TABLE OF CONTENTS

Preface
Table of Cases
Table of Statutes
Table of US Statutes and Rules
Table of Statutory Instruments
Table of Conventions
Table of Civil Procedures Rules

CHAPTER 1 THE CONCEPT OF SALVAGE
Civil Salvage defined “no cure—no pay” 1–01
Comparison with military salvage 1–02
Essential elements of civil salvage 1–05
Origins of salvage law 1–07
Introduction of salvage contracts 1–11
Ancient codes and laws 1–12
Sources of English salvage law 1–14
The policy of encouragement underlying the salvage reward 1–20
The role of the Court of Admiralty 1–22
Early textbooks 1–24
An historical survey of developments in America before 1800 1–27
Relationship between English and American admiralty law post independence 1–30
English statutory history 1–32
The international salvage conventions 1–37
Use of the CMI Report 1984 to construe the 1989 Convention 1–41
English Law and the interpretation of international conventions: use of travaux preparatoires and purposive construction 1–42
Enforcement and application of the salvage conventions 1–52
Reservations and denunciation 1–56
United Kingdom reservations regarding the 1989 Convention 1–57
Enactment in the United Kingdom of the 1989 Convention 1–58
Commencement provisions 1–60
Future Convention modifications 1–61
Non-retrospective effect 1–62
Territorial scope 1–63
Crews of sub-contracted ships 1–272
Salvor’s sub-contractors 1–275
ISU Sub-Contract (Award Sharing) 1994 form 1–279
American Law 1–281
Voluntariness and professional salvors 1–283
Common ownership of salvaged and salvaged ships 1–284
Sister ship clause: arbitration provision 1–287
Common managed or chartered ship 1–288
Crew of ship in same ownership as salvaged ship 1–289
Claims against cargo in different ownership 1–290
Form of award in common ownership cases 1–292
Crew of salvaged ship as salvors: limitations on their right 1–293
Owner of cargo on salvaged ship as salvor 1–305
Pilots 1–307
Ship’s agent 1–316
Passengers 1–318
Tug and tow: towage contracts and salvage 1–321
Standard towage contracts 1–324
Towage contracts: the English authorities 1–327
Tug and tow: American Law 1–344
Fixed price salvage for one salvor: position of other contributing salvors 1–348
Contract not on “no cure, no pay” basis 1–349
Salvage service: examples 1–350
“Success”, “benefit” and “useful result” 1–356
Post “success” expenses 1–361
Mere contribution to success 1–363
Non-contribution to success 1–369
Meaning of “salvage” 1–370
“The Trelisias” and the meaning of “salvaged” 1–375
Salvage and “success”: American law 1–382
“Salved” and “combined benefit” 1–384
“Salved” and place of safety 1–386
Cargo on a derelict vessel and a place of safety 1–389
“Salved”: a solution? 1–390
Port of refuge: State co-operation 1–396
Dangerous vessels 1–398
Success and the salvage of damaged ships: the American viewpoint 1–399
Engaged services: non contribution to success 1–401
Effect of response to distress call and “engaged services” 1–405
The engaged service to be performed 1–407
Improper distress signals 1–411
The Salvage Working Group: the plight of the salvage industry 1–413

CHAPTER 2 THE JURISDICTION OF THE ADMIRALTY COURT

1

Introduction 2–01
The jurisdiction outlined 2–03
The statutory basis of jurisdiction 2–04
Maritime lien, proceedings in rem and priorities 2–15
Priorities 2–17
Demands for excessive bail of security deprecated 2–19
Security and re-arrest 2–20
Arrest and re-arrest before judgment 2–21
Arrest and re-arrest after judgment 2–23
Wrongful Arrest 2–28
Defending and action in rem 2–30
Actions in personam 2–31
Action or judgment where claim against one interest has been settled 2–37
Identifying owners of cargo and freight 2–38
Delay to be avoided 2–39

Suits in contract, tort and for salvage 2–44
CJIA 1991: The Lugano Convention 1988 2–58
Competing jurisdictions 2–61
Territorial jurisdiction 2–62
International conventions and jurisdiction 2–63
Judgment in default 2–67
Procedure and evidence 2–68
Representation of co-salvors: payments into court and cost 2–69
Duty to provide security for salvage claim 2–82
Excessive bail or security 2–90
Salvor’s possessory lien 2–93
Salvor’s possessory lien: American law 2–95
Limitation of actions: two year time limit 2–96
State immunity: vessels 2–99
State-owned non-commercial cargoes protected 2–102
Humanitarian cargoes protected 2–103
State immunity: basic concepts 2–104
Crown Proceedings and salvage 2–121

The assessment of the amount of the reward: a broad jurisdiction 2–126
No “moiety” rule 2–128

Brussels Convention 1910: art.2 and 8 2–132
London Salvage Convention 1989: art.12 2–133
Article 13.1: criteria for fixing reward 2–134
Is art.13 exhaustive? 2–136

