

1996

Review of Robert M. Jarvis (ed.), *An Admiralty Law Anthology*

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Recommended Citation

John Paul Jones, Book Review, 27 *J. Mar. L. & Com.* 485 (1996)

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Book Reviews

AN ADMIRALTY LAW ANTHOLOGY. Edited by Robert M. Jarvis. Cincinnati: Anderson Publishing Co., 1995. Pp. ix/159. USD 21.00. ISBN 0-87084-017-7.

Professor Jarvis, an experienced legal editor with a history of service to this journal, the *University of San Francisco Maritime Law Journal*, and the *Maritime Law Reporter*, has collected thirty articles in one slim volume. As edited, they average fewer than five thousand words, and range from barely 340 words criticizing the U.S. Supreme Court's decision in *Bisso v. Inland Waterways Corp.*¹ to the more than ten thousand words of George Healy's survey of maritime personal injury and wrongful death law. Fourteen of the articles come from professors, one from a judge, eleven from practitioners, two from average adjusters, three from Coast Guard officers, and three from law students. All originally appeared in law journals; none came from books; none from trade journals or newspapers. Nine of the articles first appeared here, in the *Journal of Maritime Law and Commerce*; eight first appeared in the *Tulane Law Review*.

The dictionary on my office shelf defines an anthology as "a collection of selected writings by various authors, usually in the same literary form or on the same subject." It is safe to say that all thirty of these law review articles employ the same literary form. While they are all writings on the same general subject of maritime law, they address fifteen different topics within maritime law, e.g., salvage, general average, the maritime lien. The work therefore qualifies as an anthology without straining the point. It might be more accurate, however, to describe it as a reader, and thereby convey the use for which it was obviously intended. That law students were intended as its consumers seems clear from the way the publisher markets the series in which Professor Jarvis's book appears. According to Anderson Publishing, *An Admiralty Law Anthology* (like its mates) offers "enrichment reading beyond the traditional casebook." Moreover, the headings of Professor Jarvis's chapters correspond to those in casebooks offered by leading American publishers for use in law school courses in admiralty and maritime law. Indeed, the number of chapters—fifteen—comes conveniently close to

¹349 U.S. 85 (1955).

the number of weeks in a semester as ordained by the American law school accrediting body. A chapter a week surely must have been the pace in the mind of the work's superintendent. For the most part, the articles address essential elements of maritime law uncontroversially, and without a common theme. *An Admiralty Law Anthology* thus offers about what the synecdochic nutshells by West Publishing offer, albeit by various authors rather than one. What most commends the *Anthology* to me as a teacher is the three articles by law students. Beyond their excellent content, they signal to an audience of peers that critical and scholarly writing on a par with that of professors and practitioners is something for students to dare.

All the footnotes have been excised from these law review articles. I found this so startling that I began to consider what functions the absentees ought to have been serving. Had they been present for duty, they could have conveyed citations, that is, offered directions for locating the printed work which the writer was discussing or the primary sources on which she was relying. Otherwise, they could have presented amplifying, circumferential, or explanatory materials. Because *An Admiralty Law Anthology* was intended by its publisher to accompany (rather than to supplant) a casebook, and because the chosen articles address central themes found in famous cases, citation footnotes could be deleted as unnecessary for the student readers at whom the book is aimed. On the other hand, I was prepared to object to the omission of footnotes of the other sort, that is, explanatory notes. For example, in Benjamin W. Yancey's article, *The Carriage of Goods: Hague, Visby, and Hamburg*, the author reports that the troublesome effect of the "benefit of insurance" clause in a carrier's bill of lading (that is, cutting off the cargo underwriters' right of subrogation) was nullified by invention by cargo underwriters of the loan receipt. Page 50. Surely if the benefit-of-insurance clause needed defining for a typical *Anthology* reader, then the loan receipt would, too. As the former was defined in the text, I fully expected the latter to be defined in a footnote, and therefore to offer an example of a jettisoned note better left aboard. But a loan receipt is not defined in Mr. Yancey's article as it appeared in the *Tulane Law Review*, so the absence affords no basis for my exercising either Professor Jarvis or the series editor regarding footnote deleting. In *Marine Insurance: Varieties, Combinations, and Coverages*, authors Raymond P. Hayden and Sanford E. Balick refer to "red-letter clauses" in builder's risk policies, but do not define the term in their text as reprinted in the *Anthology*. Turning to the *Tulane Law Review*, I again found the omission chargeable to the original authors or their law review editors, and not to those who trimmed the footnotes for the *Anthology*. In the end, I could identify no more grievous consequence from eliminating footnotes than that in the article by Mr. Hayden and Mr. Balick, where omission of an identifying note made cryptic

the authors' reference to "a frequently criticized Supreme Court decision" which constrained towing companies more "than their salty counterparts in the matter of indemnification." Page 127. Without assistance, most law students probably would not recognize this as a reference to *Bisso v. Inland Waterways Corp.*

