

Tony Scotford

Tony Scotford, who died on the 4 April 2022, was one of the New South Wales practitioners who were contacted by the Victorians when they initiated the formation of the Maritime Law Association of Australia (later MLAANZ). As I said in the Frank Dethridge memorial address in 2018 it was Norman Lyall and Tony Scotford (of Ebsworth & Ebsworth) who together with Ken Carruthers had attended the 1975 Maritime Law Association of Australia's meeting in Melbourne and helped form the NSW Branch.

Tony was one of the outstanding solicitors, certainly in New South Wales, and probably Australia, of his generation. He had joined Ebsworth and Ebsworth as an articled clerk in 1964, graduated with Honours from the University of Sydney in 1966, was admitted in 1967 as a solicitor and became a partner in 1968. He was President of the Young Lawyers in NSW. He was the only partner that joined that partnership in the 1960s. At that time Ebsworth & Ebsworth were the solicitors for P&O, RW Miller & Co, ACTA Pty Ltd, AJCL, Associated Steamships, China Navigation Company, HC Sleigh Limited, Howard Smith Limited, McCarthur Shipping & Agency, McDonald Hamilton & Co Pty Ltd, McIlwraith McEacharn, Swires, Overseas Containers Australia Limited and CSR amongst others. In addition, Ebsworth & Ebsworth acted for stevedores and others in the shipping industry including tug operators.

Ebsworth & Ebsworth had acted for many of the P&I Clubs for many years at the time, and were the honorary solicitors to the Chamber of Shipping and also the solicitors to Liner Shipping Services, advising on Conference arrangements. Tony briefed the late James Crawford to settle submissions to the various Canberra sponsored enquiries into Conference Agreements and Part X of the then Trade Practices Act. He was also a Consultant to the ALRC reference into the Admiralty Jurisdiction which produced Australia's first Admiralty Act.

The high esteem with which the firm, and him in particular, were held in the 1980s can best be understood in two cases in which he triumphed in 1980. The first was *Salmond and Spraggon (Australia) P/L v Port Jackson Stevedoring (The "New York Star")* (1980) 2 Lloyds Rep. 317, which I described in the Dethridge address as "probably one of the most significant cases as far as the practices of maritime lawyers had been concerned in the last 40 years". It was a cargo claim for the loss of the razor blades, that had been shipped from New Brunswick to Sydney, whilst in the shed at the wharf after being discharged. Ebsworth & Ebsworth had originally acted for the ship's agents but they had been successful at first instance. They had been sued as a bailee but were found by Sheppard J not to have had possession of the goods and in any event not to have been negligent, and there was no appeal against that decision. The stevedore however was found to have failed to take care of the goods, but was also found entitled to rely on the limitation provision in the bill of lading, even though they were stolen after being discharged from the ship, (the exhaustion point) and one of those provisions, (the time bar point) was found to protect it as the proceedings were initiated over one year after the loss.

The case had then gone on to the NSW Court of Appeal where the decision was overturned, on a ground conceded by the Plaintiff at first instance not to have been available to it: that there had been no consideration moving from the stevedore in satisfaction of the fourth condition mentioned by Lord Reid in *Scruttons Ltd v Midland Silicones Ltd* (1962) A.C 446 at 474. It then progressed to the High Court which held 4 to 1 (with a strong dissent from Barwick CJ) that the stevedore could not rely on the Himalaya clause in order to limit their liability. The stevedore then sought legal advice from Tony Scotford as to whether there was any prospect of appealing the High Court's decision. Murray Gleeson QC (as he then was) and Brian Rayment were briefed to advise on the prospects of obtaining leave to appeal from the Privy Council. At that time it was generally believed that the Privy Council would have a profound reluctance to grant special leave to appeal from the High Court.

The arguments in the High Court had taken a curious turn, as described by Lord Wilberforce in the Privy Council, which led their Lordships "exceptionally to grant special leave to appeal to Her Majesty in Council." The issue that their Lordships found it necessary to deal with was what was described as the "capacity" point, namely that at the time the loss was occasioned the carrier had fulfilled its contractual obligation, that is from tackle to tackle. The Privy Council found that notwithstanding the contractual provisions the carrier's obligations extended to the delivery of the cargo and thus the exceptions and limitations under the bill of lading also extended to cover those periods. The appeal to the Privy Council by the stevedores was therefore successful and the High

Court's decision was overturned. Whilst not taking anything away from the brilliance of the advocates that appeared in that case the successful challenge was due in no small measure to the tenacity, legal acumen and conviction of Tony Scotford.

The other great litigation triumph he had the same year was in unfamiliar territory when he again briefed Murray Gleeson QC (with Bob Stitt) to defend the National Country Party Minister, Ian Sinclair, who was charged with fraud over business dealings involving his father's funeral business. After a trial that lasted 20 days Sinclair was acquitted.

During the early 1980s a number of additional P and I Clubs were added to the Ebsworth and Ebsworth portfolio under his leadership. There were also many other maritime cases that he was involved in (including a contested general average case arising from a grounding off Port Kembla and marine insurance cases) but as the 1980s progressed into the 1990s he stepped away from maritime litigation leaving that to others in order to develop the non marine side of the practice and then managing partner, and the leadership of the firm including the opening of offices in Melbourne and Brisbane.

Tony Scotford was almost solely responsible for the development of the Ebsworth & Ebsworth non-marine practice. Starting off with workers compensation, common law, personal injury matters for the local insurance industry he was able to develop one of the most significant London based insurance practices on the back of successfully acting for the professional indemnity insurers of Law Coverl, which gave the firm an entrée into the London non-marine market, particularly through the Michael Payne Syndicate. The growth of Ebsworth & Ebsworth in the early 80's until it eventually became part of HWL was phenomenal and largely attributable to Tony Scotford. His legal skills, his charisma and diligence all combined to make him one of the leading practitioners in insurance law in the country.

He took an active interest in politics and living in Hunters Hill he ran the Honourable John Howard's electoral office in the early days of his political career. Later he was Chairman of the Sydney Theatre Company.

He mentored many fine solicitors who went on to become partners of Ebsworth and Ebsworth and many other firms in both the marine and non marine insurance arenas. They will be forever grateful for the interest and support he gave them.

The Funeral arrangements are: North Chapel, Northern Suburbs Memorial Garden and Crematorium, 199 Delhi Road, North Ryde on 26 April at 3.15 pm.

Stuart Hetherington 13 April 2022