The Westmar Marine Services case: an American view 2–139
Article 13.1 and “danger” 2–143
“Danger” and threat of claims or litigation 2–145
Success, benefit and third party claims 2–146
Table of Contents

Article 13.1: encouragement and the criteria analysed 2-148
Criteria in American Law 2-173
The criteria and subcontracted services 2-174
Relevance of commercial towage rates and "rescue towage" 2-176
The "Disparity Principle" 2-177
The Voutakis 2-183
The relevance of commercial rates 2-185
Particular considerations 2-187
The proportion of the salvaged fund awarded: the derelict 2-188
The large salvaged fund 2-191
Effect of guaranteed remuneration 2-196
Misconduct of salvor 2-202
Theft and looting by salvor 2-208
Fraud and dishonesty of salvor 2-210
Effect of misconduct upon assessment of remuneration of award to co-salvor 2-211
Salvors’ expenses and losses 2-212
Status considerations 2-213
Specific losses claimed 2-217
Presumption as to cause of loss 2-229
No absolute right to recover expenses or losses 2-230
Examples of losses 2-231
Salvors’ losses and expenses: apportionment of salvage 2-235
Expenses in foreign currency: judgment in foreign currency 2-236
Post salvage expenses 2-238
The cost of maintaining salvage vessels and equipment: State subsidies 2-241
Salvage remuneration and the incidence of taxation 2-246
Salvage and Value Added Tax 2-248
Interest on salvage remuneration 2-249
Lloyd’s Form and the awarding of interest 2-255
Default interest 2-258
The effect of inflation 2-259
Future economic recession 2-261
Life salvage 2-262
Special statutory provisions on life salvage 2-265
Assistance to persons in danger at sea: penal provisions 2-267
General relevance in fixing salvage remuneration of saving life 2-268
Effect of art. 16 of the Salvage Convention 2-269
Interim payments 2-285
Apportionment of salvage remuneration 2-287
Apportionment and fixed price services 2-297
Appeals to the Court of Appeal 2-298
Possessor’s rights of salvors and their protection 2-304
Possessor’s rights and derelicts 2-307
Archaeological property 2-317
Dispossession or supersession of salvors 2-318

CHAPTER 3 SALVED PROPERTY AND SALVED VALUES
Introductory 3-01
United States traditional approach less restricted 3-03
Scope of chapter 3-04
The impact of the London Salvage Convention 1989 3-05
"Ship", "vessel" and "craft" 3-06
"Property" 3-07
Exclusions platforms and drilling units 3-10
Vessels and State reservations 3-15
The ship, her stores and her apparel 3-17
Hovercraft 3-21
Hulks, sunken vessels and other structures 3-22
Cargo 3-27
Tug and tow 3-30
Freight: hire 3-33
Freight at risk, pre-paid and advance freight 3-35
Chartered freight 3-45
Aircraft 3-54
London Salvage Convention 1989 and aircraft 3-65
Aircraft used in salvage operations 3-66
Bunkers 3-67
The interest in the salved property 3-70
Charterer’s liability for salvage 3-80
The interest in the salvaged property: American law 3-82
The salvaged value 3-87
Time and place for assessment of salvaged values 3-88
Valuing the salvaged ship 3-94
The effect of charter commitments 3-96
Governmental restrictions 3-121
The valuation of damaged vessels 3-125
The cargo value 3-132
Deductions from sound value 3-136
Value of freight at risk 3-140
Salvors’ remedies for salvaging freight 3-144
Salvaged values and foreign currency 3-145

CHAPTER 4 WRECKS, SALVAGE AND THE UNDERWATER CULTURAL HERITAGE
Introductory 4-01
"Sunken treasure" 4-02
The salver and the marine archaeologist 4-03
Public and private interests 4-05
# Table of Contents

