

BOOK REVIEW

The Law of Shipbuilding Contracts (Fifth Edition), By Simon Curtis, Ian Gaunt and William Cecil. Published by informa Law from Routledge (Taylor and Francis) (2020). Pages 444. Hardback. £495.00. eBook £445.00 ISBN: 978-1-1383-7016-6.

*Oh, hear us when we cry to Thee,
For those in peril on the sea!*

These words from William Whiting's 1860 hymn "Eternal Father, Strong to Save" reflect the timeless maritime struggle against the dangers of the sea. The universality of the narrative portrayed is embodied in the ubiquity of the hymn, adapted versions have been adopted by the Royal Marines as well as several Commonwealth countries' navies, and the United States Navy and Coast Guard.

This notion of course is not new, the hymn was inspired by *Psalm 107: 23–26* and one which is common to classical literature. Indeed, Homer's epic *Odyssey* could not have occurred without the perilous winds which blew Odysseus astray on the high seas.

To face these hazardous conditions high quality ship building is essential. This can only be achieved through commercial and efficient contracting. To that end, *The Law of Shipbuilding Contracts* provides the leading practical guide to explaining the basic principles and law underlying standard contracts used in the shipbuilding industry.

While shipbuilding practices have evolved greatly since ancient times so too has international dependence on shipping. This has created new challenges for the realm of shipbuilding. Since the publication of the last edition in 2012, some of the key difficulties faced by the shipping industry have arisen not from the sea but instead from changes in the global economy. As the authors acknowledge, since 2009 freight rates have remained stagnant, leading to a fall in global demand for new vessels.

Even where demand exists, heightening environmental protections must now be met. This is in response to the increasing pressure to reduce marine-derived SO_x and NO_x "greenhouse gas" emissions. The book considers the current state of environmental protections, but reference also made to the likely environmental considerations that will continue to shape the shipbuilding landscape.

The awareness of the key commercial issues facing the shipbuilding industry is reflective of the strength of the book's authorship. Ian Curtis, as the book's original sole author for the first four editions, has unquestionable credentials. Curtis showed foresight in the field by adopting a clause by clause analysis of the SAJ Form in the 1990 edition of the book. He has been cited in each edition of *The World's Leading Shipping and Maritime Lawyers* since 1998. In this edition he is joined by two new co-authors William Cecil,

also of Haynes and Boone (London) as well as Ian Gaunt, LMAA President and renowned arbitrator.

The book's awareness of the shipbuilding context is further reflected by the selection of standard form contracts considered by it. As the authors recognise, East Asia continues to dominate the shipbuilding scene, the three most significant shipbuilding exporters being Korea, Japan and China. The Philippines and Vietnam are also emerging as contenders in the shipbuilding market, a development which will likely continue in the coming years.

Despite the emergence of these other markets, the "SAJ Form", first published in 1974 by the Shipbuilders' Association of Japan, continues to be the most widely used standard form contract in the Asian market. Although the form was created for the Japanese market, its continued dominance appropriately warrants detailed analysis, particularly as matters are regularly arbitrated in London and some of the concepts contained may be foreign to common law practitioners. As with previous editions of the book the detailed analysis and insight is given to the SAJ Form.

Additionally, detailed analysis is devoted to BIMCO's 2007 "NEWBUILDCON" Form of shipbuilding contract, which reflects, as the authors acknowledge, the take-up of the form in the shipbuilding market. The greater adoption of this standard form document reflects the strength of buyers in the current market: the form bolsters the position of the purchaser, as compared to that provided under the SAJ Form.

The Chinese shipbuilding market remains the largest and continues to enjoy the most significant growth. This is reflective of the national plans to continue its expansion in the market as part of its "Made In China 2025" initiative. However, despite this dominance, the China Maritime Arbitration Commission (CMAC) standard form has not been widely adopted in the market. Accordingly, the authors have not included analysis of this form in the most recent fifth edition (although enthusiasm for the form, following its publication in 2011, had warranted its inclusion in 2012 in the fourth edition).

The book provides comparative analysis of the SAJ Form and NEWBUILDCON, concentrating on the effect of material differences in contractual wording. The authors further employ their practical insights, demonstrating their world-class experience, by comparing the practices of the conventional shipbuilding sector with specialised projects for the offshore (oil and gas) sector, analysing, for the first time, the construction of these specialised vessels and units. In recognition of the unique challenges of the offshore industry, the latest edition devotes particular attention to the different design process for shipbuilding in this context. One instance of these differing considerations is shown in relation to variation procedures and changes to the scope of work.

The insight of the work, and degree of practical understanding is demonstrated in the work's discussion of the prevention principle. By way of context, the "traditional" common law view is that where there

is an act of prevention and an extension of time is not granted, or is not able to be granted, time is “at large” and the Owner cannot insist on compliance with the date for completion. A term is then necessarily implied that the Contractor will complete within a reasonable time. As a result, the Owner is not able to claim for any liquidated damages and will only be entitled to common law unliquidated damages for which it can provide proof. This is a fraught issue in the construction industry more broadly and remains unsettled.

The SAJ form for shipbuilding incorporates a clause which allows extension of the delivery date in stipulated circumstances, thereby preventing time from being set at large. The NEWBUILDCON form at clause 34 provides that in a similar range of circumstances to the SAJ, an extension of the delivery date will result, subject to the builder giving notice of such an event within 10 days of the time of becoming aware of it. It follows that, as the authors opine, that the scope of operation for the prevention principle in the shipbuilding industry is narrow.

This position is set out, contrary to the decision of Leggatt J (as he was then, now Lord Leggatt) in *Zhoushan Jinhaiwan Shipyard Co Ltd v Golden Exquisite Inc* [2015 EWHC 4050 (Comm); [2015] 1 Lloyd’s Rep 283. The cautious critique offered by the authors has found judicial support in *Jiangsu Guoxin Corp Ltd (Formerly Sainty Marine Corp Ltd) v Precious Shipping Public Co Ltd* [2020] EWHC 1030 (Comm), post-publication, where Butcher J distinguished the judgment of Leggatt J on this point. This is just one example of the insight and depth of understanding the authors offer in the book.

As the fields of maritime law and construction have both been historically dominated by arbitration as a dispute resolution mechanism, it is perhaps easily understood this has also been the trend for shipbuilding matters. This is reflected by the book’s focus on arbitral procedure. Effective dispute resolution procedures are integral to encouraging predictability and commercial confidence in any industry. The authors therefore make valuable contributions to the sphere of maritime dispute resolution with guidelines on arbitration that are both practical and thorough, spanning the lifecycle of the dispute resolution process.

I do not hesitate in my recommendation of this book for those coming to the subject of shipbuilding for the first time as practitioners or regularly practising in the field. The comprehensive and authoritative text will prove a worthy addition to the bookshelves of buyers and charterers of newbuilding tonnage, shipbuilders and those working in the offshore sector. Further, the clear and concise prose lead me to also recommend this work for shipbrokers, banks and insurers, should they seek a clear guide to the industry.

This book is available on i-law.com