

## THE LAW OF SALVAGE

### **Important Disclaimer:**

*The following article contains general legal information which is designed to give a broad understanding to ocean racers of some matters which may be of interest to them. It does not constitute legal advice intended to be acted upon by anyone. Any person requiring legal advice concerning the topics discussed should engage an appropriately qualified legal practitioner to advise as to the specific matters relevant to their own individual circumstances. Neither the author of the article nor the Ocean Racing Club of Victoria, by its officers, employees or agents, accept any legal responsibility for the correctness, currency or completeness of the information which follows.*

1. The legal concept of an entitlement to reward for saving imperilled marine property can be traced back into antiquity for some 3,000 years. Beginning with the Edicts of Rhodes, through the laws of the Romans and into modern legal systems, it has been recognised throughout the ages that an individual who risks himself and his own property voluntarily to successfully rescue the property of another from peril at sea should be rewarded by the owner of the property saved. An authority on the law of salvage in the United States, Andrew Anderson, has noted that modern admiralty law descends:

“... from an era when the distinction between pirates and free booters on the one hand and honest seamen and salvors on the other was often only one of motivation and expectation. While both were on the lookout for a generous reward for their efforts, at least the latter hoped to come by it honestly. The purpose was to encourage honesty by generously rewarding those who restored property safely to the owner”.

2. The modern law of salvage rewards the voluntary salvor for a successful rescue of property in peril at sea. The purpose of the policy is not only the obvious humanitarian benefits of maritime rescues but to advance marine commerce. To this end, the measure of reward has never been adjusted by a mere estimate of the time and labour provided by the salvors. Looking to the safety and interest of seafarers and sea commerce, the courts have allowed liberal rewards for useful and successful salvage operations even when these involve little effort or trouble to the salvors particularly where human life is at risk.

3. When does a right to a salvage reward arise? The modern law of salvage is found in the International Convention on Salvage (1989) which has force of law in Australia pursuant to the Commonwealth Navigation Act as amended. A right to salvage can only arise where a “vessel” or other property as defined is in peril at sea or in navigable waters. Vessel is defined to include any ship or craft or any structure capable of navigation. Rights of salvage do not apply to aircraft, or oil and gas platforms. In addition to vessels, rights of salvage also attach to any property not permanently or intentionally attached to the shoreline and include freight adrift or at risk.
  
4. Before a right to salvage reward can arise in respect of a vessel, or valuable freight, the property must be “in peril”. This isn’t restricted just to ships in immediate danger of sinking or being blown onto the rocks, but extends to any marine property where there is a reasonable apprehension of danger of future loss or harm. This would apply to an abandoned vessel adrift at sea, a vessel which has accidentally run aground, or one which is leaking or otherwise unseaworthy. Technically, an abandoned vessel is referred to as a “derelict” vessel. It will be so regarded where it has been left by its crew without intention to return, or hope of recovery of the vessel or property on board. The traditional test of whether or not a vessel is derelict depends upon the intentions of the master and crew when leaving. If, having abandoned the vessel without an intention to return, the master and crew later change their mind, the vessel remains “derelict” for the purpose of the law of salvage. Considering a recent example, Skandia Wildthing in last year’s Sydney Hobart never became “derelict” because Grant Warrington always intended to recover it later.
  
5. The concept was once extremely important because the salvor of a derelict vessel traditionally obtained the most generous possible reward. However, I have to disappoint you: the popular myth is not true. The person who finds and saves a derelict vessel does not become entitled to full ownership except in the rare case where the salvor can prove that the true owner has abandoned all claims to ownership, as well as abandoning possession. In the

far more common case where concern for human safety has dictated the abandonment of the vessel, rights of ownership remain.

6. Nonetheless, the salvor of a derelict vessel under admiralty law was traditionally entitled to half the value of the vessel and cargo. While such a hard and fast formula no longer applies, it remains true that the law will provide a generous reward for a salvage operation which restores a derelict vessel to its owner.
7. One unusual aspect of the law of salvage is that rights to reward can arise without the vessel master or owner agreeing to accept salvage services. If, in the circumstances the vessel was in, a prudent owner or master would have accepted salvage services, this is sufficient to entitle the salvor to reward. When a vessel is exposed to a marine peril and no one is aboard to refuse or accept the salvage services, it is not necessarily for the salvor to attempt to locate the owner or to obtain anyone's permission prior to undertaking the salvage operation. The salvor will be rewarded if he successfully saves the vessel without obtaining consent from anyone. In the absence of agreement the amount of salvage reward will be fixed by a Court of Admiralty. However, this does not mean that salvage services can be thrust upon an unwilling vessel master or owner who positively refuses them.
8. Rights to salvage are clear enough where the vessel has been abandoned or is aground, but disputes often arise, where a vessel has been simply towed by another, as to whether this amounts to a salvage service or simple towage. What is clear is that towing a vessel which is in peril to a place of safety is a prototypical act of salvage in circumstances such as where a power vessel has run out of fuel, or is disabled, or is adrift at sea. In these circumstances it will still be regarded as salvage even if the only assistance required is a tow to a safe mooring. This is to be contrasted with a tow which is provided by another vessel as a mere means of saving time or for considerations of convenience. In such circumstances, there is no immediate or apprehended peril, and therefore no right to reward for salvage. The towing vessel may be entitled to payment for towage based on a fair hourly rate or distance travelled

but will not be entitled to the more generous sum awarded for a salvage operation.

