

Sydney to Hobart:

Sailing Adventures and the

Law



Salvage of ships and cargo

We were delivering “One for the Road” home after our safe completion of the Sydney to Hobart race, when we came across a yacht with engine difficulties. We offered to assist and finished up towing the boat 110 km to Eden. This started me thinking about the legal position of the rescued persons and the rescuers. It made me aware that all boat owners should know the legal and financial consequences of salvage

Unlike the situation on land, people who voluntarily rescue a boat or its cargo have a legal right to a reward. This is called “salvage”. To make a valid claim of salvage, a claimant must prove:

the event involved a vessel and its cargo, or things committed to and lost at sea or other public, navigable waterways;

the vessel or its cargo have been rescued from danger;

the service performed by claimant must have been of benefit to the property involved in the rescue.

We did not actually think of seeking a reward from the yacht, but I thought about the issue of salvage rewards. To receive the reward, you must apply to a court which will decide how much of a reward to grant. 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 salvaged 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 salvaging 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.

Some salvage rewards have been generous. 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. There is no reward for saving lives, only the cargo and vessel.

If there is a contract between the rescuer and those salvaged regarding the salvage operations, that contract will usually govern the rescuer’s right to salvage. So (assuming we otherwise had a claim for salvage) if we had agreed with the master of the rescued yacht that we would tow them to the closest port for, say, a case of beer, we have no further claim of salvage.

There is a common form of contract used in rescue and salvage situations. It is known as “Lloyds Open Form”. It may be worth keeping a copy in your yacht just in case you get into trouble one day. If you want to have a look at this contract, you can find it on the Lloyd’s website at http://www.lloyds.com/Lloyds_Worldwide/Lloyds_Agents/Salvage_Arbitration_Branch/Lloyds_Open_Form_LOF.htm.

Most insurance policies will cover you for the cost of salvage as well as for damage to your vessel. It is advisable to check your policy to see whether claims of salvage are covered.

In our situation, to be able to make a successful claim for salvage, we would have to show that we actually “rescued” the yacht, or that it was in some danger. It is not necessary that there should have been absolute danger for the property salvaged, but there must be a state of difficulty and reasonable apprehension of danger.

The yacht we towed was having engine difficulties, but still had its sails. Because the yacht was still sea-worthy, our actions did not save it from any danger, but was simply convenient for its crew. This was a simple towing situation and would not give rise to a reward for salvage. If it had also been taking on water and needed to return to land as quickly as possible to prevent danger to the boat and crew, it could have been a salvage operation.

Rescuing persons on vessels in distress

While there is no right to a reward, there is a legal obligation to aid persons in danger at sea if this can be done without danger to the rescuing vessel, its crew or passengers. Please note that you may not board a vessel in distress unless you have first received permission from the master of the vessel to do so.

Conclusion

Our experience highlighted that it is important to check your insurance policy to see whether it covers salvage claims. It is also important, when accepting assistance in the water, to ensure that you agree with your rescuers about the terms of your rescue and their right to a reward before accepting their help. If you cannot agree on specific terms, at least agree to use “Lloyd’s Open Form”.

By Kym Butler
With assistance from
Louise Cherry