## **MARTIN DAVIES**

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# ACADEMIC APPOINTMENTS

Tulane University Law School, New Orleans, LA	since 2000
Admiralty Law Institute Professor of Maritime Law Professor of Law Director, Tulane Maritime Law Center Co-Director, Tulane Maritime Law Center Deputy Director, Tulane Maritime Law Center	since 2002 2000-2002 since 2004 2002-2004 2000-2002
Melbourne Law School, The University of Melbourne, Australia	since 1995
Professorial Fellow Harrison Moore Professor of Law Associate Dean (Academic), Faculty of Law	since 2000 1995-2000 1996-1998
Monash University Law School, Melbourne, Australia	1989-1995
Associate Professor of Law Senior Lecturer in Law Associate Dean (Research), Faculty of Law	1993-1995 1989-1992 1991-1993
The University of Western Australia Law School, Perth, Australia	1983-1989
Lecturer in Law Sub-Dean, Faculty of Law	1983-1989 1986-1989
Department of Law, Nottingham University, Nottingham, U.K.	1980-1981
Lecturer in Law	1980-1981
VISITING TEACHING APPOINTMENTS	
Law School, Dalian Maritime University, Dalian, China	2016
Law Faculty, Baku State University, Azerbaijan	2014, 2015
Law Faculty, National University of Singapore	
Distinguished Visitor Maritime and Port Authority Distinguished Visitor	2008, 2009 2004

Università degli Studi Cagliari, Sardinia, Italy		
Visiting Professor	2007, 2008	
HONORARY APPOINTMENTS		
Titulary Member, Comité Maritime International	since 2019	
Dalian Oceans University, Dalian, China		
Visiting Professor	since 2016	
International Shipping Law School, East China University of Politi Law, Shanghai, China	cal Science and	
Guest Professor	2014-2017	
PROFESSIONAL EMPLOYMENT		
Senior Consultant, Clyde & Co., Australia, Hong Kong, Singapore ar	nd USA 2020 to present	
Consultant, Norton Rose Fulbright, Australia, Hong Kong, Singapor	e and USA 2011-2020	
Consultant, Blake Dawson Waldron, Melbourne, Sydney and Brisba	n <b>e, Australia</b> 1999-2011	
Consultant, Mallesons Stephen Jaques, Melbourne and Sydney, Aust	<b>ralia</b> 1989-1999	
Consultant, Gibson and Gibson, Perth, Australia	1988-1989	
OTHER PROFESSIONAL APPOINTMENTS		
Panel Arbitrator, International Center for Dispute Resolut Arbitration Association	ion, American since 2014	
Panel Arbitrator, Qingdao Arbitration Commission	since 2019	
EDUCATION		
B.A. (with First Class Honours) in Jurisprudence, University of Oxford	1978	
B.C.L. (with First Class Honours), University of Oxford	1979	
LL.M., Harvard Law School	1980	
M.A., University of Oxford	1983	

D.C.L., University of Oxford
Higher doctorate, approved 2021, to be awarded 2022 

## SUBJECTS TAUGHT/AREAS OF RESEARCH EXPERTISE

Admiralty and Maritime Law (all aspects); International Sale of Goods; Conflict of Laws/Transnational Litigation; International Commercial Arbitration; Contracts; Torts.

# PUBLICATIONS

#### **Books (author or co-author)**

NYGH'S CONFLICT OF LAWS IN AUSTRALIA (LexisNexis Butterworths, 10<sup>th</sup> ed., 2019), with Andrew Bell, Paul Brereton, and Michael Douglas.

- Bell is President of the New South Wales Court of Appeal
- Brereton is a Justice of Appeal of the New South Wales Court of Appeal.
- Ninth edition (with Bell and Brereton), 2014; eighth edition (with Bell and Brereton) 2010; seventh edition (with Peter Nygh) 2002.

SHIPPING LAW (Thomson Reuters, 4<sup>th</sup> ed., 2016), with Anthony Dickey, Q.C.

• Third edition 2004; second edition 1995; first edition 1990.

TORTS (LexisNexis Butterworths, 9<sup>th</sup> ed., 2021), with Ian Malkin.

