THE SHIPPING LAW REVIEW

NINTH EDITION

Editors
Andrew Chamberlain, Holly Colaço and Richard Neylon

THE LAWREVIEWS

THE SHIPPING LAW REVIEW

NINTH EDITION

Reproduced with permission from Law Business Research Ltd
This article was first published in June 2022
For further information please contact Nick.Barette@thelawreviews.co.uk

Editors
Andrew Chamberlain, Holly Colaço and Richard Neylon

THE LAWREVIEWS

B

PUBLISHER
Clare Bolton

HEAD OF BUSINESS DEVELOPMENT
Nick Barette

TEAM LEADER
Katie Hodgetts

SENIOR BUSINESS DEVELOPMENT MANAGER
Rebecca Mogridge

BUSINESS DEVELOPMENT MANAGERS
Joey Kwok and Juan Hincapie

BUSINESS DEVELOPMENT ASSOCIATE
Archie McEwan

RESEARCH LEAD
Kieran Hansen

EDITORIAL COORDINATOR
Leke Williams

PRODUCTION AND OPERATIONS DIRECTOR
Adam Myers

PRODUCTION EDITOR
Felicia Rosas

SUBEDITOR
Caroline Fewkes and Sarah Andreoli

CHIEF EXECUTIVE OFFICER
Nick Brailey

Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK

www.TheLawReviews.co.uk

ISBN 978-1-80449-079-2

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ADAME GONZÁLEZ DE CASTILLA & BESIL

A KARITZIS & ASSOCIATES LLC

ASIALEGAL LLC

BLACK SEA LAW COMPANY LLC

BLOOMFIELD LP

BOSE & MITRA & CO

BUDIDJAJA INTERNATIONAL LAWYERS

CHANDLER MHM LIMITED

CHOI & KIM

COSTA, ALBINO & LASALVIA ADVOGADOS

D L & F DE SARAM

DZUNGSRT & ASSOCIATES LLC

GAUCI-MAISTRE XYNOU

GORRISSEN FEDERSPIEL

HARRIS & CO MARITIME LAW OFFICE

HESKETH HENRY

HFW

IN LAW OFFICE

JORQUIERA & ROZAS ABOGADOS (JJR LAW FIRM)

MAPLES GROUP

MESTRE ABOGADOS SLP

MORGAN & MORGAN

PALACIOS, PRONO & TALAVERA

PPT LEGAL

SABATINO PIZZOLANTE ABOGADOS MARÍTIMOS & COMERCIALES

STUDIO LEGALE MORDIGLIA

TMI ASSOCIATES

VERALAW (DEL ROSARIO RABOCA GONZALES GRASPARIL)

VILLAGRAN LARA

CONTENTS

PREFACE

The aim of the ninth edition of this book is to provide those involved in handling shipping disputes with an overview of the key issues relevant to multiple jurisdictions. We have again invited contributions on the law of leading maritime nations, including both major flag states and the countries in which most shipping companies are located. We also include chapters on the law of the major shipbuilding centres and a range of other jurisdictions.

As with previous editions of *The Shipping Law Review*, we begin with cross-jurisdictional chapters looking at the latest developments in important areas for the shipping industry, including ocean logistics, piracy, shipbuilding, ports and terminals, marine insurance, environmental issues, decommissioning and ship finance.

Each jurisdictional chapter gives an overview of the procedures for handling shipping disputes, including arbitration, court litigation and any alternative dispute resolution mechanisms. Jurisdiction, enforcement and limitation periods are all covered. Contributors have summarised the key provisions of local law in relation to shipbuilding contracts, contracts of carriage and cargo claims. We have also asked the authors to address limitation of liability, including which parties can limit, which claims are subject to limitation and the circumstances in which the limits can be broken. Ship arrest procedure, which ships may be arrested, security and counter-security requirements, and the potential for wrongful arrest claims are also included.

The authors review the vessel safety regimes in force in their respective countries, along with port state control and the operation of both registration and classification locally. The applicable environmental legislation in each jurisdiction is explained, as are the local rules in respect of collisions, wreck removal, salvage and recycling. Passenger and seafarer rights are examined, and contributors set out the current position in their jurisdiction. The authors have then looked ahead and commented on what they believe are likely to be the most important developments in their jurisdiction during the coming year.

The shipping industry continues to be one of the most significant sectors worldwide, with the United Nations Conference on Trade and Development (UNCTAD) estimating that the operation of merchant ships contributes about US$380 billion in freight rates within the global economy, amounting to about 5 per cent of global trade overall. Between 80 per cent and 90 per cent of the world's trade is still transported by sea (the percentage is even higher for most developing countries) and, as of 2021, the total value of annual world shipping trade had reached more than US$14 trillion. Although the covid-19 pandemic has had a significant effect on the shipping industry and global maritime trade (which plunged by an estimated 4.1 per cent in 2020), the recovery was swift. The pandemic truly brought to

the fore the importance of the maritime industry and our dependence on ships to transport supplies. The law of shipping remains as interesting as the sector itself and the contributions to this book continue to reflect that.

We would like to thank all the contributors for their assistance in producing this edition of *The Shipping Law Review*. We hope this volume will continue to provide a useful source of information for those in the industry handling cross-jurisdictional shipping disputes.

Andrew Chamberlain, Holly Colaço and Richard Neylon
HFW
London
May 2022

Chapter 20

ENGLAND AND WALES

Andrew Chamberlain and Holly Colaço[1]

I COMMERCIAL OVERVIEW OF THE SHIPPING INDUSTRY

The shipping industry has been an important contributor to the United Kingdom's island-nation economy for centuries. In 2021, the United Kingdom was ranked 10th with regard to ownership of world fleet.[2] In economic terms, shipping accounts for 95 per cent of UK exports and imports. The wider maritime sector contributes approximately £10 billion and 240,000 jobs to the UK economy every year.[3] According to the most recent statistics available, total port freight traffic through the United Kingdom's major ports in 2021 was 436.4 million tonnes, which represents an increase of 2 per cent compared with the previous year.[4] In 2020, the UK Ship Register came top in the Paris MOU league table of high performing Flag States.[5]

II GENERAL OVERVIEW OF THE LEGISLATIVE FRAMEWORK

England and Wales is a common law jurisdiction with a legal framework is founded on a mixture of case law and legislation. Shipping law in particular has historically been developed primarily by decided cases, although there are statutes in key areas. The Merchant Shipping Act 1995 (the MSA 1995), consolidating previous statutes dating from 1894, is a particularly important piece of overarching legislation in this field and various statutory instruments have been made under it.

