

BOOK REVIEWS

General Average: Law and Practice 3rd edn
F D Rose

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General average is the concept which provides for the apportionment of financial losses and costs in specific circumstances between the parties interested in the property involved in the maritime adventure and who benefited from those circumstances. The concept, although well established in practice, continues to give rise to problems from a legal perspective. In the preface to the book's third edition, Professor Rose acknowledges this and indicates that his aim was to 'combine an exposition of legal principles with a statement of the rules that are applied in practice' and to do so in a 'reasonably succinct' manner. Contrary to what might be expected from the fact that the book numbers 323 pages, it seems that he has succeeded in this purpose. In the first 151 pages, the general average concept is discussed and explained based on English case law. The following 175 or so pages cover regulations and standard conditions/forms, including the Marine Insurance Act 1906, a comparison of various versions of the York-Antwerp Rules and rules of practice and insurance clauses. The complexity of general average and its relations with contracts of carriage, salvage, marine insurance and the law of unjust enrichment are duly explored and the difficulties which can arise as a consequence thereof are clearly demonstrated. The various interests that parties may have, including from an insurance point of view, are discussed, as is the competition that naturally ensues. In particular, the extensive discussion of the new York-Antwerp Rule on salvage and the chapter on several insurance aspects of general average contain much that is of special interest. It clearly follows that the author has considerable expertise in these areas. In fact, the whole book is of the highest level and provides some thought-provoking views.

The hybrid nature of the concept of general average and the duality of its application in practice and theory create potential difficulties for any author dealing with general average. It is hard to find a clear structure, except perhaps when one chooses to follow the order of the York-Antwerp Rules. However, in his book Professor Rose has not opted for a description of the York-Antwerp Rules. This is a sensible choice,

both in view of the fact that the York-Antwerp Rules are already described in detail elsewhere (see, for example *Lowndes & Rudolf: The Law of General Average and York-Antwerp Rules*, which has over the last century become the 'GA bible', as well as in the more concise work of Hudson and Harvey, *The York-Antwerp Rules*), and also in view of the fact that the general average concept is much more comprehensive than the issues covered by the York-Antwerp Rules alone. The consequence of the choice not to follow the order of the York-Antwerp Rules, however, is that an obvious structure is absent. As a result of the complex nature of general average, repetition on the one hand and references to other paragraphs on the other can be difficult to prevent. For example, various aspects of the subject of salvage are discussed in five of the seven chapters.

The order in which the chapters appear is identical to that in the previous edition. The first introductory chapter of the nature of general average may be regarded as a summary of the concept's application in practice. The main issues are further explained and explored in depth in the following chapters on the conditions for general average, the qualifying losses, exceptions to the liability to contribute, the effects of a general average act and adjustment and insurance contracts.

Since the second edition was published in 2005, a new version of the York-Antwerp Rules has been adopted by CMI in 2016. CMI Guidelines were also adopted in the same year and several significant general average decisions were rendered by the English Court of Appeal and the High Court, inter alia, in *The Lehmann Timber* ([2013] Lloyd's Rep 541), *The Maersk Neuchatel* ([2014] 2 Lloyd's Rep 377), *The Olympic Galaxy* ([2006] 2 Lloyd's Rep 27) and *The Vitoria* ([2005] 2 Lloyd's Rep 769). As such, the updated third edition of this high-level practitioner volume, including all these developments, is very welcome.

The book gives an extensive overview of the law and practice of English general average until 16 May 2017. Even though every book that is published is outdated when it appears, at least to some extent, Professor Rose has had the disadvantage that 2017 was an extremely fruitful year for general average literature and case law. The cut-off date of 16 May 2017 meant that he could and did include the Australian judgment of 30 March 2017 in *Offshore Marine Services Alliance v. Leighton Contractors* ([2017] FCA 333), but that he could not cover, inter

alia, the important decisions of the High Court in *The Cape Bonny* ([2017] EWHC 3036 (Comm)) and *COSCO Bulk Carriers CO Ltd v Tianjin General Nice Coke* ([2017] EWHC 2509) or, most notably, the House of Lords' judgment in *The Longchamp* ([2017] UKSC 68), as well as the subsequently issued Committee Report on this case of the Association of Average Adjusters. This is unfortunate, largely because the book's focus is firmly on the case law: legal literature is covered more modestly.

The book deals with English case law and general average related to seagoing voyages. Occasionally, common law rules are also included for 'historical interest' (eg para 3.45). The order is such that the position under English law of a particular aspect is discussed first, before dealing with the position under the York-Antwerp Rules. From a chronological perspective this is logical, but the question may be asked whether chronology is the proper criterion. The vast majority of general average cases worldwide is adjusted pursuant to the York-Antwerp Rules and in practice they are, arguably incorrectly, regarded as the starting point in most general average cases. The author is rightly critical of the construction of the York-Antwerp Rules; from a perspective of sound drafting, they cannot be regarded as having passed that test. However, if regarded from the perspective of application in practice, it appears that no other set of conditions has been more successful internationally. Moreover, as a result of the York-Antwerp Rules' widespread application, they are also dealt with in other legal systems. That their interpretation should not be limited to the English adjustment and legal principles is confirmed by the House of Lords' decision in *The Longchamp*, where it was indicated by Lord Sumption that the York-Antwerp Rules 'represent an international arrangement' and they must be interpreted 'unconstrained by technical rules of English law, or by English legal precedent, but on broad principles of general acceptance.' As such, a look across the border might have been useful.

In view of the concept's international application, it might also have been helpful if the position of general average in the area of private international law could have been considered in more depth. The author sets out the traditional view that general average is to be adjusted pursuant to the law and practice of the place where the adventure ends (paras 5.33 and 6.4). It is arguable, however, that the Rome Regulations on the law applicable to contractual and non-contractual obligations should also determine the law applicable to the adjustment, at least for as long as the UK remains a Member State of the EU (Article 12(1)(c) Rome I and Article 15(c) of the Rome II Regulation, respectively).

In view of the author's stated aim to keep the overview reasonably succinct, it is clear that choices had to be made on what to include. Overall, the book

is a useful reference book for general average cases and their insurance aspects. The third edition confirms that the book's status as one of the leading English books on general average is well deserved.

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