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Maritime Law- Papers by Dr. Bevan Marten, Senior Lecturer, School of Law, Victoria University of Wellington

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"Maritime Law in the Asia-Pacific Region"

(2016) 30 *Australia and New Zealand Maritime Law Journal* 64
Victoria University of Wellington Legal Research Paper No. 1/2018

BEVAN MARTEN, Victoria University of Wellington School of Law
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This is an editorial introducing a group of articles on maritime law in the Asia-Pacific region in vol 30 of the Australia and New Zealand Journal of Maritime Law. The full text of these articles is available online for free at the Journal's website.

"Third Party Agreements in the Salvage Context"

[2014] *Lloyd's Maritime and Commercial Law Quarterly* 497

Victoria University of Wellington Legal Research Paper No. 2/2018

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Article 7 of the Salvage Convention 1989 permits contracts to be annulled or modified by a tribunal if they were entered into under undue influence or the influence of danger and their terms are inequitable. This article discusses the applicability of Art 7 to contracts between salvors and third parties. While there is no question that Art 7 applies to contracts for salvage services between salvors and the owners of vessels or property in distress, it is arguable whether it extends to this third party situation. The issue recently arose in litigation before the High Court of New Zealand relating to the Rena disaster. As this litigation settled out of court the author has examined whether this argument was likely to succeed, and concludes that such contracts would not fit within the scope of the Convention.

"Shipping and Air Pollution: New Zealand's Failure to Ratify Marpol Annex VI"

(2016) 30 *Australia and New Zealand Maritime Law Journal* 90

Victoria University of Wellington Legal Research Paper No. 3/2018

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This article discusses New Zealand's failure to ratify the air pollution-related Annex VI of MARPOL. It challenges the current New Zealand position on the Annex, which is based on pragmatic considerations, with particular reference to the country's position within the international regulatory framework of the IMO.

"Port State Jurisdiction Over Vessel Information: Territoriality, Extraterritoriality and the Future of Shipping Regulation"

(2016) 31 *International Journal of Marine and Coastal Law* 470

Victoria University of Wellington Legal Research Paper No. 4/2018

BEVAN MARTEN, Victoria University of Wellington School of Law

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This article discusses the use of port state jurisdiction to impose information requirements on visiting foreign vessels. It analyses the issues surrounding the regulation of information on a territorial basis, with particular reference to the traditional maritime zone-based approach taken in the United Nations Convention on the Law of the Sea among other maritime conventions. It argues that port states have extensive options for requesting information from vessels in port, even if that information relates to matters arising beyond the state's maritime zones (as in the case of the European Union's 2015 regime for monitoring vessel CO₂ emissions), without making any excessive claim to extraterritorial jurisdiction. After discussing the manner in which port states may choose to deploy these options in practice, the article addresses some broader trends connected with the increasing automation of shipping and the ever-wider availability of shipping-related information, and the impact these developments may have on international law and shipping regulation in the long term.

"The Vice Admiralty Court of New Zealand: Imperial Neglect and Colonial Pragmatism, 1841-1868"

(2016) 3 *Law & History* 104

Victoria University of Wellington Legal Research Paper No. 5/2018

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The first three decades of the Vice Admiralty Court of New Zealand, established in 1841, were characterised by a small caseload and infrequent sittings. In addition, the Court's officers were appointed by various Governors acting in the capacity of Vice Admiral, rather than under the seal of the High Court of Admiralty. Although an innocent mistake, this was contrary to imperial law, meaning the Court unwittingly suffered from a serious constitutional defect. This article traces the Court's early

practical and legal shortcomings, demonstrating that in the latter case New Zealand's experience provides just one illustration of what was in fact an Empire-wide problem. It traces the discovery of this problem, along with the growing calls to make the Court more widely available from both government and commercial interests during the early 1860s. The article then highlights several reasons for these problems including a lack of imperial oversight of what remained an imperial court, and understandable mistakes made by the colonial authorities in the absence of such oversight. It also draws on the maritime cases that were going before New Zealand's courts of general civil jurisdiction during this time.

"Constitutional Irregularities in the British Imperial Courts of Vice Admiralty During the Mid Nineteenth Century"

(2016) 37 *Journal of Legal History* 215

Victoria University of Wellington Legal Research Paper No. 6/2018

BEVAN MARTEN, Victoria University of Wellington School of Law

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During the mid nineteenth century there were between 40 and 50 courts of vice admiralty located in colonies across the British Empire. They were imperial institutions, whose officers were supposed to be appointed by the High Court of Admiralty in London. However, the complexity and obscurity of the official process, combined with the lack of priority given to the courts by imperial and colonial officials alike, meant that many of these courts experienced unfilled vacancies and irregular appointments. This article discusses the shortcomings of the vice admiralty system that gave rise to these irregularities, and led to the passage of the Vice Admiralty Courts Act in 1863. It demonstrates that the courts were ineffective instruments of imperial authority, and that by the time the 1863 Act was passed their integration into the regular colonial courts was inevitable.

"Port State Jurisdiction, International Conventions, and Extraterritoriality: An Expansive Interpretation"

H. Ringbom (ed.), Jurisdiction over Ships: Post-UNCLOS Developments in the Law of the Sea (Brill, 2015); ISBN13: 9789004303492

Victoria University of Wellington Legal Research Paper No. 7/2018

BEVAN MARTEN, Victoria University of Wellington School of Law

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The position of port states under international law in relation to visiting foreign merchant vessels is a subject of debate. This is a debate with a hard edge: the ability or otherwise of a port state to regulate issues such as the safety equipment, employment conditions, or environmental standards of such vessels can have serious financial consequences for their operators. For the most part, this edge has been softened through the development of a body of international regulatory conventions under the auspices of the International Maritime Organization (IMO). As a result, the most challenging legal issues in relation to port state jurisdiction arise when port states decide to introduce shipping regulations that have no international equivalent, or are more stringent than existing international standards. The significance of unilateralism in this context is reflected throughout this chapter.

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The Student/Alumni Series is a subseries of the Victoria University of Wellington Legal Research Paper Series. The subseries started in 2015 and publishes papers by students and alumni of Victoria University of Wellington, comprising primarily work for honours and postgraduate courses. Papers are collected into thematic or general issues.

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachusetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through

many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Appellate Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the Law School has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

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