International conventions that are ratified by the United Kingdom are usually implemented through domestic legislation. The United Kingdom has ratified all the major international maritime conventions.

The United Kingdom is no longer a member of the European Union, following the end of the Brexit transition period on 31 December 2020. EU legislation, as it applied to the United Kingdom on 31 December 2020, is now a part of UK domestic legislation, known

1 Andrew Chamberlain is a partner and Holly Colaço is a knowledge lawyer at HFW.

2 United Nations Conference on Trade and Development [UNCTAD], 'Review of Maritime Transport: 2021', Table 2.4: Ownership of world fleet, ranked by carrying capacity in dead-weight tons, 2021, https://unctad.org/system/files/official-document/rmt2021_en_0.pdf.

3 https://www.maritimeuk.org/about/our-sector/shipping/?msclkid=ba4331f8b4e511eca9c428da0154f8de.

4 https://www.gov.uk/government/statistics/port-freight-quarterly-statistics-october-to-december-2021/port-freight-quarterly-statistics-october-to-december-2021?msclkid=ceeed52eb4e311ecad5eb96173f522b9.

5 MCA Business Plan 2021 to 2022, https://www.gov.uk/government/publications/mca-business-plan-2021-to-2022.

as 'retained EU legislation',[6] under the control of the UK's Parliaments and Assemblies. The European Union (Future Relationship) Act 2020 implements the arrangements for the relationship between the United Kingdom and the European Union, as agreed on 24 December 2020. These arrangements include the Trade and Cooperation Agreement,[7] applicable since 1 January 2021, which concerns the establishment of a free trade area, non-reciprocal maritime cabotage, climate change cooperation and reciprocal access to maritime services.

III FORUM AND JURISDICTION

i Courts

Forum and jurisdiction

Shipping disputes in England and Wales are heard in the Commercial Court or the Admiralty Court, depending on the precise nature of the claim. These are specialist courts experienced in dealing with shipping disputes and in which a number of highly experienced commercial and maritime judges sit. There are currently 13 judges attached to the two courts.[8]

Proceedings commenced in the Admiralty and Commercial courts are governed by the general procedural rules contained in the English Civil Procedure Rules (CPR). There is also, however, a specialist Admiralty and Commercial Court Guide,[9] which sets out detailed information regarding the conduct of litigation in these courts. The CPR also contains specific rules and practice directions relating to admiralty claims (CPR 61 and Practice Direction 61) and claims commenced in the Commercial Court (CPR 58 and Practice Direction 58).

Under English law, the following claims must be commenced in the Admiralty Court: salvage, collision, limitation and *in rem* proceedings for the arrest of a vessel. Claims that fall within the jurisdiction of the Commercial Court include carriage of goods, import or export of goods, insurance and reinsurance disputes, and shipbuilding. Appeals are heard by the Court of Appeal and, ultimately, the Supreme Court.

During the past year, several particularly significant shipping disputes have come before the English Court of Appeal and Supreme Court, including:

a *The CMA CGM Libra*,[10] a decision by the Supreme Court concerning the legal test for unseaworthiness, the limits of a carrier's obligation to exercise due diligence and the repercussions of defective passage planning (in this case, the Supreme Court held that vessel was unseaworthy by virtue of a defective passage plan);

b *The Eternal Bliss*,[11] in which the Court of Appeal overturned the High Court's decision, ruling that demurrage is an owner's exclusive remedy for failure to complete cargo operations within laytime;

6 This is set out in Sections 2 and 3 of the European Union (Withdrawal) Act 2018 (c. 16). Section 4 of the 2018 Act ensures that any remaining EU rights and obligations, including directly effective rights within EU treaties, continue to be recognised and available in domestic law after exit.

7 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf.

8 See Ministry of Justice website, www.gov.uk/guidance/admiralty-and-commercial-court-judges.

9 The current edition is the 11th edition, updated in 2022, https://www.judiciary.uk/wp-content/uploads/2022/02/Commercial-Court-Guide-11th-edition.pdf.

10 *Alize 1954 v. Allianz Elementar Versicherungs AG* [2021] UKSC 51.

11 *K Line Pte Ltd v. Priminds Shipping (HK) Co Ltd (the Eternal Bliss)* [2021] EWCA Civ 1712 (CoA).

c *Evergreen Marine (UK) Limited v. Nautical Challenge Ltd*,[12] in which the Supreme Court in 2021 overturned earlier judgments on the *Ever Smart and Alexandra I* collision and provided clarity on the International Regulations for preventing Collision at Sea 1972 (COLREGs), in its first collision liability appeal; and in which the High Court in 2022 redetermined all matters of apportionment, as directed by the Supreme Court;

d *The Polar*,[13] in which the Court of Appeal reviewed the principles to apply when considering whether charter party terms are incorporated into bills of lading, and confirmed that GA recovery from cargo interests for piracy losses is not blocked by bill of lading terms;

e *The Stema Barge II*,[14] in which the Court of Appeal considered the meaning of the word 'operator' under the Limitation Convention, narrowing the meaning of the term by holding that an operator must be involved in the management or control of the vessel, and not simply provide crew; and

f *Holyhead Marina Ltd v. Farrer & ors*[15] in which the Court of Appeal agreed with the Admiralty Court that a marina was a 'dock' for the purposes of limitation under Section 191 of the Merchant Shipping Act 1995.