<table>
<thead>
<tr>
<th>International aspects</th>
<th>4-07</th>
</tr>
</thead>
<tbody>
<tr>
<td>The “underwater cultural heritage”</td>
<td>4-08</td>
</tr>
<tr>
<td>The Convention on the protection of the underwater cultural heritage (2001)</td>
<td>4-10</td>
</tr>
<tr>
<td>Extent and meaning of the “underwater cultural heritage”</td>
<td>4-11</td>
</tr>
<tr>
<td>Meaning of “historic”</td>
<td>4-13</td>
</tr>
<tr>
<td>International law, UNLOS and historic wrecks</td>
<td>4-16</td>
</tr>
<tr>
<td>The International Salvage Convention 1989 and historic wrecks</td>
<td>4-23</td>
</tr>
<tr>
<td>Non-implementation by the United Kingdom</td>
<td>4-26</td>
</tr>
<tr>
<td>“Wreck” in English law and the Royal Prerogative and State interests: introduction</td>
<td>4-27</td>
</tr>
<tr>
<td>Royal Prerogative and “unclaimed wreck”: current statutory provisions</td>
<td>4-31</td>
</tr>
<tr>
<td>Definition of “wreck”</td>
<td>4-32</td>
</tr>
<tr>
<td>Another example of the Royal Prerogative to wreck</td>
<td>4-33</td>
</tr>
<tr>
<td>Wreck of the sea: “wreccum maris”</td>
<td>4-34</td>
</tr>
<tr>
<td>Wreck and derelict: application of the London Salvage Convention 1989</td>
<td>4-35</td>
</tr>
<tr>
<td>Flotsam, jetsam, lagan (or ligan)</td>
<td>4-40</td>
</tr>
<tr>
<td>Admiralty Court Jurisdiction over wreck</td>
<td>4-41</td>
</tr>
<tr>
<td>Cinque Ports</td>
<td>4-42</td>
</tr>
<tr>
<td>Actual droits</td>
<td>4-43</td>
</tr>
<tr>
<td>Wreck of the sea and droits of admiralty compared</td>
<td>4-44</td>
</tr>
<tr>
<td>Derelict</td>
<td>4-45</td>
</tr>
<tr>
<td>Dispossession and derelicts</td>
<td>4-50</td>
</tr>
<tr>
<td>Wrecks and extra-territorial jurisdiction: American law and quasi in rem jurisdiction</td>
<td>4-51</td>
</tr>
<tr>
<td>Rights of owners of cargo on a derelict vessel</td>
<td>4-52</td>
</tr>
<tr>
<td>Abandonment and derelict</td>
<td>4-56</td>
</tr>
<tr>
<td>Abandonment and res nullius</td>
<td>4-58</td>
</tr>
<tr>
<td>Droits of Admiralty</td>
<td>4-59</td>
</tr>
<tr>
<td>Droits and the Admiralty Court jurisdiction</td>
<td>4-62</td>
</tr>
<tr>
<td>Sunken ships and cargoes</td>
<td>4-63</td>
</tr>
<tr>
<td>Ancient sunken wrecks, salvage and “danger”</td>
<td>4-66</td>
</tr>
<tr>
<td>Protection of a salver’s possessory rights to a wreck</td>
<td>4-70</td>
</tr>
<tr>
<td>Salvage services and historic wrecks: relevance of scientific standards</td>
<td>4-72</td>
</tr>
<tr>
<td>Recovery of wreck in non-tidal waters: embedded wrecks</td>
<td>4-73</td>
</tr>
<tr>
<td>Abandonment of ownership (or title)</td>
<td>4-74</td>
</tr>
<tr>
<td>Embeddedness (or imbeddness) of a wreck: title</td>
<td>4-77</td>
</tr>
<tr>
<td>Abandonment of ownership (or title): American law</td>
<td>4-79</td>
</tr>
<tr>
<td>Wrecked cargo recovered but ownership not proved</td>
<td>4-81</td>
</tr>
<tr>
<td>Embeddedness (or imbeddness) of a wreck (or title): American Law</td>
<td>4-82</td>
</tr>
<tr>
<td>Exclusion of salvage law and the law of finds</td>
<td>4-84</td>
</tr>
<tr>
<td>“Abandonment” and “embedded”: application of the Act</td>
<td>4-85</td>
</tr>
<tr>
<td>Salvage rewards for salvaging archaeological wrecks and the salver’s scientific Commitment in American Law</td>
<td>4-86</td>
</tr>
</tbody>
</table>

| Protection of wrecks by statute | 4-87 |
| Protection of military remains | 4-91 |
| UK extra-territorial legislation and wrecks | 4-96 |
| Definitions | 4-98 |
| Further and ancillary provisions | 4-99 |
| RMS Titanic | 4-100 |
| Irish extra-territorial legislation regarding wrecks | 4-101 |
| Potential conflicts between the United Kingdom and foreign jurisdictions | 4-102 |
| Aircraft and wreck | 4-103 |
| Hovercraft and wreck | 4-104 |
| The Nairobi Wreck Removal Convention | 4-105 |
| Background and Objectives | 4-107 |
| UK Law and the ICWR | 4-108 |
| The ICWR and Salvage | 4-113 |
| Limitation Periods | 4-114 |
| Wreck Removal Insurance | 4-115 |
| Penalties | 4-116 |
| The Provisions of the ICWR: Definitions | 4-117 |
| Dispute Resolution | 4-120 |
| The functions and duties of the Secretary of State and of a receiver of wreck | 4-121 |
| Recovery of the expenses and fees of a receiver of wreck | 4-124 |
| The functions of a receiver of wreck | 4-125 |
| Functions of a receiver of wreck as regards salvage | 4-126 |
| Valuation by valuer for receiver | 4-127 |
| Detention by receiver of property liable for salvage | 4-128 |
| Giving of security and release from detention | 4-130 |
| Commentary on the receiver’s powers of detention and release | 4-132 |
| Potential liability of a receiver | 4-133 |
| Sale by receiver of detained property | 4-134 |
| Proceeds of sale | 4-136 |
| Apportionment by a receiver of wreck | 4-137 |
| Receiver of wreck and a vessel in distress | 4-138 |
| Exercise of statutory powers: preservation of certain salvage rights | 4-139 |
| “Shipwrecked persons” | 4-140 |
| Duties of a receiver regarding vessel wrecked, etc. | 4-141 |
| Receiver to take command | 4-142 |
| Limitation on receiver’s powers | 4-143 |
| Penalty for disobedience | 4-144 |
| Further powers of a receiver | 4-145 |
| Penalty for non-compliance | 4-146 |
| Receiver of wreck and salvors | 4-147 |
| Power to pass over adjoining land | 4-148 |
| Liability for damage | 4-149 |
| Dealing with wreck | 4-150 |
| Duties of a finder of wreck: two classes | 4-151 |
Table of Contents