9. Assuming the necessary “peril”, either immediate or reasonably apprehended, the next requirement in order for a salvor to obtain a reward is that the services be rendered “voluntarily” in the sense of being rendered without a legal obligation or a duty to do so. Thus, if there is a contract which predates the provision of salvage services, as distinct from a contract which is executed at the time when the vessel is in trouble, the services rendered are not salvage services properly so called because they are not rendered voluntarily, but as a result of a pre-existing legal duty. In those circumstances, it is the pre-existing contract which governs the right to compensation, and not the principles of the law of admiralty. A naval vessel, performing a rescue and saving property in the course of duty, would also not be entitled to salvage.
10. Sometimes rights to a salvage reward will be covered by an express agreement made between the salvor and the owner or master at the time of rescue. Circumstances do arise where a party or their insurer will later seek to set aside a salvage agreement which was entered into by a vessel master or owner when the ship was in peril on the ground that the contract was signed as a result of duress or coercion. However, while a court can set aside such a contract which does not represent a true exercise of free will by a master or owner whose vessel is in peril, the courts will be slow to do so just because the contract was entered into in circumstances of danger and urgency. However, if there is clear evidence of improper coercion (just as in cases of fraud, mutual mistake, misrepresentation or suppression of material facts), the courts do have a jurisdiction to avoid or set aside a salvage contract and to fix what might be regarded as an appropriate reward rather than the one apparently agreed upon.
11. The third necessary element in a right to salvage is the success of the operation, complete or partial, with a contribution to that success being made to the salvor. It is the actual salvor who is entitled to the reward and if there is more than one person who contributes to saving a vessel they will share in

the reward. However, no reward will be payable at all if the salvage service was rendered necessary by the fault of the salving vessel. Obviously enough, a vessel cannot fail to give way and collide with another vessel and then claim a salvage reward for saving it from sinking.

12. Importantly, salvors are required to exercise due care in carrying out a salvage operation and will be liable to pay damages for negligence which may equal or exceed the salvage reward if a vessel or property is further damaged through lack of due care by a salvor. What amounts to due care will obviously depend upon the circumstances and a court will be unlikely to have much regard where minor damage has been caused in circumstances of emergency, which led to much greater damage or loss being avoided.
13. A salvor also owes a duty, when the circumstances reasonably require it, to seek assistance from other salvors and, when reasonably requested to do so by the owner or master of the vessel in danger, to accept the intervention of other salvors even if the first salvor thinks this is unnecessary. In the latter case, if a court substantially finds that the involvement of a further party was not reasonably required, then the original salvor's right to a reward is not prejudiced. If the court holds that intervention of another was appropriate then it would split the reward between them according to their contributions.
14. One of the most interesting developments recently in salvage law has been the growing attention paid to environmental concerns. Under the 1989 International Convention on Salvage which has force of law in Australia, and many other countries, a salvor must now exercise due care to prevent or minimise damage to the environment in the course of a salvage operation. "Damage to the environment" is defined as substantial physical damage to human health or marine life or resources in coastal or inland water or adjacent areas caused by pollution, contamination, fire, explosion or similar major incidents.
15. The requirement to have regard environmental concerns has also led to a modification of the rules relating to salvage reward. Traditionally, an

unsuccessful salvor, no matter how great the trouble and expense put to, was entitled to no reward. However, under the International Convention, an unsuccessful salvor who attempts to salvage a tanker laden or partly laden with a tank of oil is entitled to recover his expenses plus up to 200% of his expenses as a reward for efforts to prevent or mitigate damage to the environment even if ultimately unsuccessful. This special compensation measure is designed to encourage salvors to take a chance on undertaking both salvage and environmental protection even when the probability of success is slim.

16. Modern salvage rewards are not based as they once were on any fixed percentage of a vessel's value. As noted earlier, historically a salvor of a derelict vessel was entitled to half the value of the property saved. The International Convention in force in Australia and many other countries sets out a number of factors which a court is required to have regard to in fixing a salvage reward. These include:
  - (a) the salved value of the vessel and other property;
  - (b) the skill and efforts of the salvors in preventing or minimising damage to the environment;
  - (c) the measure of success obtained by the salvor;
  - (d) the nature and degree of the danger;
  - (e) the skill and efforts of the salvor in salving the vessel, other property and life;
  - (f) the risk of liability and other risks run by the salvors or their equipment;
  - (g) the time used and expenses and losses incurred by the salvors;
  - (h) the promptness of the services rendered;
  - (i) the availability and use of vessels or other equipment intended for salvage operations and the state of readiness and efficiency of the salvor's equipment and the value of that equipment.
  
17. Ultimately the amount awarded is in the discretion of the court, but the cases show rewards will be generously given when circumstances warrant it. Even an hour's work by a salvor, which successfully saves a vessel, can result in a reward equivalent to between 20% and 50% of a typical recreational vessel's

value. Larger amounts tend to be awarded to professional salvors as distinct from amateurs in order to encourage professionals to maintain vessels and equipment on stand by to conduct salvage operations. Some examples include an \$8,000 reward for a saving a recreational vessel which when saved was valued at just twice that amount and rewards of \$3,000 and \$13,000 respectively for saving yachts with values after salvage of \$12,000 and \$48,000 – approximately 25% of value.

18. The good news for boat owners is that salvage rewards are covered by standard boat insurance policies. Accordingly, if your boat is damaged but saved from loss the insurer will not only be liable for the damage but will also be required to pay the reasonable cost of salvage.
  
19. There is no reward for saving life at sea as distinct from property. Where both property and life are saved, the salvage reward relating to the property may be fixed at a higher rate than would be the case otherwise. But, regardless of reward, the master of a ship is under a duty of law to render assistance to any person found at sea in danger of being lost if this can be done without danger to the rescuing ship, its crew or passengers.