, B.A., B.C.L.
of the Bar of Québec and Canada

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**INTERNATIONAL
MARITIME AND
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WILLIAM TETLEY

To Rosslyn

OTHER BOOKS BY WILLIAM TETLEY, Q.C.

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ABOUT THE AUTHOR

Professor William Tetley, C.M., Q.C., was educated in Montreal public schools, and then the Royal Canadian Naval College and served in the Royal Canadian Navy Reserve as a Midshipman, Sub-Lieutenant and Lieutenant. He obtained his B.A. from McGill University (1948) and his LL.L. from Laval University (1951) and then practised maritime law for 18 years. Subsequently he was a member of the Québec National Assembly for eight years, including six and a half years as Minister of Revenue and of Financial Institutions and of Public Works and Supply. In 1976, he joined McGill University Law Faculty, where he continues to teach maritime law and private international law. Every year, as well, since 1984, during the cold Montreal winter, he has gone south like a Canada goose, for three weeks, to teach at Tulane University, New Orleans. In 1987, he was named the Distinguished Visiting Professor of Maritime and Commercial Law at Tulane, where the annual "William Tetley Maritime Law Lecture" has been given each year since 1999. He has also been a visiting professor at the Universities of Cambridge, Aix-en-Provence and Southampton, amongst others.

Professor Tetley is an honorary vice-president of the Comité Maritime International (C.M.I.), and an honorary member of the M.L.A. of the United States. He is an Associate Editor of *American Maritime Cases* (Baltimore), *Droit Maritime Français* (Paris), *European Transport Law* (Antwerp), *Lloyd's Maritime and Commercial Law Quarterly* (London), the *Journal of Maritime Law and Commerce* (New York), *Tulane Maritime Law Journal* (New Orleans), the *University of San Francisco Maritime Law Journal* (San Francisco) and *la Revue Scapel* (Marseille).

He is the author of numerous law journal articles and forgotten political speeches and promises. His most recent books are the second edition of *Maritime Liens and Claims*, 1998, *International Conflict of Laws – Common, Civil and Maritime*, 1994, and *Marine Cargo Claims*, 3 Ed., 1988. He has also authored *Maritime Transportation*, being Chapter 4 of Vol. XII (*Law of Transport*) of the *International*

Encyclopedia of Comparative Law, published by the Max Planck Institute, Hamburg, 2001.

His latest achievement is his website – “Tetley’s Law and Other Nonsense” – at <http://tetley.law.mcgill.ca>, where many of his published works may be found.

He is counsel to Langlois Gaudreau O’Connor. He and his wife, Rosslyn, have four children and nine grand-children and collect Canadian art, books and antiques.

PREFACE

1) *Is a new text on maritime and admiralty law needed?*

Is another text on maritime or admiralty law necessary in this period of extensive publication of law books? Or in other words, can a new text on maritime law be original? May I suggest that *International Maritime and Admiralty Law* is original, in that it is international and cuts across national boundaries and jurisdictions. Nor is it just a text on either U.K. or U.S. or Canadian or French maritime law, but on all of them and more. There are, it is true, maritime law texts which occasionally comment on two jurisdictions, e.g. the law of England and then the law of America, by authors on either side of the Atlantic, but they are usually two books between a single cover, and these texts rarely contain real comparative exposition.

Comparative law is demanding and is the simultaneous analysis of two laws or systems of law or jurisdiction and then a synthesis of the result, followed by a critical statement on the differences, advantages and disadvantages. This the present text sets out to do.

International Maritime and Admiralty Law also attempts, in respect of each subject studied, to compare the civil law origins of maritime law with the great contributions of the common law.

For all the above reasons, it is hoped that the text will be truly comparative, international, original and beneficial.

2) *Maritime law vs. admiralty law*

The term "maritime and admiralty law" is used throughout *International Maritime and Admiralty Law*, the text being transsystemic in its presentation, and because no clear distinction can be drawn between maritime and admiralty law today. This is because they have evolved separately in various countries of the

world at various times, so that today, neither is truly a term of art, distinct from the other.

It is true that the term “admiralty law” is best known for its place at the head of the English maritime law tradition, which spread throughout the British Empire and then the Commonwealth. Nevertheless, English admiralty law, itself, has very civilian origins.

“Maritime law”, for its part, is more Continental, but many “English” jurisdictions used both terms early on. Thus, for example, some of the early American courts were known as “Admiralty and Maritime Courts” even before the American Revolution.

Today, maritime law and admiralty law have been fused together into a virtually single body of law, by the passage of time, and particularly because so many shipping conventions are international.