Penalties on finder for non-compliance 4-152
Duties and penalties regarding wrecked cargo 4-154
Penalties for non-compliance 4-155
Recovery of wrecked cargo 4-156
Wrecked vessels and cargoes: criminal sanctions 4-157
Recording and notice of wreck by receiver 4-158
Claims by owners to wreck: requirements and one year time limit 4-160
Wrecks of foreign ships and cargoes 4-161
Receiver’s powers of interim sale 4-162
Extended power of sale 4-163
Payment to salvors on a sale 4-164
Unclaimed wreck: the further statutory provisions 4-165
Notices regarding unclaimed wreck 4-166
Disposal of unclaimed wreck: payments to salvors 4-167
Offences in respect of wreck: restrictions on sale 4-168
Interfering with wrecked vessel or wreck: salvors and others 4-169
Receiver’s powers of entry 4-173
Coastguard services, salvage and wreck 4-174
Customs revenues and release of goods 4-176
Wreck removal: harbour, conservancy and lighthouse authorities 4-177
Wreck: fishing boats and fishing gear 4-178
Right of entry into port, etc. of a vessel in distress 4-179
Salvage and submerged wrecks in American law 4-180
Treasure salvage and the law of “finds” in American law 4-181
American naval property 4-188
Abandonment of ownership (or title) in American law 4-189
Protection of archaeological wrecks, salvor’s rights and the salvor’s scientific commitment 4-192
Wrecks and extra-territorial jurisdiction: American law and quasi in rem jurisdiction 4-187
Salvage rewards for salvaging archaeological wrecks and the salvor’s scientific commitment 4-194
Misconduct and the salvage of historic wrecks 4-195
Royal prerogative in Canada: embeddedness (or imbeddedness) of a wreck and title thereto 4-196

CHAPTER 5 THE SALVAGE AGREEMENT

Introductory 5-01
Salvage contracts: the London Salvage Convention 1989 5-06
Formation of the salvage contract 5-08
Fixed price contracts 5-10
Proving the contract 5-11
Proving the contract: American law 5-12
The parties to the contract: privity of contract 5-16

Protection of the rights of seamen 5-20
Settlements on behalf of seaman 5-27
Wages and salvage 5-28
Rights of crew of contracted tug under reasonable contract 5-29
Owners of the salvaging vessel 5-31
Owners of the salvaged property 5-34
Salvage contracts and the owners of the salvaged property 5-38
Article 6.2 and conflict of laws 5-44
Agency of necessity 5-47
Agent’s motive: The Winston 5-48
Necessity 5-49
Communication with principal 5-51
The Choko Star 5-53
Salvör’s remedies against ship and cargo 5-58
Containers, freight and bunkers 5-61
Freedom to contract: the environmental exception 5-62
Unreasonable contractual terms 5-63
Delegation of powers to other persons as agents 5-65
London Salvage Convention 1989: varying the salvage contract or prohibiting the services 5-66
Contract salvage: scope of master’s and shipowner’s authority in American law 5-67
Time for engaging salvor 5-74
Governmental intervention and freedom of contract 5-76
Ratification of a salvage contract 5-80
Breach of warranty of authority 5-86
Liability for an agreed sum: adjustment in general average 5-88
Effect of agreement to pay the salvor’s expenses 5-94
Liability where agreement not a salvage agreement 5-95
Sub-contractors 5-102
Assignment of salvor’s contractual rights 5-108
The Liens and Mortgages Convention 1993 and assignment 5-116
Setting aside salvage agreements (common law and equity) 5-119
Duress and recovery of sums paid under duress 5-121
Non esstactum 5-128
Unfair Contract Terms Act 1977: “marine salvage” 5-130
Unlawful performance of salvage agreement 5-137
Setting aside salvage agreements (Admiralty Court jurisdiction) 5-138
Brussels Convention 1910 and setting aside agreements 5-139
London Salvage Convention 1989 5-141
Development of the jurisdiction to set aside salvage agreements 5-142
Principles applied in enforcing agreements 5-147
Table of Contents