• Eighth edition (with Ian Malkin), 2018; Seventh edition (with Ian Malkin), 2015; sixth edition (with Ian Malkin) 2012; fifth edition (with Ian Malkin) 2008; fourth edition 2003; third edition 1999; second edition 1995; first edition 1992.

INTERNATIONAL TRANSACTIONS IN GOODS: GLOBAL SALES IN COMPARATIVE CONTEXT (Oxford University Press, 2014), with David V. Snyder.

• Winner of the Egon Guttman Casebook Award at American University, Washington DC, 2016.

ADMIRALTY AND MARITIME LAW: PRACTITIONER'S EDITION (2 volumes)(Beard Books), with Robert Force and A.N. Yiannopoulos.

- Vol. 1 (1st ed. 2005, 2nd ed. 2012, 3rd ed. 2021).
- Vol. 2 (1st ed. 2005, 2nd ed. 2017).

ADMIRALTY AND MARITIME LAW: ABRIDGED EDITION (Beard Books, 2006), with Robert Force and A.N. Yiannopoulos.

• Revised edition published 2008.

INTERNATIONAL TRADE LAW: COMMENTARY AND MATERIALS (Thomson LawBook Co., 2<sup>nd</sup> ed., 2004), with Michael Pryles and Jeff Waincymer.

• First edition 1996.

CONFLICT OF LAWS: COMMENTARY AND MATERIALS (Butterworths, 1997), with Sam Ricketson and Geoffrey Lindell.

## **Books** (editor)

JURISDICTION AND FORUM SELECTION IN INTERNATIONAL MARITIME LAW: ESSAYS IN HONOR OF ROBERT FORCE (ed. Martin Davies, Kluwer Law International, 2005).

#### **Book chapters**

Neither fish, nor flesh, nor good red herring: A comparative study of the law relating to marine insurance brokers, accepted for publication in THE MODERN LAW OF MARINE INSURANCE, VOL. 5 (ed. D. Rhidian Thomas), to be published by Informa in 2022.

*Liability in the shipping industry*, accepted for publication in RESEARCH HANDBOOK ON CORPORATE LIABILITY (eds Christian Witting and Martin Petrin), to be published by Edward Elgar in 2022.

*Perspectives on material non-disclosure and misrepresentation in marine insurance,* accepted for publication in MARITIME PERSPECTIVES OLD AND NEW, Volume 2 (eds. P.K. Mukherjee, J. Xu and M. Mejia), to be published by Nova (for the World Maritime University) in 2022.

Forum non conveniens – now we are much more than ten, in A CONFLICT OF LAWS COMPANION: ESSAYS IN HONOUR OF ADRIAN BRIGGS 31-51 (eds A. Dickinson, E. Peel and T. Pausey, Hart Publishing, 2021).

*Maritime uses of drones* (with Maurice Thompson) in DRONE LAW AND POLICY 78-112 (eds A. Tarr, J-A. Tarr, M. Thompson, J. Ellis, Taylor and Francis, 2021)

Soft clauses in letters of credit, in TRADE FINANCE: TECHNOLOGY, INNOVATION AND DOCUMENTARY CREDITS 40-54 (eds D. Neo and C. Hare, OUP, 2021).

*Choice of law in determining ownership of ships*, in THE WORLD OF MARITIME AND COMMERCIAL LAW: ESSAYS IN HONOUR OF FRANCIS ROSE 107-121 (eds C. Mitchell and S. Watterson, Hart Publishing, 2020).

When was the last time you were restrained by a prince?: Conservatism and the development of maritime law, in MARITIME LAW IN MOTION 153-173 (eds. P.K. Mukherjee, M. Mejia, J. Xu, Springer, 2020).

*Pilotage of autonomous and remotely-controlled ships*, in AUTONOMOUS SHIPS AND THE LAW 279-294 (ed. H. Ringbom, E. Røsæg, T. Solvang, Routledge, 2020).

Cross-border insolvency and admiralty: a middle path of reciprocal comity, in COMMERCIAL MARITIME LAW 1-27 (ed. M. Özdel, Hart Publishing, 2020).

*The future of ship arrest*, in THE ARREST CONVENTIONS: INTERNATIONAL ENFORCEMENT OF MARITIME CLAIMS, 307-20 (ed. P. Myburgh, Hart Publishing, 2019).