Coincidentally, *Bisso* is soundly and succinctly criticized by Daniel B. MacLeod in his *The Use of Exculpatory (Red Letter) Clauses in Ship Repair Contracts* thirty pages before. Page 94. Not much of Mr. MacLeod's article appears in *An Admiralty Law Anthology*, but that does not seem strange in view of what appears to have been a decision to stick to the basics. Indeed, the excerpt from Mr. MacLeod's article is only 343 words long; it is, therefore, the best evidence of the sharp scalpel deftly wielded by Editor Jarvis. What was almost a digression in the article as it appears in the *University of San Francisco Maritime Law Journal* stands perfectly well alone, Lilliputian but undiminished, in the *Anthology*.

One edits by inserting as well as by deleting. Professor Jarvis is an unobtrusive editor, saving his two cents respecting the more controversial assertions of some contributors for another venue, another day. Here, he offers only the most neutral of introductions to each chapter. Typical of his gentle touch is the introduction to Chapter 14, Limitation of Liability:

Shipowners historically have been permitted to limit their liability to the value of their vessels. The reading below outlines the development of limitation and discusses the judiciary's hostility towards the concept.

Page 133. In one or two places, the reader might have profited from editorial intrusion in the form of a set of brackets enclosing information of particular use. For example, the first and supposedly simplest illustration in Peter N. Swan's excellent piece, *Client Counseling and Settlement Evaluation—A Probabilistic Approach with Special Reference to Admiralty*, surely would make more sense were it accompanied by a brief explanation as to why damages claimed by a stranded vessel admitting its own liability ought to be divided in half for a calculation on behalf of the other vessel said to have been involved. My assumption is that Professor Swan, writing months before *United States v. Reliable Transfer Co.*² even was argued in the U.S. Supreme Court, applied the historical rule of equal division of damages. Given that the *Anthology* seems to have been aimed primarily at student readers, interpolations relating the traditional rule of collision damage apportionment to stranding, and calling to the reader's attention what *Reliable Transfer* soon did to Professor Swan's unstated premise would have enabled a fuller appreciation of Professor Swan's work. Indeed, for the latter

²421 U.S. 397 (1975).

point, an editor's note could have referred elsewhere in the *Anthology* to the lucid and succinct *Basic Principles of the Law of Collision* by Nicholas J. Healy and Joseph C. Sweeney. Another simple cross reference might otherwise have prevented the confusion engendered in the article by Mr. Hayden and Mr. Balick, when deletion of an identifying footnote left them alluding disparagingly to *Bisso v. Inland Waterways Corp.* without naming it. A note from the *Anthology* editor could have identified the case clearly and referred readers to Mr. MacLeod's sharp but brief criticism.

From editing, I would distinguish proofreading. Even a casual reading turns up one or more proofreading errors in each article, invariably of the sort that spelling checking software programs do not detect. For the most part, these amount to very minor distractions while the reader fathoms "criminal seal law," "a contact for towing," "civil are," and the like. One such error is worth bringing to the attention of readers before they begin. In Professor Swan's article on evaluating claims for settlement purposes, 2ⁿ appears as 2n. Page 146. Admitting to deeply seated math phobia, I nevertheless venture that the former is not accurately conveyed by the latter.

One who takes the trouble to edit a collection of writings surely earns the privilege of choosing, without superintendence, what to include or omit. It seems natural, nevertheless, to indulge in the pastime of *What If I Had Been Editor?* Few could quibble with Professor Jarvis's decisions to include; the collection is excellent on the subjects he has covered. My only quibble is with what he did not include. Contrary to the laudable interest of brevity, I might have argued for articles on three more subjects: treasure, pleasure, and crime. The tension between treasure salvage and marine archaeology is certainly dynamic, and therefore worthy of study in an era of technological breakthroughs in deep water search and retrieval. As the law seems to be out-pacing attempts to write about it, were I editor, I would opt for timeliness over comprehensiveness and take up *Gold, Abandonment, and Salvage*, Patrick J. O'Keefe's recent comment in *Lloyd's Maritime and Commercial Law Quarterly*³ on the decision by the U.S. Court of Appeals for the Fourth Circuit in *Columbus-America Discovery Group v. Atlantic Mutual Insurance Co. (The Central America)*.⁴ The only omission by Professor Jarvis that I might call glaring is that pertaining to the relationship of admiralty law to recreational boating. Where is Preble Stolz's seminal article from the *California Law Review, Pleasure Boating and Admiralty: Erie at Sea*?⁵ Finally, I suspect that the editor's charming tendency for self-effacement lies behind the absence of an article on maritime criminal

³[1994] LMCLQ 7.

⁴974 F.2d 450, 1992 AMC 2705 (4th Cir. 1992), cert. denied, 507 U.S. 1000 (1993).

