

BRITISH SHIPPING LAWS

**KENNEDY'S
LAW OF SALVAGE**

FIFTH EDITION

by

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PREFACE

The publication of the first edition of Lord Justice Kennedy's *Civil Salvage* in 1891 was nothing if not well timed. The principles of the modern law of maritime salvage were in the main laid down in the nineteenth century by the Admiralty Court at a time when the court also had to grapple with the applicability of the traditional rules, originally formulated in the days of sail, to the circumstances presented by the shift in use to vessels powered other than by natural forces. The greater manoeuvrability and reliability of modern vessels encouraged the growth of professional salvors and, in turn, the practice of effecting salvage on the basis of standard forms of salvage contract, principally the Lloyd's Standard Form of Salvage Agreement (No Cure—No Pay), which was coming into use at exactly the time that the first edition of *Kennedy* appeared. Resolution of salvage issues between parties to the Lloyd's Form is not conducted publicly, in court, but privately, by arbitration. The number of judgments of the Admiralty Court dealing with salvage matters therefore considerably decreased. But the court's success in the nineteenth century in comprehensively stating the principles of salvage law meant that those salvage cases which did come before it tended to be concerned more with the application of settled principles than the elucidation of unsolved problems. Another factor reducing potential controversy in salvage litigation, however, was undoubtedly the great authority quickly achieved by *Kennedy*. Its established pattern, of succinct exposition of the effect of the authorities accompanied by generous summaries of and quotation from them, has given it the position of the principal source of reference on salvage law for nearly a century.

The writing of a new edition of such an established work inevitably involves the necessity of deciding how far to adhere to the existing text or to rewrite. Practical and legal developments since the previous edition have on this occasion been particularly strong in prompting a move forward. To take one example, the problems posed by the carriage of large cargoes of oil have not only involved consideration of the application of the established rules of salvage but also contributed to the revision of the Lloyd's Form and been an important topic for discussion in the negotiations for a new international convention on the law of salvage. The ubiquity of the Lloyd's Form in modern times has also made it appropriate for it to be given fuller consideration throughout the various chapters of this book than has been accorded to it in the past, when it was given more discrete treatment.

Despite the usual uncertainty as to the eventual outcome of negoti-

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ations for international conventions, it was also considered proper to give some consideration to the proposed C.M.I. Salvage Convention (a draft of which was prepared in Montreal in 1981) and to include references to the Brussels Salvage Convention of 1910. The Brussels Convention largely reproduced the existing English law, leading to no major United Kingdom legislation and no mention in this book even of its existence. The traditional pre-eminence of London as a centre for settlement of salvage questions may in the past have appeared to justify concentration on English law as the predominant law governing salvage cases internationally. But it is, at the very least, misleading to conceal the awareness of judges, arbitrators and practitioners in London of the full international implications of the subject. Pressure of space has prevented more than a few references in this edition to salvage cases decided outside England, a situation which it is hoped to remedy in the next edition.

Within this jurisdiction, four recent cases decided a century after the Judicature Acts 1873–1875 and the merger into a unified High Court of the old High Court of Admiralty have highlighted the significance of that legislation. Although the law of salvage was developed, and still falls, within the admiralty jurisdiction, those cases have demonstrated clearly, if it needed to be done, that the law of salvage is nonetheless part of English law as a whole and not solely concerned with principles and rules with a civil law basis. Its exposition therefore requires fuller consideration of the major common law areas: of tort (*The Tojo Maru*); of contract (*The Unique Mariner (No. 1)* and *The Unique Mariner (No. 2)*); and of restitution (*The Winson*).

A major process of revision has been begun in this edition which it is hoped to continue in the next. The subject-matter of the book has been completely re-arranged, in many parts treated far more extensively and, particularly in the light of the factors mentioned above, new material added. But the influence of the old *Kennedy* is readily apparent to those previously familiar with the book. The earlier editions provided both the starting point and the yardstick for the work on this new edition. Although the presentation is new, several passages have been retained intact from previous editions, where appropriate. But the old style of presentation, of text interspersed with accounts of the cases and quotations from the judgments plus verbatim extracts, sometimes extremely lengthy, from the statutes, has gone, replaced by a now conventional, more integrated presentation. Nevertheless, the original author's desire to afford a book which is also of value as a case-book is reflected by the inclusion in this edition, contrary to the prevailing trend, of several generous extracts from the judgments which are of particular utility.

We are grateful for the patience of the publishers in the early stages of the preparation of this edition. Other commitments precluded

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devotion to the work of as much time as we would have wished. On the other hand, we benefited gratefully from this in that, once the decision was taken to accelerate production, the publishers relieved us of much of the usual work required of authors in seeing a book through the press, especially the proof-reading, and also undertook responsibility for preparing the tables of cases and statutes, and collecting the material for the appendices.

We have been anxious to ensure that this new edition should benefit from not only the academic world and the practising bar but also from a practising solicitor specialising in maritime claims. To this end, we have been fortunate to have the assistance of Richard Shaw. The completed work betrays evidence not merely of his consultancy but also of his participation, particularly in those areas where he and his colleagues in the leading shipping firms are so intimately involved (*e.g.* assessment of values and preparations for arbitration).

