

# By sea and by air

By Richard Royle



In 1697, when Holt CJ stated “A man shall not sue in the admiralty, only because it is a ship”,<sup>1</sup> a new, very broad, jurisdiction was born. Similarly, the recent massive expansion in aviation travel has generated increasing legal issues.

Admiralty law (also referred to as maritime law) and aviation law are distinct bodies of law, both domestic (governing maritime/aviation activities), and private international law (governing the relationships between private entities which operate vessels and planes in the oceans and in the air). Matters covered include marine and aviation commerce, maritime navigation, shipping, sailors, pilots and transport of passengers and goods by sea and air. Both areas of law involve commercial, common law and criminal jurisdictions. When boats and planes travel overseas, additional dimensions come into play, such as international treaties, questions of the appropriate forum and the proper law.

This edition of *Precedent* focuses on selected areas likely to be of greatest interest to its readers.

The first involves maritime and aviation safety. In the early 1930s, Captain AG Lamblugh of British Aviation Insurance Group, London, noted, “aviation in itself is not inherently dangerous. But to an even greater degree than the sea, it is terribly unforgiving of any carelessness, incapacity or neglect.”

In their excellent articles on the provisions of the *Civil Aviation (Carriers Liability) Act 1959*, Montreal 99 and the Warsaw Convention, Russell McIlwaine SC and Brian Bradley provide two different perspectives on the law relating to recovery for damages resulting from death or injury on commercial aircraft. Russell’s article is an outline of the main legal principles, while Brian focuses on interpretation of an ‘accident’ under Article 17 of the Montreal No. 4 Convention.

Whereas the Carriers Liability Act adopts international conventions with a ‘no-fault’ system of recovery for commercial flights, many accidents occur on private aircraft. Joseph Wheeler’s careful review of the National Regulation of Air Safety, overseen by the Civil Aviation Safety Authority (CASA) under the *Civil Aviation Act 1988*, assists the practitioner in understanding how air safety is regulated and enforced in this country.

In relation to maritime safety laws, we have the benefit of a self-confessed ‘old salt’ in Mr Peter Burge. Mr Burge is a highly experienced maritime expert with a lifetime of practical and marine engineering experience. He outlines the origins of maritime standards, rules and regulations from the Lloyd’s Register of Shipping to current operational and navigational protocols.

Injuries on cruise liners are an increasing source of litigation involving numerous jurisdictional issues, as well as disputes over contractual terms and waiver clauses. Matthew Harvey skilfully navigates his way through these jurisdictional waters.

Recent events involving environmental activists in Russian waters and protests against Japanese whaling in the Southern Ocean have triggered questions about whether such activists are pirates within the meaning of Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS). Charlie Rae considers this interesting issue and, in particular, whether the activities of the environmentalists are ‘for private ends’ or to further a political agenda or government policy.

The Montara oil spill in August 2009 caused thousands of litres of oil to gush unabated into the Timor Sea for 74 days. The use of highly toxic dispersants to clean up the spill caused an environmental disaster. Emily Mitchell highlights the depth and breadth of this tragedy, outlining the economic and health impacts on villages in West Timor. To complete this smorgasbord of maritime-related articles, Natalie Klein considers the plight of sharks. She highlights gaps in the international legal regime, particularly UNCLOS, which fails to protect sharks by international law. The lessons learned from the movement to protect whales are informative and well considered.

Tracey Carver’s case note on the decision of the High Court in *Barclay v Penberthy* reminds us of the need to consider claims by employers that may arise from transport accidents, and Patrick Nunan considers the findings of the Supreme Court of Queensland in an action brought following the Lockhart River plane crash in 2005, where the lost services from the deceased included the loss of the fruits of their hunting and fishing activities.

Enjoy! ■

**Note:** 1 *Shermoulin v Sands* (1697), 1 Raym. 272.

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