⁵51 Cal. L. Rev. 661 (1963).

law, as my first choice for a work on that subject would be Professor Jarvis's own *Common Ethical Problems in Maritime Criminal Cases*, published in an earlier issue of this journal.⁶ Because of its focus on the ethical perils associated with representing a criminal defendant, Professor Jarvis's article is an excellent introduction for maritime students who, no doubt, regard a criminal case as the farthest thing on their professional horizons. For other readers, very useful footnotes identifying a most helpful treatise and the important cases commend the original version.

Any law school offering a course in maritime law shelves the journals from which *An Admiralty Law Anthology* has been compiled. There is, therefore, available to the *Anthology's* anticipated buyers, free and easy access to the originals. Nevertheless, I expect today's law students to regard twenty-one dollars well spent in exchange for the convenience offered by Professor Jarvis's combination and abridgments. I will offer that opinion to mine.

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⁶23 J. Mar. L. & Com. 387 (1992).

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INTERNATIONAL CONFLICT OF LAWS: COMMON, CIVIL AND MARITIME. By William Tetley. Montreal: International Shipping Publications, 1994. Pp. cix/1103. CD 195.00. ISBN 2-89073-988-0.

The title of this book suggests a number of things about the material therein. For example, the "international" prefix brings to mind contrast with so-called "interstate" conflict of laws to be found in federal jurisdictions. Similarly, the "Common, Civil and Maritime" subtitle may be read to infer that the regimen of maritime law deserves to be, or is best, examined in its own right alongside the other traditions identified. Professor Tetley brings a recognized wealth of academic as well as practical experience to unavoidably international maritime law, with special reference to its conflictual aspects.

The main contribution of the review book is in the author's radical "fifth" thesis, "a consistent and uniform methodology" (page 37) aimed at isolating the properly applicable law. The methodology deprecates rigid adherence to the institutional distinction made between procedure and substance and, moreover, leans toward a more substantivistic, civilian law-type redefinition of these basic precepts. This is very much in line with the current "fourth" approach in national legislation and international conventions. Consequently, the "fifth" would extend proper law rationales, flexibility of approach, and the practical function of the precepts to several areas that have conceptually been regarded as regulated by forum law because they are essentially procedural. This is the subject of the first substantive Part of the book, "The Theory," and runs into six chapters which trace the historical development of general aspects of conflict theory and method not limited to the shipping law aspects. It rounds off with a discussion of such topics as *renvoi*, public policy, and mandatory rules in international and comparative contexts, e.g., forum statutes, the Hague Rules 1924, the Hague-Visby Rules 1968, and the Hamburg Rules 1978.

"The Theory" is consistently masterful in its conflictual analysis and exposition, and is especially commendable on a number of points. For example, Professor Tetley argues in favor of the application of an international definition of public policy (presumably limited to shipping) and addresses the contradistinction between conflict avoidance and evasion by the litigants, always with ample sketches of existing case law and with more than adequate references to the variety of national laws and international conventions. A bona fide choice of law clause in a charterparty or in a sale agreement is given to illustrate avoidance, while a marine insurance policy or a bill of lading clause that specifies a law other than the governing law typifies evasion. Choice of jurisdiction clauses are valid in a charterparty but not necessarily so in bills of lading or in towage contracts. Pages 154-166.

The remainder of the book is in nine Parts which carry twenty further chapters (between Parts Two and Eight), plus Part Nine (summaries of forty-one national maritime conflicts systems) and Part Ten (appendices of various pertinent documents). Part Two deals with territoriality and nationality; Three with contracts; Four with torts and delicts; Five with "special questions" of shipowners' limitation of liability and of maritime liens, mortgages, and claims; Six with so-called ancillaries; and Seven with proof of foreign law, jurisdiction, and recognition. Part Eight is the concluding chapter. Parts Nine and Ten, respectively, detail national maritime conflicts systems plus several definitive international instruments. Pervasive issues include the contemporary inadequacies of the application of the law of the flag, the quality of the notion of closest connection, and the reference to selection either of a rule of the applicable legal system or of the legal system itself. These are raised and discussed in the ensuing chapters. Every chapter ends with a conclusion or set of conclusions invariably along the lines of the author's definitional thesis/methodology identified. Professor Tetley realistically predicts that the "next frontier will be international conventions on *procedure*." Page 868.

In relation to (say) the English tort position, the reader might question the opening gambit that "it has been *the traditional and accepted view* that matters which were deemed substantive were subject to their own proper law, even if it was a foreign law." Page 47 (emphasis added). In no way could this diminish the book's sound academic basis nor, for that matter, should the fair, referential detail not capture the practitioner's attention. A contemporary, eminently accessible book well-conceived of, and one which affirms its author's experience across several jurisdictions, it should have its place alongside cognate authoritative texts.

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