*Punitive damages*, in MANAGING THE RISK OF OFFSHORE OIL AND GAS ACCIDENTS: THE INTERNATIONAL LEGAL DIMENSION, 337-53 (eds. G. Handl and K. Svendsen, Edward Elgar, 2019).

*Pre-contractual duties of disclosure under American insurance law*, with Jeffrey Stempel, in *CARTER V BOEHM* AND PRE-CONTRACTUAL DUTIES IN INSURANCE LAW: A GLOBAL PERSPECTIVE AFTER 250 YEARS, 171-96 (eds. Y. Hang & G. Pynt, 2018).

International multimodal transportation in the United States, in CURRENT ISSUES IN FREIGHT FORWARDING: LAW AND LOGISTICS, 97-112 (eds. D. R. Thomas and S. Lamont-Black, Lawtext Publishing, 2017).

Seamen's Actions, Vol. 1B of BENEDICT ON ADMIRALTY: annual updates (since 2014).

Incorporation of charterparty terms into bills of lading held by third parties: choice of law issues, in THIRD PARTIES' RIGHTS AND LIABILITIES UNDER BILLS OF LADING, Chapter 7 (ed. F. Lorenzon, Taylor & Francis, 2014).

Admiralty and maritime jurisdiction in the United States: "Same same but different," in INTERNATIONAL COMMERCIAL LAW AND ARBITRATION: PERSPECTIVES 145-57 (ed. N. Perram, Ross Parsons, 2014).

*Excuse of impediment and its usefulness*, in INTERNATIONAL SALES LAW: A GLOBAL CHALLENGE 295-306 (ed. L. DiMatteo, Cambridge University Press, 2014).

*Maritime law: the epitome of transnational legal authority* in BEYOND TERRITORIALITY: TRANSNATIONAL LEGAL AUTHORITY IN AN AGE OF GLOBALIZATION 327-40 (eds. G. Handl, J. Zekoll & P. Zumbansen, Kluwer International, 2012).

*Product liability* in FLEMING'S THE LAW OF TORTS 555-85 (eds. Carolyn Sappideen and Prue Vines 10<sup>th</sup> ed., 2011).

Australia in TRANSFER OF OWNERSHIP IN INTERNATIONAL TRADE 1-30 (2<sup>nd</sup> ed., eds., A. von Ziegler, C. Debattista, A. Plégat and J. Windahl, 2011).

Warranties and utmost good faith in U.S. marine insurance contracts, in THE MODERN LAW OF MARINE INSURANCE, VOLUME THREE 81-100 (ed. D. Rhidian Thomas, 2009).

*Classification society liability in the United States*, in LIABILITY REGIMES IN CONTEMPORARY MARITIME LAW 129-147 (ed. D. Rhidian Thomas, 2007).

Forum selection clauses in international maritime contracts, (with Robert Force) in JURISDICTION AND FORUM SELECTION IN INTERNATIONAL MARITIME LAW: ESSAYS IN HONOR OF ROBERT FORCE 1-58 (ed. Martin Davies, 2005).

*Taking evidence by video-link in international litigation* in INTERCONTINENTAL COOPERATION THROUGH PRIVATE INTERNATIONAL LAW: ESSAYS IN MEMORY OF PETER E. NYGH 69-88 (eds. T. Einhorn and K. Siehr, 2004).

*Product liability in international markets* in TORTS TOMORROW: ESSAYS IN HONOUR OF JOHN FLEMING 130-151(eds N. Mullany and A. Linden, 1998).

*The end of the affair: duty of care and liability insurance* in THREE ESSAYS IN INSURANCE LAW 29-47 (1989).

## Journal articles

"Marine insurance, utmost good faith, and the role of the broker," to be published in *Journal of Maritime Law and Commerce* in 2022.

"Arbitration clauses in seafarers' employment contracts in the Fifth Circuit," 80 *Louisiana Law Review* 404-420 (2020).

"Cross-border insolvency and admiralty: a middle path of reciprocal comity," 66 *American Journal of Comparative Law* 101-26 (2018).

• An earlier version of this article was published in *Comité Maritime International Yearbook 2015 Annuaire* 196-215 (2016).

"A comparative analysis of national responses to the OW Bunker collapse," (2017)(2) *Rivista del Diritto della Navigazione* 685-98.