The rights of the salvor and setting aside agreements 5-154
Principles applied in setting aside agreements 5-158
Remuneration too high or too low 5-159
Effect of art.7 of the London Salvage Convention 1989 5-163
Fraud 5-166
Misrepresentation and non-disclosure 5-167
Mistake 5-179
Inequitable agreements and arbitration clauses 5-180
Vitiation of salvage contracts: American viewpoint 5-182
Duress in American salvage law 5-185
Effect of mistake as to salved value in American salvage law 5-186
Contracted services: payment irrespective of success in American law 5-189
Compromise: accord and satisfaction in American law 5-191
Effect of arbitration clause in American law 5-192
Frustration of contract in English law 5-194
Frustration of contract and salvage agreements 5-199
The development of the doctrine at common law 5-202
Frustration and uneconomical salvage: cl. G of LOF 5-209
Detention of Craft and Frustration: the Sea Angel 5-210
Consequences of frustration 5-215
Breach of the salvage agreement 5-219
Interference with salvage agreement 5-224

Chapter 6 Salvage and the Environment

Introduction 6-01
The benefit conferred 6-04
Danger: the threat of claims by third parties 6-09
Third party claims as a sole danger: not allowable 6-15
The international conventions and third party claims 6-17
Environmental dangers and American law 6-25
Liability to pay enhanced awards: the pro rata rule 6-27
Different types of danger: The Velox 6-28
The Longford 6-33
The “War Time” cases 6-40
The M. Vatan 6-43
Conclusions regarding The Velox: enhancement of salvage award 6-49
London Salvage Convention 1989: pro rata rule and differing termination dates 6-53
The nature of the threat to the environment 6-56
The nature of the pollutant 6-60
The laden tanker as casualty 6-61
Salvage remuneration and the environment 6-65

Table of Contents

Marine environment at protection: the international conventions and voluntary agreements 6-66
Brussels Convention on Salvage 1910 6-68
Background to the “safety net” and “special compensation” 6-72
The IMCO and CMI initiative 6-73
“Liability Salvage” 6-79
Recent initiatives 6-81
London Salvage Convention 1989:
“special compensation” 6-82
Interpretation: the purposive approach 6-83
The meaning and scope of art.14.1 “Salvage operation” 6-87
“Vessel” and “property” 6-89
“Damage to the environment” 6-92
“Substantial physical damage” 6-94
“Coastal or inland waters”, etc. 6-95
Cause of the physical damage 6-99
“The threatened” 6-101
“The threatened” and “danger” compared 6-103
“The threatened” and alternative assistance 6-107
The pollutant 6-109
Threat from “the vessel which by itself” 6-110
The liability to pay special compensation: no maritime lien 6-112
Special compensation and general average 6-113
The salvor’s “expenses” 6-114
“Out-of-pocket expenses” 6-115
“The fair rate”: a rate of expenditure only 6-117
Application of art.13.1(h), (i) and (j): fleet costs 6-121
Value and depreciation 6-122
Use of an account 6-123
International aspect of the meaning of “fair rate” 6-124
The period for which special compensation is payable 6-125
Scope of allowable “salvors’ expenses”: relevance of non-environmental services 6-126
Interest 6-128
“Payment” 6-129
Article 14.2: special compensation and the increment on the “salvors’ expenses” 6-130
Relationship between art.13 and 14 6-138
An arithmetical approach 6-141
The anticipated small salvaged fund and Article 14 6-146
Effect of a settlement of the art.13 claim on the amount of special compensation 6-149
Fixed-price salvage and art.14 6-150
Duties relating to the environment 6-152
The standard of care 6-154
Table of Contents

Non-Convention duties 6-156
Article 14 and salver’s negligence: art.18 6-158
Damages and limitation of liability 6-160
“Special compensation” and “guaranteed remuneration” 6-161
Special compensation, salvage and State subsidy 6-165
Liability for pollution damage 6-166
The creation and abolition of the voluntary liability
schemes: TOVALOP and CRISTAL. 6-167
The international liability conventions (CLC and Fund)
summarised 6-170
STOPA and TOPA 6-174
The U.K. statutory enactments regarding oil pollution
liability and of the liability conventions 6-175
Salvor’s liability and the “channelling provisions” 6-176
Bunkers Convention 2001 6-180
Claims by salvors 6-182
LOF 2011 and the London Salvage Convention 1989 6-185
LOF 2011: Salver’s duties and the environment 6-186
Special compensation: currency of award and security 6-187
Special compensation: currency correction 6-188
Public international law and the prevention of pollution
Intervention Convention 1969 6-192
Intervention Convention of salvors 6-199
Intervention and other substances: the 1973 Protocol
and Merchant Shipping and Maritime Security Act 1997 6-200
Functions of the Secretary of State as regards
marine pollution 6-201
Merchant Supply Act 1995: salvors and oil pollution
The ICRW 6-212
Temporary exclusion zones and emergencies at sea 6-213
Secretary of State’s Representative SOS REP 6-214
Enhancement and underwriters 6-215
Hazardous and noxious substances (“HNS”) 6-217
Dumping or jettison at sea: salvage operations 6-218
The International Convention for the Prevention of
Pollution from Ships 1973 (MARPOL) 6-222
MARPOL: reporting casualties 6-225
European Community Directives 2005/35/EC and
2009/123/EC 6-227
OPRC Convention 1990: salvage policy, contingency
plans and reporting of casualties 6-228