3) *Maritime and admiralty law is a complete system of law*

Maritime and admiralty law is a complete system of law and as such permits a study of all law – **contract** (carriage of goods and passengers, charterparties, insurance); **tort** (collision, personal injury to crew, passengers and third parties); quasi-contract/restitution (general average, salvage); **public law** (the law of the sea, marine pollution, sovereign immunity and crime on the oceans), etc. Maritime and admiralty law also permits the study of rights of **security** on property (maritime liens and ship mortgages) and related **enforcement** procedures (arrest *in rem*, maritime attachment, and detention of ships). **Limitation** of shipowners’ liability, although peculiar to seafaring, is the inseparable companion of maritime tort law. It also affects contract law governing the carriage of **goods** and **passengers** by water, as well as the **public law** of marine **pollution** and the **law of the sea**.

Maritime and admiralty law, being both **civilian** and **common law**, lends itself to **comparative law**, and being both **national** law and **international** law, lends itself to the study of **private international law**.

One may conclude that maritime and admiralty law is in effect a complete system of law in all its aspects and for that reason alone is of importance to the generalist, let alone the specialist admiralty judge, lawyer, professor or student.

4) *For whom is the text intended?*

International Maritime and Admiralty Law is intended as a broad résumé for the scholar, professor, practitioner and judge, who see beyond the confines of his national law or his pedagogical background. It is for the person who wants to know the law of more than his own country and wishes to understand the origins of maritime and admiralty law (both civil and common and statute law), so that he can better understand his own law. It has been said that only by knowing another language, can one know one's own language. So it can be said of law.

Maritime law is international law and therefore not only must the laws of other nations be known, but also international maritime conventions which give the framework of modern maritime law.

"Admiralty law" too, being more concerned with procedure and remedies in the common law tradition, is dealt with here, especially in Chapters 10, 11 and 12. Finally, public law is dealt with in the last chapter.

5) *Method of work and presentation*

Comparative law can be studied from three points of view. Firstly, in respect of related laws in different legal systems – in the case at hand, the civil, common and general maritime laws. Secondly, comparison can be made between the laws of various nations and also with international conventions. Finally, a comparison of laws can be made as they evolve over time, (the historical approach). All three comparative methods will be used in this study where appropriate, although only the most important questions and comparisons can be raised here.

Wherever possible, each question of law will first be looked at from the point of view of the civil law, the common law and the general maritime law. National laws will then be looked at, in particular the laws of the United Kingdom, the United States, France and Canada, as well as the Chinese Maritime Code 1993 and the Swedish (Nordic) Maritime Code 1994. Finally, international laws and conventions will be considered.

Within the framework of this book, and following a brief outline of the history of maritime law in Chapter 1, the most important prob-

lems on maritime transportation are considered as follows: Chapter 2 will deal with general considerations: the ship, the three basic contracts of maritime transportation and the five basic themes running through maritime law. Chapter 3 deals with carriage of goods; Chapter 4, with charterparties; Chapter 5, with towage; Chapter 6, with collision; Chapter 7, with shipowners' limitation of liability; Chapter 8, with salvage; Chapter 9, with general average; Chapter 10, with jurisdiction and procedure; Chapter 11, with pollution; Chapter 12, with special legislative rights, maritime liens, mortgages and claims; Chapter 13, with carriage of passengers; Chapter 14, with maritime personal injury and death; Chapter 15, with marine insurance; and Chapter 16, with public international maritime law (law of the sea).

"Bonne lecture" and please send me your comments, corrections and suggestions. William Tetley, McGill Law Faculty, 3644 Peel Street, Montreal H3A 1W9; e-mail: william.tetley@mcgill.ca; website: <http://tetley.law.mcgill.ca/>.

ACKNOWLEDGMENT

Any author is deeply indebted to a great many persons, not the least to contemporary legal writers (who are rarely or adequately recognized during their lifetimes) and to authors of the past, who have gone to their reward (which I hope they will find in the next world). Therefore on each possible occasion, throughout the text, I have tried to refer to contemporaries and ancients by a footnote at least stating: "See also...", because ours is a profession that on occasion seems to borrow on a level verging on theft.

It was said of Cobbett, that many stole copiously from his works, but that there was still so much left over, that he seemed undiminished. Those of us who do not have Cobbett's great originality, should especially cite our direct and indirect sources, so that those sources, in turn, will do unto us as we have done unto them.

Besides references to contemporaries in the text, a list of particular indebtedness to authors and their works is also found in the "Special Bibliography and Abbreviations", which follows this "Acknowledgment".

The principal source material for *International Maritime and Admiralty Law*, however, is primary, i.e. from the international conventions, and the national statutes, codes and recorded decisions of four jurisdictions – the U.S., the U.K., Canada and France. The main reports scrutinized from front to back (and from their first volume to today) are Lloyd's Law Reports, American Maritime Cases, *Droit Maritime Français*, European Transport Law and the multitudinous reports of Canadian court decisions. (Canada, apparently, has more law reporters per capita than any country in the world, and only the United States has more reporters. This is not a situation which is salutary, and it is hoped the lesser reports will expire with the advent of the web and CD Roms.) Many decisions from continental Europe, Africa, Asia, Australia and New Zealand have also been relied on. To all these, my thanks.

SPECIAL BIBLIOGRAPHY AND ABBREVIATIONS

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