• Also published in 42 *Tulane Maritime Law Journal* 359-71 (2018).

"Maritime liens and choice of law," 42 Tulane Maritime Law Journal 269-91 (2018).

"The US perspective on charterparty disputes," 23 *Journal of International Maritime Law* 468-76 (2018).

"International multimodal transportation in the United States," 21 Journal of International Maritime Law 511-20 (2016).

"Parallel proceedings for insolvency and limitation of liability," [2015] *Lloyd's Maritime and Commercial Law Quarterly* 24.

"Insurers' pre-contractual disclosure obligations: the position in the United States of America," 23 Insurance Law Journal 70 (2012).

"Forum Selection, Choice of Law and Mandatory Rules," [2011] *Lloyd's Maritime and Commercial Law Quarterly* 237.

"Deepwater Horizon: Removal Costs, Civil Damages, Crimes, Civil Penalties, and State Remedies in Oil Spill Cases," 85 *Tulane Law Review* 889-982 (2011) (with Robert Force and Joshua Force).

"Liability issues raised by the Deepwater Horizon blowout," 25 Australia & New Zealand Maritime Law Journal 35-48 (2011).

"Documents That Satisfy the Requirements of CISG Art. 58," 49(3) Belgrade Law Review (Annals of the Faculty of Law of Belgrade) 39-66 (2011).

"More Lawyers but Less Law: Maritime Arbitration in the 21<sup>st</sup> Century," 24 Australia & New Zealand Maritime Law Journal 13-20 (2010).

• Published version of the 2009 Australian Maritime and Transport Arbitration Commission (AMTAC) Address, Federal Court of Australia, Brisbane, Australia (video-linked to Federal Courts in Sydney, Melbourne and Perth), 2 July 2009.

"Choice of Law and U.S. Maritime Liens," 83 Tulane Law Review 1435-61 (2009).

"Legal and Practical Aspects of Salvage in the United States" [2009] *Lloyd's Maritime and Commercial Law Quarterly* 28-41.

"Whatever Happened to the Salvage Convention 1989?" 39 Journal of Maritime Law & Commerce 463-504 (2008).

"Choice of Law After the Civil Liability Legislation," 17 Torts Law Journal 104-119 (2008).

"Court-ordered Interim Measures in Aid of International Commercial Arbitration," 17 American Review of International Arbitration 299-334 (2008).

"McDermott v. AmClyde: The Quiet Achiever," 39 Journal of Maritime Law & Commerce 11-25 (2008).

• Reprinted in THE HEALY LECTURES ON ADMIRALTY LAW 2005-2015 (ed. John D. Kimball, Informa, 2016) 59-76.

"Bypassing the Hague Evidence Convention: private international law implications of the use of video and audio conferencing technology in transnational litigation," 55 American Journal of Comparative Law 205-237 (2007).

"Litigation fights back: avoiding the effects of arbitration clauses in charterparty bills of lading," 35 Journal of Maritime Law and Commerce 617-43 (2004).

"Forum selection clauses in maritime cases," 27 *Tulane Maritime Law Journal* 367-87 (2003).

"Obligations and implications for ships encountering persons in need of assistance at sea," 12 Pacific Rim Law & Policy Journal 109-41 (2003).

"Time to change the federal *forum non conveniens* analysis," 77 *Tulane Law Review* 309-86 (2002).

"Foreign maritime liens: should they be recognised in Australian courts?," 76 Australian Law Journal 775-82 (2002) (with Kate Lewins).

"In defense of unpopular virtues: personification and ratification," 75 *Tulane Law Review* 337-411 (2000).

"Subrogation, contribution and insurance law: an Australian view," [2000] Restitution Law Review 70-81.

"Just (don't) do it: ethics in international trade," 21 Melbourne University Law Review 601-20 (1997).

"Common law liability of statutory authorities," 27 University of Western Australia Law Review 21-43 (1997).

"Evidence, documents and preliminary discovery in international litigation," 26 University of Western Australia Law Review 286-308 (1996).

"Exactly what is the Australian choice of law rule in torts cases?," 70 Australian Law Journal 711-22 (1996).

"Proximate cause in insurance law," 7 Insurance Law Journal 135-151 (1996).