Limitation periods

The following limitation periods may apply to maritime claims in England and Wales:

a one year for cargo actions under the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924 (the Hague Rules) or the Protocol to amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading 1968 (the Hague-Visby Rules);

b two years for passenger claims under the Athens Convention on the Carriage of Passengers and their Luggage by Sea 1974 (the Athens Convention);

c two years for salvage claims under the International Convention on Salvage 1989 (the 1989 Salvage Convention);

d two years for collision claims under Section 190 of the MSA 1995;

e three years from the date of the act or omission that caused the death or injury for death or personal injury claims (or, in certain circumstances, from the date of knowledge of a latent injury);[16]

f three years from the date the loss or damage was discovered or could have been discovered for latent damage (except personal injury);

g six years from the date on which the cause of action occurred for ordinary contractual or tortious actions (except personal injury);[17] and

h 12 years for 'upon speciality' claims, for instance, for claims based on deeds.[18]

It is possible to extend time limits by agreement. However, in most cases, agreement to extend must be reached before the relevant time limit expires. The limitation period for

12 [2021] UKSC 6 and [2022] EWHC 206 (Admlty).

13 *Herculito Maritime Ltd v. Gunvor International BV (the polar)* [2021] EWCA CIV 1828.

14 *Splitt Chartering APS v. Saga Shipholding Norway AS (the 'STEMA BARGE II')* [2021] EWCA CIV 1880.

15 [2021] EWCA Civ 1585.

16 Limitation Act 1980 [LA 1980], Sections 11 and 12.

17 ibid., Sections 2 and 5.

18 ibid., Section 8.

personal injury claims under Section 11 of the Limitation Act 1980 (the LA 1980) may be extended at the court's discretion under Section 33 of the LA 1980. Other specific tribunals may have further applicable limitation periods, and contractual limitation periods should always be checked.

ii Arbitration and ADR

Maritime disputes are often resolved via London arbitration and the vast majority of international shipping arbitrations are currently dealt with in London.[19] For a dispute to be subject to arbitration, there must be an arbitration agreement, which may be either written in the contract under which the dispute arises or agreed between the parties after the dispute has arisen.

The London Maritime Arbitrators Association (LMAA) is an association of specialist maritime arbitrators operating in London. In 2021, the LMAA received approximately 2,777 new arbitration appointments and published 531 arbitration awards.[20]

LMAA arbitration is frequently used to determine commercial shipping disputes, such as charter party and bill of lading disputes, ship sale and purchase disputes, shipbuilding and repair disputes, marine insurance disputes, and offshore and oil and gas disputes. LMAA arbitration is not usually used for collision and salvage matters, salvage being more commonly resolved by Lloyd's Salvage Arbitration (see Section VI).

The LMAA operates within the framework laid out in the Arbitration Act 1996 and publishes its own set of rules, which are structured to deal with small, intermediate and larger cases. The most recent rules were published in 2021, and apply to all LMAA arbitrations commenced on or after 1 May 2021.

Several forms of alternative dispute resolution are used within England and Wales, including expert determination, early neutral evaluation, early intervention and mediation. Mediation in particular is an increasingly popular option for settling maritime disputes. Both the Admiralty and Commercial courts and the LMAA encourage parties to a dispute to engage in mediation before proceeding to trial or arbitration. If a party refuses to mediate without reasonable grounds for doing so, the court may make an adverse costs order against the refusing party. Additionally, if an English law contract contains a mediation clause, this clause will be enforceable by the parties to the contract provided that the clause is sufficiently certain.

iii Enforcement of foreign judgments and arbitral awards

Foreign judgments

Following the end of the Brexit transition period on 31 December 2020, England and Wales are no longer able to rely on the various EU conventions on jurisdiction, service and enforcement.

The Brussels 1 Regulation (recast),[21] which covers the recognition and enforceability of judgments between EU Member States, no longer applies to claims, unless issued on

19 See https://www.hfw.com/The-Maritime-Arbitration-Universe-in-Numbers-London-remains-ever-dominant-July-2020.

20 https://lmaa.london/statistics-of-appointments-awards/.

21 Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

or before 31 December 2020. The Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters 2007 (the Lugano Convention), which regulates the enforcement of judgments between EU Member States and the European Free Trade Association countries, also no longer applies to claims, unless issued on or before 31 December 2020. The United Kingdom sought to join the Lugano Convention in its own right, but required the consent of the EU Member States. On 8 March 2021, Switzerland approved the United Kingdom's application to accede to the Lugano Convention. However, in June 2021, in a *Note Verbale* to the Swiss Federal Council, the EU Commission said it was 'not in a position to give its consent to invite the United Kingdom to accede to the Lugano Convention'. The Swiss Federal Council acts as the official depository of the 2007 agreement.[22]

The Hague Convention of 30 June 2005 on Choice of Court Agreements, which continues to apply in England and Wales to certain contracts, requires the courts of contracting states to uphold exclusive jurisdiction clauses (entered into after the Convention came into force), and to recognise and enforce judgments given by courts in other contracting states that are designated by such clauses.

The Administration of Justice Act 1920 and the Foreign Judgments (Reciprocal Enforcement) Act 1933 govern the recognition and enforcement of judgments made in the Commonwealth and other reciprocating countries. These Acts require judgments to be registered before they can be enforced in England. The requirements for registration are that the court that issued the judgment must have had jurisdiction and the judgment must not have been obtained by fraud or be contrary to public policy. Once registration has occurred, the judgment will take effect as if it were an English judgment.

Enforcement of judgments from countries that are not party to the above statutory regimes is governed by English common law and requires the commencement of a new action based on the judgment itself. The English courts will not examine the merits of the judgment. However, it will be necessary to show that the court that made the judgment had jurisdiction to do so under the English conflict-of-laws rules, that the judgment is for a debt or a limited sum and that it is final, conclusive and not contrary to public policy.

Foreign arbitral awards

Many foreign arbitration awards are enforceable within England and Wales, and this position remains largely unaffected by Brexit. The United Kingdom is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention). Accordingly, most awards from other contracting states are enforceable. Enforcement is governed by Section 66 of the Arbitration Act 1996.

It is also possible to enforce an award issued by a non-contracting state. Again, enforcement is covered by Section 66 of the Arbitration Act 1996 and by common law. The key criteria for enforcement are that the award is valid under its own governing law and that it is final.

22 https://www.lawgazette.co.uk/news/eu-deals-second-blow-to-uks-lugano-chances-/5109099.article?msclkid=c32af77ab65a11eca164f1a2dd8e6751.