Chapter 7 Salvage and Breach of Duty

Introductory 7-01
The liability of the salver: a judicial dilemma 7-02
A diversity of facts 7-08
Misconduct and gross negligence 7-11

Table of Contents

Recovery of damages 7-14
Salver’s negligence and damages 7-16
The standard of care: the salver’s status 7-21
The Tojo Maru 7-23
Leniency towards salvors 7-26
Cases since The Tojo Maru 7-28
The application of the principles 7-32
Casualty caused by the salver 7-40
Contributory negligence: duty to mitigate 7-55
Duties: the effect of art.8 of the London
Salvage Convention 1989 7-56
Assessment of damages and salvage remuneration 7-58
Damages: the application of the principles 7-63
Liability in damages: quantum meruit and salvage contract
compared 7-67
The salver’s liability to third parties 7-69
Duty of care and the extent of the liability of public
rescue services in English Law 7-70
Supply of Goods and Services Act 1982 7-73
The duty of care owed to salvors; and by salvors
property inter se 7-83
Limitation of liability and salvors 7-84
The Limitation Convention 1976 7-87
The Limitation Convention 1976: the principal
changes summarised 7-90
Persons entitled to limit liability 7-91
Claims subject to limitation 7-92
Excepted claims 7-93
Claims by salvaging crew 7-94
Breaking the limit 7-95
Counterclaims: set off 7-99
The financial limits 7-100
Calculation of the ship’s tonnage 7-101
Minimum tonnage 7-102
The Unit of Account: the special drawing right 7-103
Aggregation of claims: owners and salvors 7-104
The Limitation Convention 1976 and salvors 7-105
The Salver’s Limitation Fund 7-107
Limitation and chartered tonnage 7-111
Problems in ascertaining the correct fund:
complex salvage operations 7-112
Salvage remuneration, damages and set off 7-118
The doctrine of set off 7-123
Equitable set off and salvage 7-125
Salvage: does one set off the whole or the
limited damages? 7-129
The “same occurrence”: the “distinct occasion” 7-135
Damage to one salvaged interest but not to the others 7-138
The limitation fund and tug and tow 7-144
Table of Contents

Limitation and fire damage: British ships 7-159
Limitation and oil pollution claims: “channeling provisions” and exclusion of salvor’s liability 7-161
Limitation and dock owners and others 7-164
Contracting out of limitation 7-166
American law and the salvor’s liability in damages 7-167
Making the rescuer pay: a potential injustice 7-169
Salvors’ liability the standard of care: an apparent dichotomy 7-170
The standard of care: status of the salvor 7-179
Liability of the ill-equipped the professional salvor 7-180
“Good Samaritans” and tortious liability 7-181
Standard of care owed by rescue services in American Law 7-182
The standard of care: “gross negligence” or “willful misconduct” 7-184
Distinguishable and independent damage 7-188
Damage to third party’s property 7-196
Conclusions on standard of care 7-198
Conclusions on recoverable damages 7-203
Contributory negligence, limitation of liability and set off 7-208

Chapter 8 Lloyd’s Form and Arbitration

Introducory: “No Cure—No pay” 8-01
History of Lloyd’s Form 8-02
LOF 2011 8-03
Interpretation and definitions 8-05
SCOPIC 8-06
The title of LOF 2000 8-07
No Cure—No Pay 8-08
The “Boxes” 8-09
The parties 8-10
Contractor’s crew 8-13
Sub-contractor to the head contractor and indemnities 8-14
Contractors indemnity 8-15
No inducements allowed 8-18
Authority of master or other person 8-19
The obligation to salve and protect the environment 8-23
“Best endeavours” 8-26
No “reasonable prospect of a useful result”: contractors and owner’s rights 8-30
Salvage and “place of safety” 8-36
Deemed performance by the contractors 8-40
The salvage services: “No Cure—No Pay” 8-44
Lloyd’s Form: admission of salvage and estoppel 8-45
Services performed prior to concluding the Lloyd’s Form Agreement 8-49