"Too little imagination or too much? *Phillips v Eyre* revisited yet again," 3 *Torts Law Journal* 273-298 (1995).

"Two views of free in and out, stowed clauses in bills of lading," 22 Australian Business Law Review 198-207 (1994).

"Conflict of laws issues in fatal accidents actions," 1 Torts Law Journal 45-62 (1993).

"The liability of auditors to third parties in negligence," 14 University of New South Wales Law Journal 171-197 (1991).

"The elusive carrier: whom do I sue and how?," 19 Australian Business Law Review 230-247 (1991).

"Equitable relief against withdrawal for non-payment of hire in time charterparties," 18 *Australian Business Law Review* 328-337 (1990).

"Special skill' in negligent misstatement," 17 Melbourne University Law Review 484-496 (1990).

"Private nuisance, fault and personal injuries," 20 University of Western Australia Law Review 129-142 (1990).

"What price a gold sovereign? - Limitation of liability under the Hague Rules," 6 *Australian Bar Review* 49-55 (1990).

"The off-hire clause in the New York Produce Exchange time charterparty" [1990] *Lloyd's Maritime and Commercial Law Quarterly* 107-113.

"The end of the affair: duty of care and liability insurance," 9 *Legal Studies* 67-83 (1989). (Highly Commended by the Australian Insurance Law Association, 1988).

"Limiting shipowners" liability for economic loss," 16 Australian Business Law Review 271-281 (1988) (with Guy Lawson).

"Reading cases," 50 Modern Law Review 409-431 (1987).

"Negligently caused economic loss: a restatement," 16 University of Western Australia Law Review 209-218 (1985).

"The road from Morocco: *Polemis* through *Donoghue* to no-fault," 45 *Modern Law Review* 534-555 (1982).

#### **Review articles**

Annual review of Australian maritime law published in the *International Maritime and Commercial Law Yearbook* every year from 1990-present.

Annual review of U.S. maritime law, co-authored with Robert Force, published in the *International Maritime and Commercial Law Yearbook* every year from 2001-present.

#### Essays, case notes and other short pieces

"Discovery in the USA for arbitration elsewhere," [2020] *Lloyd's Maritime and Commercial Law Quarterly* 535-540.

Editorial, "Conflicting arbitration provisions - sense or nonsense?", 24 Journal of International Maritime Law 251-2 (2018).

"Recognition of Foreign Maritime Liens – *The Sam Hawk*" [2017] *Lloyd's Maritime and Commercial Law Quarterly* 206-212.

"A tribute to Professor William Tetley," 39 Tulane Maritime Law Journal i-iii (2014).

"Conversion of intangible goods," 88 Australian Law Journal 235-37 (2014).

"Wrongful arrest of ships – a reply to Sir Bernard Eder," 38 Tulane Maritime Law Journal 137-42 (2013).

- A response to Hon Mr Justice Bernard Eder, "Wrongful arrest of ships: a time for change," 38 *Tulane Maritime Law Journal* 115 (2013).
- See also "Wrongful arrest of ships: rejoinder by the Honourable Mr Justice Bernard Eder," 38 *Tulane Maritime Law Journal* 143 (2013).

"Houseboat or floating home or what? Certiorari process in the U.S. Supreme Court," 87 *Australian Law Journal* 234-6 (2013).

"Teaching Admiralty requires dismissing important subjects," 55 Saint Louis University Law Journal 483-90 (2011).

"Arbitration awards in 'manifest disregard of the law'," 84 Australian Law Journal 602-4 (2010).

"Reflections on the past decade of transnational litigation," 10 Melbourne Journal of International Law 46-48 (2009).

"Punitive damages and the Exxon Valdez," 83 Australian Law Journal 23-26 (2009).

"Renvoi and presumptions about foreign law: Neilson v Overseas Projects Corporation of Victoria Ltd," 30 Melbourne University Law Review 244-268 (2006).

"The role of juries in US torts cases," 10 Torts Law Journal 109-118 (2002).

*"Kuwait Airways Corp v Iraqi Airways Co:* The effect in private international law of a breach of public international law by a state actor," 2 *Melbourne Journal of International Law* 523-534 (2001).

"Insured's post-contract duty uberrimae fidei: Manifest Shipping Co Ltd v Uni-Polaris Shipping Co Ltd (The Star Sea)," 32 Journal of Maritime Law and Commerce 501-510 (2001).

