

By Toby Barnfield



The author at sea as a boy

THE misfortune that befell *Raraku* off the coast of Beachport in 2015 is by now well known to the yachting community. ABC News reported that the 40-foot yacht struck a reef in bad weather, leaving her with a punctured hull that caused her to founder. The crew made it safely on to dry land in a life raft, with the strong wind eventually propelling the vessel shoreward after them.

The yacht was recovered just over a week later, but not before thousands of dollars worth of equipment and hardware had been pilfered from her, winches and all. The police called it a straight-forward act of larceny because no marine salvage rights had come into play.

This incident has rightly raised questions from a number of members about the rules and regulations that govern marine salvage.

Laws relating to salvage are as old as seafaring itself. Today in Australia, salvage is controlled by two main statutes: the Navigation Act 2012 and the Admiralty Act 1988—both administered by the federal government and applied uniformly in all the states and territories.

Photos are of the wreck of *Raraku* at Beachport

Photography: Eleanor Ramsay



The general rules contained in these Acts are drawn from the old common law, developed by British courts throughout the 1800s—a time when nautical terminology was at its most colourful. Case names like ‘The Crown v Two Casks of Tallow’ or ‘The Undaunted’ are standard fare, and one of the pivotal salvage cases is the modestly titled ‘Raft of Timber’, decided in 1844.

The act of salvaging is pretty much the same now as it was then: it is essentially any service volunteered by someone who assists in the rescue or recovery of a piece of maritime property, such as towing a stranded vessel ashore or gathering lost cargo afloat near a shipwreck.

Traditionally, admiralty law distinguished between different kinds of ‘maritime property’ that were allowed to be salvaged. A glance at a good dictionary of nautical terms tells us about them:

‘Flotsam’ is cargo found floating on the water after a ship has been badly damaged or has sunk.

‘Jetsam’ is heavier cargo jettisoned by the crew to lighten the load when the ship is in danger of sinking.

‘Lagan’ is similar to jetsam, except the crew will have attached buoys or cork to the items so that when they sink to the bottom they can be located and recovered later.

‘Derelict’ is the traditional term for a vessel that has been abandoned by its crew after foundering (filling with water), sinking, or where there seems no reasonable prospect of recovering it.

Luckily for the 21st century sailor, the modern law of Australia treats flotsam, jetsam, lagan and derelict as the same thing, which it simply calls ‘wreck’. A sail-cover blown overboard in bad weather is just as salvageable as a 70-foot ketch with a broken keel – all the same rules apply.

Matters can become complicated when it is unclear whether the vessel or property has actually been abandoned by its owner. The absence of crew does not necessarily mean that the vessel has been abandoned, as the traditional legal test looks at whether or not the master or the owner of the vessel intended to leave the ship behind and never come back for it—where, for example, they figured there was no hope of recovery.

This potentially makes things difficult for a would-be salvor. How are you to know whether a crew intends to return for the empty wreck or not?

Thankfully the law is not totally impractical here. It’s not up to the salvor to make enquiries in the heat of the moment about a vessel they come upon, so long as that vessel is ‘in peril’.

Where a vessel is in immediate danger, or if there is a reasonable likelihood that it will be in danger if it’s left as is, then it can be lawfully salvaged regardless of the intentions of its owner. The commonest situations are where a vessel has run aground, has foundered, or is drifting unseaworthy.

If there is time to make enquiries, it is good practice to contact AMSA, which keep records of any wrecks reported in the area. And where a crew is still aboard a vessel in distress, you are of course under a legal obligation (not to mention a moral one) to ensure the crew are returned to safety.

For their efforts, a successful salvor may be handsomely rewarded. Some might salvage wrecks under the mistaken belief that they are allowed to keep whatever they rescue; but a salvager is not to be confused with a scavenger.

Admiralty law treats salvaging as an act of altruism and good seamanship that is to be commended. As such, if you return a wreck safely to dock or dry land, you become entitled to a monetary reward – just like the

privateers of old. Some of the confusion may stem from the fact that salvors retain control of the vessel (as opposed to ownership) until such time as they are paid this reward.

The size of this bounty is determined by a Court of Admiralty, which in Australia sits in the Federal Court. A judge will look at the danger involved in retrieving the wreck and the amount spent in retrieving it and will give the salvor a portion of the worth of the recovered property.

But this is only where a salvor has volunteered his/her service. If the owner of a wreck hires a large salvaging company to retrieve the ship, the company can’t ask Admiralty for a reward because they have been paid for their service as part of a standard legal contract.

A salvor then is closer to a good Samaritan than a pirate or a privateer. Vessels in distress

or fresh shipwrecks need to be left intact and, provided one has the means to do so, should be transported to safety. If you assumed all the fixtures and fittings on a ship remain the property of the owner, then the law should always be on your side.

It’s fair to say that common sense also plays a big part in what you need to do in each situation. If you come across a fine yacht at anchor in Refuge Cove on a bright sunny day without anyone on board that does not mean you can take her in tow and head up the East Coast. Chances are the crew have gone ashore for a walk.

But if you find a boat empty and adrift well offshore then you would certainly need to make enquiries immediately, inform the authorities of the location by radio and, if safe to do so, go aboard to investigate and turn on the navigation lights to alert other vessels at night.

A decision to take a boat in tow needs to be carefully assessed depending on relative size of the towing craft, conditions, urgency and distances involved. A large commercial fishing boat will usually be better suited to the task, or a salvage operator arranged by the insurer.

Marine salvage plays an important role in seafaring the world over. Admiralty law holds it in high regard as it recognises the contribution salvors make to the safety of ships and the health of the ocean. The longer wrecks are left unattended, the greater the risk of injury to passing yachts or of harm to the environment, so be sure to remain vigilant of your duties as a conscientious seafarer.



Thieves steal from yacht which washed to shore after hitting reef in Beachport, SA - ABC News (Australian Broadcasting Corporation)

Read the ABC report at:
<http://mobile.abc.net.au/news/2015-05-20/thousands-dollars-property-stolen-beachport-yacht-in-sa/6484470>