Prior services performed under separate contract 8-51
Owner’s duties to the contractor 8-52
Duty on contractors to co-operate with owners? 8-58
Arbitral remedies: injunction, specific performance, rectification 8-59
Use of ship, jettison of cargo and provision of information 8-61
Security for contractor’s claim: salvage and special compensation 8-64
Salvage security 8-69
Amount of security: excessive demand 8-72
Form of security 8-76
 Sufficiency of security 8-77
Salvage Guarantee and Average Bonds 8-78
 Contractor’s remedies pending putting up of security: maritime lien for salvage preserved 8-79
Security and art. 14 of the London Salvage Convention 1989 (special compensation): two year time limit 8-81
Shipowners and cargo security 8-83
Duty not to remove salvaged property 8-86
Remedies for breach 8-87
 Contractor’s right to arrest: limitations thereon 8-89
London Salvage Convention 1989 and security 8-96
 Other forms of seizure of assets 8-97
 Salvor’s maritime lien and Lloyd’s Form 8-98
Foreign arrest and LOF arbitration 8-103
Admiralty Court arrest and LOF arbitration 8-105
Provisional measures: security for an LOF salvage claim in Admiralty Court 8-111
Freezing (Mareva) injunction 8-113
Expense of enforcing or protecting salvor’s lien: lien insurance 8-115
Currency of award and security 8-120
Place of arbitration 8-123
Governing law is English law 8-126
Scope of arbitration provisions: other differences 8-127
Lloyd’s arbitrator’s power to decide own jurisdiction 8-129
Commencement of arbitral proceedings and two year time limit 8-132
Appointment of Lloyd’s Form arbitrator 8-133
Security for arbitrators’ fees and expenses 8-135
Resignation or termination of arbitrator’s appointment 8-136
Power of the court to remove an arbitrator: impartiality essential 8-137
Arbitrator’s fees and expenses 8-138
Underwriters and arbitration 8-139
Unrepresented parties 8-140
<table>
<thead>
<tr>
<th>Table of Contents</th>
<th>8–141</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special Provisions affecting cargo in containers</td>
<td>8–141</td>
</tr>
<tr>
<td>Award against unrepresented interests</td>
<td>8–142</td>
</tr>
<tr>
<td>Notices of arbitration and costs thereof</td>
<td>8–144</td>
</tr>
<tr>
<td>The arbitration: the overriding objective</td>
<td>8–145</td>
</tr>
<tr>
<td>Conduct of the arbitration</td>
<td>8–146</td>
</tr>
<tr>
<td>The arbitral proceedings: Arbitration Act 1996</td>
<td>8–147</td>
</tr>
<tr>
<td>General duties of the parties to the arbitration</td>
<td>8–148</td>
</tr>
<tr>
<td>General powers exercisable by the arbitral tribunal</td>
<td>8–149</td>
</tr>
<tr>
<td>Procedural and evidential matters</td>
<td>8–150</td>
</tr>
<tr>
<td>Interlocutory stage: evidence and discovery</td>
<td>8–151</td>
</tr>
<tr>
<td>Lloyd’s Procedural Rules</td>
<td>8–152</td>
</tr>
<tr>
<td>General and supplementary powers</td>
<td>8–160</td>
</tr>
<tr>
<td>The preliminary meeting: time for and information required; the “check list”</td>
<td>8–166</td>
</tr>
<tr>
<td>Order for directions</td>
<td>8–168</td>
</tr>
<tr>
<td>Disclosure of documents</td>
<td>8–169</td>
</tr>
<tr>
<td>Expert evidence</td>
<td>8–170</td>
</tr>
<tr>
<td>Mediation</td>
<td>8–171</td>
</tr>
<tr>
<td>The arbitration hearing</td>
<td>8–172</td>
</tr>
<tr>
<td>Currency fluctuations and inflation: cl.9 of the LSSA clauses</td>
<td>8–173</td>
</tr>
<tr>
<td>Interest</td>
<td>8–176</td>
</tr>
<tr>
<td>Period and rate of interest</td>
<td>8–180</td>
</tr>
<tr>
<td>Arbitration services and value added tax</td>
<td>8–182</td>
</tr>
<tr>
<td>Costs: sealed offers</td>
<td>8–185</td>
</tr>
<tr>
<td>Apportionment of salvage remuneration between salvors</td>
<td>8–186</td>
</tr>
<tr>
<td>The award and interest</td>
<td>8–187</td>
</tr>
<tr>
<td>Schedules to the award</td>
<td>8–188</td>
</tr>
<tr>
<td>Part settlement and form of award</td>
<td>8–190</td>
</tr>
<tr>
<td>Publication of awards other than to parties</td>
<td>8–192</td>
</tr>
<tr>
<td>Need for arbitration agreement in writing</td>
<td>8–194</td>
</tr>
<tr>
<td>Lloyd’s Form and the Arbitration Act 1996</td>
<td>8–196</td>
</tr>
<tr>
<td>Disobedience of arbitral interlocutory orders: peremptory order</td>
<td>8–198</td>
</tr>
<tr>
<td>Enforcement by the court of peremptory arbitral orders</td>
<td>8–199</td>
</tr>
<tr>
<td>Other powers of the court</td>
<td>8–200</td>
</tr>
<tr>
<td>Stay of court proceedings</td>
<td>8–202</td>
</tr>
<tr>
<td>Stay: obtaining security for arbitration; special Admiralty Court exception</td>
<td>8–204</td>
</tr>
<tr>
<td>Miscellaneous matters: representation, experts and assessors</td>
<td>8–205</td>
</tr>
<tr>
<td>Primary point of law</td>
<td>8–207</td>
</tr>
<tr>
<td>Appeal to the court on a point of law</td>
<td>8–208</td>
</tr>
<tr>
<td>The award and the Arbitration Act 1996</td>
<td>8–209</td>
</tr>
<tr>
<td>Costs and the statutory power to limit costs</td>
<td>8–210</td>
</tr>
<tr>
<td>Appeals to Appeal Arbitrator: time for appeal and grounds of appeal</td>
<td>8–211</td>
</tr>
<tr>
<td>Appeal procedure</td>
<td>8–212</td>
</tr>
</tbody>
</table>