IV SHIPPING CONTRACTS

i Shipbuilding

English law continues to be the governing law of choice for parties entering into shipbuilding contracts and so England and Wales remains a key jurisdiction in this respect. See the 'Shipbuilding' chapter for further discussion of the law in this area.

The United Kingdom itself has a proud history of shipbuilding spanning many centuries; however, since the closure of many yards in the 1970s and 1980s, commercial shipbuilding has been in significant decline.

ii Contracts of carriage

The Hague-Visby Rules, incorporated into English law by the Carriage of Goods by Sea Act 1971, are the salient convention rules applicable in this jurisdiction. The Rules will apply compulsorily to bills of lading when the port of shipment is in England and Wales or when the bills are issued there. Further legislation on the function of bills of lading and contracts of carriage has been enacted by the Carriage of Goods by Sea Act 1992. There is no specific legislation governing multimodal contracts of carriage, although it is generally accepted that the Hague-Visby Rules will apply to the seagoing leg of such contracts for carriage. As yet, the United Kingdom is not a signatory to the UN Convention on the Carriage of Goods by Sea 1978 (the Hamburg Rules) or the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea 2009 (the Rotterdam Rules).

The Carriage of Goods by Sea Act 1971 qualifies that for contracts falling under that Act (including bills of lading governed by English law), there is no absolute implied term as to seaworthiness. The effect of this is to make the carrier's general duty regarding seaworthiness one of exercising 'due diligence'. Following Article III.1 of the Hague-Visby Rules, a carrier must exercise due diligence in the following cases:

a when making the ship seaworthy;
b when properly manning, equipping and supplying the ship; and
c when making holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe.

The duty is on the carrier personally and is not delegable to servants, agents or contractors. Deck and live animal cargoes are excluded from the provisions of the Hague-Visby Rules.

Pursuant to Article III.2 of the Hague-Visby Rules, the carrier must properly and carefully load, handle, stow, carry, keep, care for and discharge the goods under the contract for carriage. Owners may rely on the defences at Article IV.2 if goods in their care are lost or damaged. These defences include the act or neglect of the master in the navigation or management of the vessel, act of war and arrest or restraint of princes, as well as latent defects not discoverable by due diligence (otherwise known as 'inherent vice').

Article IV.6 states that inflammable, explosive or dangerous goods may be discharged or destroyed at any time before discharge without compensation if the carrier has not consented (with full knowledge of their characteristics) to carry them.

Unless notice of loss or damage is given in writing to the carrier or his or her agent before or at the time of the receiver removing the goods into his or her custody (or within three days of doing so, if the loss or damage is not immediately apparent), the carrier will

be deemed to have complied with its obligations, as per Article III.6. In any event, the time limit under which a claim can be brought under the Hague-Visby Rules is one year from the cargo's date of delivery or the date on which it should have been delivered.

Liens

The right to exercise a lien under English law may arise out of a variety of contexts, either pursuant to a contract or another legal relationship. Liens may be classed as maritime, statutory, equitable or possessory and each of these classes has a defined means of enforcement. A common characteristic of all liens is their function of conferring a proprietary interest in an asset as security for a claim and in enforcement against third parties. Liens generally do not have to be registered under English law.

Maritime liens under English law are confined to five specific categories:

a bottomry and respondentia;
b damage done by a ship;
c salvage;
d seafarer's wages; and
e masters' wages and disbursements.

These categories also overlap with the definitions under Section 20(2) of the Senior Courts Act 1981, and so maritime liens may be pleaded as statutory liens in the alternative. Purely statutory liens are defined under Section 20(2) of the Senior Courts Act 1981 and include claims for loss or damage to goods carried in a ship, personal injury sustained in consequence of a defect in or wrongful act done by a ship, claims relating to any agreement in relation to the carriage of goods in a ship, and claims arising out of general average acts. Maritime and statutory liens fall under the umbrella term 'admiralty liens', coming under the exclusive jurisdiction of the Admiralty Court, and may be brought as *in rem* claims (see Section V).

English common law recognises possessory liens, which confer the right to enforce a claim by means of retaining property already held by the claimant. Typical possessory liens include a shipowner's lien on cargo for outstanding freight or general average contributions.

If an owner or disponent owner under a time charter party has not been paid hire by the charterer, the owner may be entitled to exercise a lien requiring the charterers down the charter chain to pay direct to the owner the sub-hire or sub-freight that would ordinarily have been payable to their owners. The EWCA confirmed in the *Bulk Chile*[23] case that owners are able to exercise a lien over freight from the shipper under the bill of lading as well as a lien over the sub-freights due under a charter party in a charter party chain. Salvors may exercise possessory liens over salved property. Possessory liens can also be created by contract or statute.

An equitable lien is a right to proceed against an asset pursuant to a claim arising from a contract (the classic example being a floating charge) or pursuant to a course of conduct. Equitable liens will bind third parties only if they have acquired a legal interest in the liened asset with notice of the lien.

23 *Dry Bulk Handy Holding Inc and another v. Fayetter International Holdings and another* [2013] EWCA Civ 184.

iii Cargo claims

The bill of lading evidences a contract for carriage, obliging the carrier to deliver cargo against that document. Aside from charter parties, bills of lading are a fundamental element of cargo claims under English law. A common basis for English law cargo claims is the breach by the carrier of their duty under Articles III.1 or III.3 of the Hague-Visby Rules, namely a failure to exercise due diligence to make the vessel seaworthy or a failure to care for the cargo properly.

Pursuant to the Carriage of Goods by Sea Act 1992, which is applicable to bills of lading, sea waybills and ships' delivery orders, title to sue is vested in the lawful holder of the bill of lading. The 'lawful holder' is the person who becomes the holder of the bill in good faith, that is, a consignee or endorsee (following a valid endorsement or chain of endorsements) in possession of the bill. The EWCA confirmed that a bank that is the pledgee of goods under a letter of credit can also be classed as a lawful holder of the bill of lading because it is entirely entitled to those goods.[24]

The party that is potentially liable for the cargo claim under the bill of lading is the carrier stated under the bill. Typically, this is the shipowner or head time charterer. English law will generally give effect to 'identity of carrier' and demise clauses in bills of lading, which seek to make clear that it is the shipowner that is to be regarded as the carrier under the bill, although the issue of on whose behalf the bill has been signed will also be an important factor in deciding who is actually the carrier.