"Common law liability of statutory authorities: *Crimmins v Stevedoring Industry Finance Committee*," 8 *Torts Law Journal* 133-151 (2000).

"Application of the Hague Rules" "perils of the sea" defense in Australia: *The Bunga Seroja*," 23 *Tulane Maritime Law Journal* 449-64 (1999).

"A chink (or two) in the bill of lading plaintiff's jurisdictional armour? Good news for Australian maritime arbitration?," 26 Australian Business Law Review 70-74 (1998).

"A curate's egg: good in parts - Akai Pty Ltd v People's Insurance Co Ltd," 25 Australian Business Law Review 215-21 (1997).

"What is "ownership" for the purposes of ship arrest under the Admiralty Act 1988 (Cth)?," 24 Australian Business Law Review 76-80 (1996).

"The Hamburg Rules: what happens in 1997?," 23 Australian Business Law Review 235-36 (1995).

"The Constitutional Validity of Residence Requirements in No-Fault Transport Accident Compensation Schemes," 2 *Torts Law Journal* 275-84 (1994).

"Section 37 of the Admiralty Act 1988: Safety net or not?," 22 Australian Business Law Review 447-50 (1994).

"Strict Liability and Reasonable Foreseeability: *Cambridge Water Co v Eastern Counties Leather plc*," 2 *Torts Law Journal* 12-21 (1994).

"The Exocet finds a new target, or fear and loathing for freight forwarders and other carriers by sea," 21 Australian Business Law Review 377-84 (1993).

"Auditors' liability to third parties: *R Lowe Lippman Figdor & Franck (a firm) v AGC (Advances) Ltd*," 1 Torts Law Journal 114-21 (1993).

"What obligations does a shipowner take over from a defaulting time charterer under charterers' bills of lading?," 21 Australian Business Law Review 227-30 (1993).

"The new Act, old bills of lading and the United States District Court for the Southern District of New York: an interesting mix," 20 Australian Business Law Review 432-36 (1992).

"Case note: New South Wales Leather Co Pty Ltd v Vanguard Insurance Co Ltd," 5 Insurance Law Journal 159-64 (1992).

"Deviation is alive and well and living in New South Wales," 19 Australian Business Law Review 379-83 (1991).

"Fruits of the Blooming Orchard," 19 Australian Business Law Review 217-22 (1991).

"Default of one in a chain of charterparties," 19 Australian Business Law Review 51-57 (1991).

"Carriage of Goods by Sea Bill," 19 Australian Business Law Review 57-60 (1991).

Case note: *Qantas Airways Ltd v SS Pharmaceutical Pty Ltd*, 18 Australian Business Law Review 435-40 (1990).

Case note: Verna Trading (Aust) Pty Ltd v New India Assurance Co Ltd, 18 Australian Business Law Review 430-35 (1990).

"San Sebastian revisited," 17 University of Western Australia Law Review 150-159 (1987).

#### EDITORIAL POSITIONS

Member, Editorial Board, LLOYD'S MARITIME AND COMMERCIAL LAW QUARTERLY

Member, Editorial Board, JOURNAL OF MARITIME LAW AND COMMERCE

Member, Editorial Advisory Board, INTERNATIONAL AND COMPARATIVE LAW QUARTERLY

Member, Editorial Advisory Board, AEGEAN REVIEW OF THE LAW OF THE SEA AND MARITIME LAW

Member, Editorial Board, INSURANCE LAW JOURNAL

Member, Editorial Board, AUSTRALIA & NEW ZEALAND MARITIME LAW JOURNAL

Member, Editorial Board, NEW ZEALAND BUSINESS LAW QUARTERLY

Member, Advisory Board, MELBOURNE JOURNAL OF INTERNATIONAL LAW

Member, Advisory Board, THE UNIVERSITY OF WESTERN AUSTRALIA LAW REVIEW

#### PROFESSIONAL BODIES

Titulary Member, Comité Maritime International	since 2019
Member, Maritime Law Association of the United States	since 2000
Associate Member, American Bar Association	since 2000
Member, Maritime Law Association of Australia and New Zealand	1990–2000
Member, Documentary Committee, Intertanko	since 2003