| Table of Contents                                                                 | 8–217 |
| Interim awards: interim payments and awards separate issues                     |       |
| Interim or provisional awards and right of appeal                               | 8–223 |
| Interim and provisional awards                                                  | 8–224 |
| Payment under provisional awards and right of appeal                            | 8–227 |
| Enforcement of arbitral award                                                    | 8–228 |
| Documentation and notices                                                       | 8–229 |
| Dismissal of claim in arbitration for want of prosecution, etc.                 | 8–231 |
| Award to be final and binding                                                    | 8–232 |
| Challenging an award                                                            | 8–233 |
| American law and Lloyd’s Form arbitration                                        | 8–234 |
| FCAP (Fixed Costs Arbitration Procedure)                                       | 8–239 |
| SCOPIC: Introduction                                                            | 8–240 |
| Development of SCOPIC                                                            | 8–245 |
| SCOPIC documents                                                                 | 8–246 |
| General                                                                         | 8–247 |
| Invoking the SCOPIC Clause                                                      | 8–251 |
| Security for SCOPIC remuneration                                                | 8–253 |
| Withdrawal                                                                      | 8–258 |
| Tariff rates                                                                    | 8–262 |
| Article 13 award                                                                | 8–268 |
| Discount                                                                        | 8–271 |
| Payment of SCOPIC remuneration                                                  | 8–273 |
| Termination                                                                     | 8–278 |
| Expenses and losses caused by intervention                                      | 8–286 |
| Duties of contractor                                                            | 8–291 |
| Article 18–1989 Salvage convention                                             | 8–292 |
| Special Casualty Representative (SCR)                                           | 8–293 |
| Special Representatives                                                         | 8–294 |
| Pollution prevention                                                            | 8–296 |
| General Average                                                                 | 8–298 |
| Arbitration                                                                     | 8–300 |
| Appendices                                                                      | 8–301 |
| ISU Sub-contract (Award Sharing) 200                                              | 8–302 |
| The Preamble                                                                   | 8–305 |
| ISU Sub-contract 2001: definitions                                              | 8–308 |
| Obligations of contractor                                                       | 8–309 |
| Obligations of sub-contractor: the schedule                                    | 8–311 |
| Conduct of the LOF arbitration and settlement negotiations                      | 8–313 |
| Contractor’s further obligations: Trust, Trust Account and Assignment            | 8–314 |
| Restrictions on assignment of the benefit of the LOF or the remuneration        | 8–317 |
| Trustee exoneration                                                             | 8–318 |
| Indemnities and hold harmless: a sharing of risks                              | 8–319 |
| Contractor’s indemnity and hold harmless                                        | 8–320 |
| Indemnities and statutory protection                                            | 8–323 |
PREFACE

Eight years have now elapsed since the publication of the 4th edition of Geoffrey Brice’s work. Much has happened in that time which impacts upon the law of salvage with consequences also for the salvage industry. Considerable revision has been required in the light of new legislation, Conventions and case law. The format of the last edition has been retained. However, some of the American material has been removed. That which is retained illustrates differences of approach to that adopted by English law and assists to throw light on unresolved questions.

There have been important legislative developments. The Nairobi Wreck Removal Convention has been given statutory effect and will come into force when the Convention itself receives sufficient support. The Bunker Convention has also been implemented, as has the European Directive to better enforce anti-pollution measures. The new limits imposed by the 1996 Protocol to the 1976 London Convention have come into force. There have been four important decisions of the English Courts affecting salvage: the Voutakos which disposed of the flawed “disparity principle” but gave guidance as to the relevance of commercial cases in the assessment of a salvage award; the Ocean Crown which re-affirmed the principle in the Amerique and its application in complex salvage cases; the Altair where a wide and purposive construction was given to Article 6. 2 of the 1989 Salvage Convention; and the Sea Angel which was concerned with frustration when sub-contracted craft were detained by a port authority. The chapter dealing with pollution and the environment has been brought up to date incorporating Conventions affecting these areas.

The issue of environmental salvage has been the subject of much discussion within the industry in recent times. The 1989 Salvage Convention is now under scrutiny after an initiative by the ISU to amend LOF to provide for an environmental salvage award did not achieve acceptance. A weblink is provided in order that readers may follow the debate.

These are but some of the matters addressed in this new edition. There are many matters of detail which have received attention too. The new provisions of LOF 2011 are discussed and there are noted the more recent decisions of Lloyd’s Arbitrators on the construction of the Form and SCOPIC.

Finally, may I again express my gratitude to Sweet & Maxwell for their assistance and support in the preparation of this latest edition of Geoffrey Brice’s book.

John Reeder

Gray’s Inn, London WC1
September 2011