Liability in tort – that is, a breach of the duty to take reasonable care not to cause damage or loss (i.e., negligence) – will usually be asserted by any cargo claimant against the shipowner, and may also arise between parties where no contractual relationship exists, for example, between stevedores and cargo owners. The claimant must be able to prove physical loss or damage, and so cannot claim for pure financial losses in the absence of any cargo loss or damage (for example, in the event of cargo delay). Furthermore, only the person who owned the cargo, or was entitled to possession, at the time of the negligent act may claim. Apart from tortious liability, English law also recognises the effectiveness of *Himalaya* clauses in bills of lading in the context of losses caused by the acts of stevedores (for a deeper analysis of *Himalaya* clauses, see the 'Ports and Terminals' chapter).

When bills of lading are issued in respect of carriage on a chartered vessel, carriers may attempt to limit liability to cargo owners with reference to a charter party, by expressly incorporating terms of the charter party into the issued bills of lading. Provisions incorporating charter-party terms into bills of lading will be recognised only if they are relevant to the bill of lading contract, and terms as to choice of law or jurisdiction (including arbitration) must be expressly referred to if they are to apply. There is a general presumption that terms in a charter party will not be upheld if they are inconsistent with the terms of the bill of lading.

Parties will often attempt to incorporate the terms of the charter party into the bill of lading. However, this will be successful only in the following cases:

a where the wording purporting to incorporate the charter-party terms is sufficiently accommodating;

b where the term of the charter party being incorporated makes sense in the context of the bill of lading; and

c where the incorporated term is consistent with the terms of the bill of lading itself.[25]

24 *Standard Chartered Bank v. Dorchester LNG (2) Ltd (The 'Erin Schulte')* [2015] 1 Lloyd's Rep 97.

25 Bennett, Berry, Foxton, Smith and Walsh, *Scrutton on Charterparties and Bills of Lading* (24th edition, 2020), Chapter 6, Article 54.

It is important when trying to incorporate charter-party terms into a bill of lading to refer to the exact charter party in question, as the charter may not otherwise be incorporated effectively. There is a presumption that in circumstances in which the parties failed to specify which charter party in a chain is being incorporated in the bill of lading, the head charter party is incorporated, but that presumption is subject to several exceptions.

Cargo claims can also be brought under charter parties. They will usually be made within the framework of the Hague Rules or Hague-Visby Rules, which have usually been incorporated into the charter by contract. The apportionment of liability for cargo claims as between owners and charterers who are party to a dry bulk time charter is often governed by the International Group of P&I Clubs' Inter-Club New York Produce Exchange Agreement (revised in 2011).

iv Limitation of liability

The earliest legislation entitling shipowners to limit their liability was the Shipowners Act 1733. This permitted shipowners to limit their liability to the value of the ship and freight in respect of theft by a master or crew. Subsequent legislation seeks to strike a balance between a claimant's right to be compensated adequately in allowed situations and a shipowner's requirement for the insurance costs of an adequately high limitation fund to be affordable.

The Convention on Limitation of Liability for Maritime Claims 1976 (the LLMC Convention 1976) was given effect in the United Kingdom by virtue of the MSA 1995 and is incorporated in Schedule 7 thereof. The Protocol to amend the LLMC Convention 1996 (the 1996 LLMC Protocol) was given effect in the United Kingdom by Statutory Instrument 1998 No. 1258, which varied the LLMC Convention 1976 (and Schedule 7 of the MSA 1995) to the extent set out in the 1996 LLMC Protocol. The main effect of the Protocol is to raise the limits.

As from 8 June 2015, the limits under the 1996 LLMC Protocol have automatically been increased by 51 per cent through the tacit acceptance procedure.[26]

Who can limit liability and what claims are subject to limitation?

Under the 1996 LLMC Protocol, shipowners and salvors may limit their liability in accordance with the rules of the Protocol. The definition of 'shipowner' under Article 1(2) includes 'the owner, charterer, manager or operator of a seagoing ship'. Each of these terms requires clarification, and the Court of Appeal has now provided much needed guidance on the meaning of an 'operator' within the Limitation Convention with its decision that the term 'operator' involved something more than mere operation of the machinery of the vessel or providing personnel.[27]

Charterers are entitled to limit their liability,[28] as are slot charterers,[29] but only in respect of certain claims. For example, they cannot limit in respect of damage to the vessel by reference to which the limitation fund is calculated.

26 https://www.imo.org/en/MediaCentre/PressBriefings/Pages/24-LLMC-limits.aspx.

27 *Splitt Chartering APS v. Saga Shipholding Norway AS (the 'STEMA BARGE II')* [2021] EWCA CIV 1880.

28 *CMA CGM SA v. Classica Shipping Co Ltd (The CMA Djakarta)* [2004] 1 Lloyd's Rep. 460, at page 465.

29 *Metvale Ltd v. Monsanto International Sarl (The MSC Napoli)* [2008] EWHC 3002 (Admiralty).

Salvors are also entitled to benefit from limitation under the LLMC Convention 1976 provided the salvors are directly connected with the salvage. The 1996 LLMC Protocol does not change this.

An insurer may limit its liability to the same extent as its assured (under Article 1(6) of the LLMC Convention 1976).

Before the LLMC Convention 1976, shipowners were only able to limit liability in respect of claims for which they were liable in damages, as opposed to debts. Consequently, towage costs and wreck removal expenses claims brought by harbour authorities, for example, could not be limited. The LLMC Convention removed this requirement and now, per Article 2 thereof (which is unchanged by the 1996 LLMC Protocol), 'claims whatever the basis of liability may be' may be limited. There are exceptions, however, so that, for example, claims for salvage, contributions in general average, certain oil pollution claims and others (Article 3) may not be subject to limitation, nor can a party limit in respect of claims to the extent they relate to remuneration under a contract with the person liable (Article 2(2)). It is also not possible to limit claims for wreck removal. However, indemnity claims in respect of salvage contributions as between owners and cargo interests are limitable.[30]

Generally, limitation may be invoked against all qualifying claims 'arising on any distinct occasion' (Article 6). Claims in respect of loss of life or damage to property that occur 'on board or in direct connection with the operation of the ship . . . and consequential loss resulting therefrom' may be subject to limitation (Article 2). Thus, the action leading to limitation does not have to occur on board a vessel.

