

# Maritime Law Legal Practice in Malaysia

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## What kind of work does it involve?

It typically involves disputes such as:

- ✓ Cargo disputes (where cargo transported has been damaged *en route* or short-delivered, misdelivered, or not delivered at all);
- ✓ Ship-collision disputes (where two or more ships have collided at sea causing damage to each other, or to port or harbour structures);
- ✓ Ship-arrest proceedings (where the right of the claimant to have his claim secured is disputed);
- ✓ Charterparty or bill of lading fights (where the terms of the charter or bill of lading are fought over); and
- ✓ Disputes with authorities (where a vessel is detained and subject to criminal proceedings because she anchored without the permission of authorities, polluted the environment, transferred bunkers without complying to the rules, etc).

Some divide shipping disputes work into two groups: 'wet' and 'dry' shipping. *Wet shipping* refers to disputes that occur at sea: ship collision, salvage and towage claims, oil pollution, etc.

*Dry shipping* refers to work that is contractual: disputes over the terms of a bill of lading or charter party, etc.

Indeed, some English lawyers' market themselves as practising only 'dry' or 'wet' shipping; such is the breadth and depth of practice in the English market that specialises in one of these is sufficient to build a practice. But I don't see that breadth of work in Malaysia. So, a typical Malaysian maritime lawyer does both.

## Where are these disputes heard?

The bulk of disputes are heard at the Admiralty Court at Kuala Lumpur.

Although, depending on where the events leading to the dispute occurred or the amount of money fought over, it can also be heard in courts throughout Peninsular Malaysia.

Occasionally, some of the parties would opt for arbitrations, and as lawyers we can still represent them.

## Is there a corporate-side or a non-dispute side to a maritime law practice?

Yes, there is. Practitioners in this area advise on:

- ✓ Shipbuilding contracts (this includes the contract between the shipyard and the shipowner, the financing arrangements with the banks and the guarantees and assignments pertaining to the shipbuilding contract);
- ✓ Ship mortgages (the registration of ships at registries, negotiating terms of a mortgage and the discharging of mortgages, etc);
- ✓ Ship sale agreements;
- ✓ The restructuring of ship-owning companies during times of economic downturn;
- ✓ Financing sale in the commodity (oil, cocoa, grains) trades; and
- ✓ Sanctions, trade agreements and licenses for the export or import of items.

## Are there lawyers who have both a contentious and non-contentious/ advisory shipping practice?

Not that I know of.

The legal profession in Malaysia is still broadly divided into disputes and corporate lawyers. Although I don't see why there can't be shipping lawyers who can take up both contentious and non-contentious work. These lawyers would then have the most comprehensive view of the industry; they will truly be 'one-stop shipping lawyers'.

### **Does the work spill over into non-shipping disputes?**

It does. It can touch on:

- ✓ Insurance disputes (disputes on whether the insured is entitled to recover under the terms of the policy; whether the insurer is compelled to pay-out);
- ✓ Insolvency claims (what happens when a ship-owning company is a creditor to a party under judicial management or in the midst of being wound-up); and
- ✓ General commercial disputes over guarantees, indemnities, bills of exchange, letters of credit, etc.

### **Who are the clients?**

Insurers, Protection & Indemnity Clubs, shipowners, cargo-owners, cargo-carriers, foreign law firms, banks, shipyards, etc. Rare is the case where the client is an individual.

Most disputes are subrogated claims with instructions received from insurers (sometimes through foreign lawyers or claims correspondents) to act in the name of the insured.

### **Are there peculiar characteristics of a maritime law practice?**

I don't know if these are characteristics peculiar to a maritime practice. But my guess is that a maritime law practice is more cross-jurisdictional than most other practices, especially as shipping clients are inclined to forum-shop.

And there is greater propensity for foreign clients to be involved. This is given the international nature of shipping.

What this means in practice is that:

- ✓ You are often working with foreign lawyers to compare the pros and cons of starting (or defending) claims in different countries (given the differences in the law applicable in these countries) and you are often asked how a judgment from a different jurisdiction might be enforced in Malaysia;
- ✓ You aim to have a working understanding of maritime practice in other countries (especially neighbouring ones); and
- ✓ You almost never see your client in person (instructions and communication is by email).

Also given that ships are mobile objects, shipping lawyers are expected to have their law at their fingertips to be prepared for urgent court applications.

You often seek to arrest vessels before they leave Malaysian waters, to inspect the logs of a ship right after an oil spill or get a statement from the Master right after a collision.

Additionally given that there is no rich seam of jurisprudence on maritime law locally, you should be on the lookout for laws in other countries that might be somewhat relevant to the Malaysian scene and fill in gaps in the Malaysian jurisprudence.

### **Does one need to have taken maritime law subjects at university to practise?**

You don't need to have taken maritime law subjects to practise maritime law. Sometimes not having formal training can be an advantage in that you are compelled to question everything and not accept received wisdom. But it does mean that you have to take the extra effort to learn the law.

Those who have read maritime law subjects often have an overall picture of how the different pieces and parties to a dispute fit together. Their academic knowledge also means that they have an idea of how new legal developments fit into the existing jurisprudence.

If you are thinking of reading maritime law subjects, the most relevant might be:

- ✓ Admiralty law: Here you learn all about ship-arrest and tonnage-limitation proceedings, things peculiar to a maritime law

practice.

✓ The carriage of goods by sea: This concerns bills of lading, charterparties, sea waybills, etc.

✓ International trade: The workings of CIF and FOB contracts, letters of credit and the way the Incoterms aid trade.

### **Are there particular skills needed to practice maritime law?**

Knowing how to swim? This might come in handy during those ship-arrest duties when you board a vessel.

On a serious note, I think the skills are really indistinguishable from any sort of civil litigation: the patience to analyse documents, knowing one's law thoroughly and keeping up with developments in the industry.

### **What is a typical day for a maritime lawyer?**

They say that warfare is, 'Interminable boredom punctuated by moments of terror.'

Practising maritime law is perhaps the interminable analysing of documents punctuated by bouts of advocacy.

For me, I go through documents to arrange them chronologically, fashion a cause of action or a defence and advise clients on the merits of their claim. It is a lot of paperwork.

Occasionally, these disputes end up in court or in arbitration and I get a chance to get on my feet. So, I am not in court as often as my colleagues who practice, say, criminal law, constitutional law or even corporate litigation.

The fact that most claims are subrogated also means that shipping lawyers are often instructed to seek settlements (even when there is a dispute) as insurers tend to shy away from litigation.

### **What is your advice to aspiring maritime law practitioners?**

A person contemplating a maritime law practice should perhaps:

✓ Be interested in the international trade scene (a ship stuck in the Suez Canal? A dip in the price of commodities? Larger ships being built in China?);

✓ Be interested in international disputes and public international law (eg a fight over the ownership of the Spratlys);

✓ Understand that this is an area of law that take years to master – don't give up!

I stumbled upon it by accident after applying to a vacancy for a maritime lawyer that did not require experience. Since then, I learnt to love the practice of maritime law along the way.

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