Finally, we would like to extend our gratitude to the secretaries of the Faculty of Laws, University College London, who were responsible for the bulk of the typing of the manuscript; to Dominic and Josephine Rose, without whose assistance the index could not have been ready in time, and to those bodies who granted permission to reproduce the materials contained in the appendices.

We have attempted to state the law on the basis of the material available to us up to September 1, 1985.

David Steel
September 1985

Francis Rose

ABBREVIATIONS

[Abbreviated book and statute citations, omitting books to which full references are given.
Standard abbreviations are omitted.]

A.J.A.	Administration of Justice Act
Abbott	<i>Abbott's Law of Merchant Ships & Seamen</i> , 14th ed. (1901), eds. J. P. Aspinall, B. Aspinall and H. S. Moore
Arnould	<i>Arnould's Law of Marine Insurance and Average</i> , 16th ed. (1982), eds. Sir M. J. Mustill and J. C. B. Gilman
Beawes	Beawes, <i>Lex Mercatoria Rediviva</i> , 6th ed. (1813), ed. Joseph Chitty
Benjamin	<i>Benjamin's Sale of Goods</i> , 2nd ed. (1981) by A. G. Guest <i>et al.</i>
Birks	Birks, <i>An Introduction to the Law of Restitution</i> (1985)
Bowstead	<i>Bowstead on Agency</i> , 15th ed. (1985), ed. F. M. B. Reynolds
Brice	Brice, <i>Maritime Law of Salvage</i> (1983)
C.C.A.	County Courts Act
C.J.A.	Criminal Justice Act
C.P.A.	Crown Proceedings Act
Carver	<i>Carver's Carriage by Sea</i> , 13th ed. (1982) ed. R. Colinvaux
Charlesworth & Percy	<i>Charlesworth & Percy on Negligence</i> , 7th ed. (1983) by R. A. Percy
Chitty	<i>Chitty on Contracts</i> , 25th ed. (1983), eds. A. G. Guest <i>et al.</i>
Clerk & Lindsell	<i>Clerk & Lindsell on Torts</i> , 15th ed. (1982), eds. R. W. M. Dias <i>et al.</i>
Dicey & Morris	<i>Dicey and Morris on the Conflict of Laws</i> , 10th ed. (1980) by J. H. C. Morris <i>et al.</i>
Goff and Jones	Goff & Jones, <i>The Law of Restitution</i> , 2nd ed. (1978)
Halsbury	<i>Halsbury's Laws of England</i> , 4th ed. (1973-1983), eds. Lord Hailsham of St. Marylebone <i>et al.</i>
Jackson	Jackson, <i>Enforcement of Maritime Claims</i> (1985)
Kennedy	<i>Kennedy's Civil Salvage</i> , 4th ed. (1958), ed. K. C. McGuffie
Lowndes & Rudolf	Lowndes & Rudolf, <i>The Law of General Average and the York-Antwerp Rules</i> , 10th ed. (1975), ed. Sir John Donaldson, C. S. Staughton and D. J. Wilson
M.C.A.	Maritime Conventions Act
M.S.	Merchant Shipping
M.S.A.	Merchant Shipping Act
Marsden	Marsden, <i>The Law of Collisions at Sea</i> , 11th ed. (1961), ed. K. C. McGuffie
Marvin	Marvin, <i>Wreck and Salvage</i> (1858)
Park	Park, <i>A System of the Law of Marine Insurances</i> , 8th ed. (1842), ed. F. Hildyard
Pritchard	<i>Pritchard's Digest of Admiralty and Maritime Law (Pritchard's Admiralty Digest)</i> , 3rd ed. (1887), eds. J. C. Hannen and W. T. Pritchard
Roscoe	<i>Roscoe's Admiralty Practice</i> , 5th ed. (1931), ed. G. Hutchinson
Rose	Rose, <i>The Modern Law of Pilotage</i> (1984)
S.C.A.	Supreme Court Act
S.G.A.	Sale of Goods Act
S.G.S.A.	Supply of Goods and Services Act
S.I.A.	State Immunity Act
Scrutton	<i>Scrutton on Charterparties and Bills of Lading</i> , 19th ed. (1984), ed. Sir A. A. Mocatta, Sir M. J. Mustill and S. C. Boyd
Shawcross & Beaumont	Shawcross & Beaumont, <i>Air Law</i> , 4th ed. (1977), ed. P. Martin <i>et al.</i>

Abbreviations

Summerskill	Summerskill, <i>Oil Rigs: Law and Insurance</i> (1979)
Temperley	<i>Temperley's Merchant Shipping Acts</i> , 7th ed. (1976), eds. M. Thomas and D. Steel
Treitel	Treitel, <i>The Law of Contract</i> , 6th ed. (1983)
U.C.T.A.	Unfair Contract Terms Act
Winfield and Jolowicz	<i>Winfield & Jolowicz on Tort</i> , 12th ed. (1984), ed. W. V. H. Rogers
Wiswall	<i>The Development of Admiralty Jurisdiction and Practice since 1800</i> (1970)

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