Breaking limits

The LLMC Convention 1976 (unchanged by the 1996 LLMC Protocol) makes it very difficult to break the limitation limit. To do so, it must be proved that the act or omission of the person seeking to limit was 'committed with the intent to cause such loss or recklessly and with the knowledge that such loss would probably result' (Article 4).[31] The LLMC Convention (unchanged by the Protocol) is a compromise whereby claimants accept that they are unlikely to break the right to limit liability, in return for a higher compensation fund.[32]

Overview of English procedure

As a matter of English law, it is not necessary to admit liability to take advantage of a limitation defence. Nor does invoking limitation constitute an admission of liability. The procedure for pleading limitation and constituting a fund is set out in CPR 61.11 and the accompanying practice direction.

Two particularly important points are, first, that, as a matter of English law, it is not necessary for a liability action to already be pending before an owner is permitted to initiate limitation proceedings,[33] and second, bringing England in line with many other jurisdictions, a limitation fund can now be constituted by way of a letter of undertaking,[34] which offers owners and insurers a significant cost saving.

30 *The Breydon Merchant* [1992] 1 Lloyd's Rep 373.

31 Lord Hoffmann in *Meridian Global Funds Management Asia Ltd v. Securities Commission* [1995] 3 All ER 918 sets out a comprehensive discussion of the new test and its application.

32 Griggs, Williams and Farr, *Limitation of Liability for Maritime Claims* (4th edition, 2004), pp. 3–6.

33 *Seismic Shipping Inc v. Total E&P UK Plc (The Western Regent)* [2005] EWCA Civ 985.

34 *The Atlantik Confidence* [2016] EWHC 2412.

Summary

States across the world have enacted the provisions of the LLMC Convention 1976 and the 1996 LLMC Protocol in different ways, in particular in relation to wreck removal expenses and whether an owner is entitled to limit for these (many states have excluded Article 2(1)(d) from domestic law). Given that one state party should automatically recognise a fund constituted in another (Article 13), careful consideration is needed as to where to limit, as this may significantly mitigate against an owner's exposure following a casualty.

V REMEDIES

i Ship arrest

Vessel arrests may be brought only pursuant to an admiralty claim *in rem* (that is, in this case, against a vessel itself). As mentioned previously, the Admiralty Court has jurisdiction over such claims.

Grounds for admiralty claims are prescribed in an exhaustive list at Section 20(2), Paragraphs (a) to (s) of the Senior Courts Act 1981. These include damage received or done by a ship, loss or damage to goods carried in a ship, claims in respect of a mortgage on a ship, towage and pilotage. It is not possible to base an arrest on a claim for bunkers.

The procedure for applying for an arrest pursuant to a claim *in rem* is set out in Part 61.5 of the CPR and the Practice Direction to that part (PD61). Additional procedural rules are contained within the Admiralty and Commercial Courts Guide and elsewhere in the CPR.

Procedure

Pursuant to CPR 61.5, a claimant may make an application for a vessel arrest in respect of a claim *in rem* issued by the Admiralty Court. In practice, an admiralty claim form and application for arrest may be issued and served on the target vessel at the same time or separately.

An application must be made on the prescribed court form (ADM4) and must include an undertaking by the claimant to cover the Admiralty Marshal's expenses of arrest. The claimant must also request a search of the admiralty register for any cautions against arrest in respect of the vessel.

Subject to the claimant's compliance with the prescribed procedure, and the target vessel being within the territorial jurisdiction of the court, the Admiralty Marshal will proceed with issuing a warrant for the vessel's arrest. The arrest itself is effected by service of the warrant by the Admiralty Marshal or his or her substitute (for example, a bailiff) on the target vessel. At the request of the claimant, the Admiralty Marshal may also serve the admiralty claim form at this time; otherwise it is the responsibility of the claimant to serve the admiralty claim form in accordance with the CPR.

Sister and associated ship arrests

It is possible to arrest a sister ship of a vessel subject to an admiralty claim, although to do so a claimant must satisfy certain strict criteria. The owner of the target sister vessel must have been the owner or demise or bareboat charterer, or in possession or control of that vessel when the cause of action arose in relation to the defendant vessel. That person or entity must also be the beneficial owner of all the shares in the target sister vessel when the admiralty claim is commenced.

Security and counter security

A claimant is not required to provide security for an arrest, although he or she must provide an undertaking as to the arrest expenses of the Admiralty Marshal.

Security may be provided by the defendant to procure release of the vessel in the form of a payment into court or by issuing a guarantee acceptable to the claimant. On the application of any party, the Admiralty Court may order that any security provided to procure the release of an arrested vessel, or to prevent an arrest, be reduced, or that a claimant may arrest or rearrest the property to obtain further security (unless that security would exceed the value of the vessel itself).

Wrongful arrest claims

It is open for a defendant owner to claim damages for wrongful arrest. The defendant must prove that the basis for the application for arrest was made in bad faith or through gross negligence. In practice, satisfying these criteria is very difficult.

Requirement to pursue claim on merits or possibility of arrest to obtain security only

Pursuant to Section 26 of the Civil Jurisdiction and Judgments Act 1982, a claimant may apply for the arrest of the vessel by reason of security for purposes of arbitration or other proceedings in the United Kingdom or in another country.

Arrest by helicopter of a vessel at anchor in territorial waters but not yet in berth

In theory, this can be done as long as the target vessel is within the territorial jurisdiction of England and Wales. Ultimately, however, arrest is effected by the Admiralty Marshal and so the means by which the service of the arrest warrant is effected is at the Admiralty Marshal's discretion.

ii Court orders for sale of a vessel

The Admiralty Court has the jurisdiction to order the sale of a vessel that is under arrest. The judicial sale of a vessel is made free from encumbrances and liens, and with good title.

An applicant must follow the procedure as prescribed in CPR 61.10. The application may be made by any party, and must be served on all parties, including those who have obtained judgment against the vessel and those who have been granted cautions against arrest.

Any order for sale must be preceded by an appraisement of the vessel's value by the Admiralty Marshal with assistance from an appointed ship broker. The vessel is advertised and offers for purchase are invited, with the sale going to the highest bidder. In any event, a vessel cannot be sold at a price less than its appraised value unless permitted by the Admiralty Court. The Admiralty Court receives commission on the sale, and the Admiralty Marshal's expenses of arrest, appraisement and sale rank as first priority from sale proceeds.

The Admiralty Marshal acts as an impartial officer of the court, rather than the arresting party, and so this procedure is likely to be followed even if a claimant is able to procure buyers at ostensibly the best possible price unless there is an exceptional reason to deviate.

VI REGULATION

i Safety

The Maritime and Coastguard Agency (MCA) is the key executive agency of the UK Department of Transport responsible for maritime safety in the United Kingdom. The MCA fulfils a number of maritime safety functions, including coordinating a 24-hour maritime emergency response service, monitoring the quality of vessels operating in UK waters, promoting and managing the UK Ship Register and working to minimise the environmental effects of shipping.

The MCA is also responsible for ensuring that the United Kingdom implements and adheres to the key international conventions regarding maritime safety to which it is a party, which include:

a the International Convention for the Safety of Life at Sea 1974 (SOLAS);
b the COLREGs, as amended;
c the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (the STCW Convention); and
d the International Convention on Maritime Search and Rescue 1979 (the Search and Rescue Convention 1979).

ii Port state control

England is a party to the Paris Memorandum of Understanding on Port State Control 1982 (the Paris MOU). The provisions of the Paris MOU were incorporated into EU law through the EU Council Directive on port state control.[35] This was implemented into English law through the Merchant Shipping (Port State Control) Regulations 1995, Statutory Instrument 1995 No. 3128, as amended. This EU Directive was subsequently replaced by Directive 2009/16/EC on Port State Control, which was implemented into English law by the Merchant Shipping (Port State Control) Regulations 2011, which have been in force in England and Wales since 24 November 2011.

The port state control authority in England is the MCA. In this capacity, the MCA is responsible for checking that all vessels visiting UK ports and anchorages meet UK and international safety regulations and standards. Accordingly, the MCA has wide-ranging powers to carry out periodic checks on any vessels calling at UK ports and in-depth 'expanded inspections' on the following:

a vessels with a high-risk ship profile, as recorded on the Paris MOU database;
b oil, gas or chemical tankers over 12 years old;
c bulk carriers over 12 years old; and
d passenger ships over 12 years old.

An expanded inspection involves a detailed check of the construction elements and safety systems in place on vessels by inspectors from the MCA. Inspectors are required to ensure that their visits and inspections do not disrupt the safety of any on-board operations, such as cargo handling.

In the event that a vessel is found not to comply with any applicable safety or environmental convention, a deficiency may be raised against the vessel. If the deficiency is

35 Directive 95/21/EC.

regarded as serious enough to require rectification before the vessel's departure, then the vessel may be detained. A detained vessel must then satisfy MCA surveyors that remedial work has been carried out before the vessel is permitted to leave the United Kingdom.

iii Registration and classification

Registration

The UK Ship Register consists of four parts: Part I relates to merchant vessels and pleasure vessels; Part II relates to fishing vessels only; Part III is known as the UK Small Ships Registry; and Part IV relates to the registration of bareboat charters of foreign registered ships. The Register does not allow registration of vessels under construction under the UK flag.

The following, among others, may be registered as shipowners on the UK Ship Register:

a British citizens;
b British dependent territory citizens;
c British overseas citizens;
d companies incorporated in one of the European Economic Area (EEA) countries;
e citizens of an EU Member State exercising their rights under Article 48 or 52 of the EU Treaty in the United Kingdom;
f companies incorporated in any British overseas possession that have their principal place of business in the United Kingdom or in that British overseas possession; or
g European economic interest groupings.[36]

Where none of the qualified owners is resident in the United Kingdom, a representative person must be appointed who may be either an individual resident in the United Kingdom or a company incorporated in an EEA country with a place of business in the United Kingdom.[37]

The United Kingdom is officially the highest-performing flag under the Paris MOU Port State Control regime.[38] The UK Registry also offers a potentially advantageous tonnage tax regime under the UK Tonnage Tax Incentive, which offers an alternative method of calculating corporation tax profits in accordance with the net tonnage of the ship operated. The tonnage tax profit replaces both the tax-adjusted commercial profit or loss on a shipping trade and the chargeable gains or losses made on tonnage tax assets. The Incentive is available to companies operating qualifying ships that are 'strategically and commercially managed in the UK'.[39]

Classification

The following classification societies are recognised and approved by the UK government for the purpose of performing surveys and inspections on UK-registered vessels:

a ABS Europe Ltd;
b Bureau Veritas;
c Class NK;

36 https://www.ukshipregister.co.uk/registration/eligibility/.
37 ibid.
38 https://www.ukshipregister.co.uk/news/uk-is-officially-the-highest-performing-flag-on-paris-mou-whitelist/.
39 HMRC, Tonnage Tax Manual, www.gov.uk/hmrc-internal-manuals/tonnage-tax-manual/ttm01010.

d DNV;
e Lloyd's Register Marine; and
f RINA UK Ltd.[40]

Generally, classification societies exclude their liability in contract. Furthermore, according to the leading House of Lords decision in *Marc Rich & Co v. Bishop Rock Marine (The Nicholas H)*, classification societies do not owe a duty of care to third parties in respect of their classification and certification duties.[41]

iv Environmental regulation

Environmental regulations are reshaping global shipping. See the Shipping and the Environment chapter for further discussion of the development of law in this area.

v Collisions, salvage and wrecks

Collisions

Several international conventions relating to collision claims operate in England and Wales. The Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels 1910 (the Collision Convention 1910) was implemented into English law by the Maritime Conventions Act 1911 (repealed and replaced by the MSA 1995). The Collision Convention 1910 sets out the basic rules regarding civil liability for collisions between vessels. Furthermore, the COLREGs also apply to all foreign ships sailing in UK territorial waters and to all UK ships sailing anywhere in the world. These were also brought into force by the Merchant Shipping (distress signals and prevention of collisions) Regulations 1996 and are updated from time to time by reference to IMO Regulations.

Salvage

The 1989 Salvage Convention applies in England and Wales. There is no mandatory form of salvage agreement, but the Lloyd's Open Form (LOF) is by far the most commonly used. The LOF is governed by English law and provides for arbitration by the Lloyd's Salvage Arbitration Branch in London. The latest version is LOF 2020 and, with the accompanying Lloyd's Standard Salvage and Arbitration Clauses, the contract is kept under review and updated from time to time in consultation with industry stakeholders and salvage practitioners, as well as Lloyd's.[42] When the LOF is not used, parties to a salvage operation are free to agree their own terms and conditions for salvage and, in the absence of any contractual arrangements, the salvors may also bring a claim for common law salvage.

Wreck removal

The MSA 1995 grants coastal authorities broad powers to intervene in relation to the handling of wrecks. These powers include the power to take possession of, remove or destroy the wreck, as required. The relevant authority is also permitted to contract with a third party

40 Maritime and Coastguard Agency, UK Authorised Recognised Organisations (ROs), www.gov.uk/uk-authorised-recognised-organisations-ros.

41 [1995] 2 Lloyd's Rep 299.

42 See www.hfw.com/LOF-2020-an-update-to-the-worlds-oldest-and-most-commonly-used-salvage-contract-Feb-2020.

for the removal or salvage of the wreck. The owner of the vessel remains liable for the costs of removing the wreck and this liability is unlimited (however, this is usually a protection and indemnity risk).

The Wreck Removal Convention Act 2011 allowed the United Kingdom to ratify the Nairobi International Convention on the Removal of Wrecks (the Nairobi WRC 2007), adopted in 2007, and, on 15 April 2015, the Convention came into force following ratification by Denmark on 14 April 2014. The Nairobi WRC 2007 imposes a number of obligations on shipowners; for instance, a requirement to obtain a certificate from a WRC state party confirming that insurance or other financial security is in force in line with the Nairobi WRC 2007.

vi Passengers' rights

Passenger rights are dealt with by a mixture of common law, legislation, EU law and international conventions. In the first instance, the contract of carriage may apply to any disputes, subject to the protections of the Athens Convention and EU regulations, such as the Package Travel, Package Holidays and Package Tours Regulations 1992 (as amended).

The Athens Convention was incorporated into English law in 1996 via Section 183 of the MSA 1995. The Convention renders a carrier liable for damage or loss suffered by a passenger in the event that the incident giving rise to the damage occurred during the carriage and was caused by the fault or neglect of the carrier. Under the Athens Convention, as amended by the 1976 Protocol, carrier liability for death of, or personal injury to, a passenger is capped at 46,666 special drawing rights (SDRs) per carriage; however, under Article 7, England increased the limit in respect of its own national carriers to 300,000 SDRs.

The 2002 Protocol to the Athens Convention entered into force in England on 23 April 2014. This Protocol increases the limit for carrier liability contained in the Athens Convention to 250,000 SDRs for each passenger's injury or death. It also introduces changes to the liability regime for the loss of, or damage to, cabin luggage (2,500 SDRs per passenger per carriage) and compulsory insurance of 250,000 SDRs per passenger.

Although the Athens Convention usually applies to international carriage, under the Carriage of Passengers and their Luggage by Sea (Domestic Carriage) Order SI 1987/60, English law extends the Convention's protections to domestic voyages for which the points of arrival and departure are within the United Kingdom.

The Package Travel Regulations apply to packages in which two elements of travel, accommodation and other services are sold together. Therefore, this covers cruises and, potentially, overnight ferries. These Regulations set out a consumer protection regime, which includes details of the information to be provided to passengers and that the tour operator is responsible to the passenger for performance of the package.

vii Seafarers' rights

The Maritime Labour Convention 2006 (MLC) entered into force in England and Wales on 14 August 2014, the United Kingdom having been the 41st International Labour Organization (ILO) Member State to ratify the MLC on 14 August 2013. The MLC replaces various existing conventions and provides a new framework aimed at protecting seafarers' rights.

The MLC was established by the ILO in 2006 and its aim is to provide a comprehensive set of rights and protections for all seafarers. The MLC applies to all commercial vessels, with the exception of ships navigating inland or sheltered waters subject to port regulations,

fishing vessels, warships and naval auxiliaries and traditional ships, such as dhows. The MLC sets out minimum standards for seafarers working on ships, including the minimum age, medical certification, training and qualifications, hours of work and rest, welfare and social security protection.

Seafarers wholly or substantially employed in the United Kingdom may also benefit from the protection of English employment law, although many protective regulations contain exemptions for offshore work. Vessel owners and employers must also extend protection to seafarers regarding safety at work and, for example, providing suitable equipment.

VII OUTLOOK

The United Kingdom continues to be one of the leading maritime centres in the world. London's reputation as a centre of excellence for the resolution of international maritime disputes continues to go from strength to strength. The majority of shipping contracts are governed by English law, and arbitration continues to thrive in London.[43] In addition, the specialist courts that hear the majority of shipping litigation (the Commercial and Admiralty courts) continue to enjoy an excellent reputation internationally. This is highlighted by the fact that the proportion of the Commercial Court's business that is international is 79 per cent.[44]

London also continues to be a major centre for mediation, with a total value of cases mediated each year of around £17.5 billion, including many shipping cases. Mediation remains attractive as settlement rates continue to be high, with mediators reporting an aggregate settlement rate of around 93 per cent of all cases in an audit conducted by the Centre for Effective Dispute Resolution in 2021.[45]

Although challenges have been faced as a result of the global covid-19 pandemic in 2020 and 2021, in addition to the implications arising from the end of the Brexit transition period, English law and jurisdiction continue to remain attractive to parties wishing to resolve disputes. Given the sophistication of English shipping law and the high level of trust placed in the dedicated Commercial and Admiralty courts, it is generally expected that English law will remain the first choice of the industry for shipping contracts. Arbitration awards remain internationally enforceable, and therefore London is very likely to remain the leading maritime arbitration centre.

43 Around 25 per cent of claims issued in the Commercial Court concern matters arising from arbitration, reflecting London's continued status as an important centre for international arbitration. The Commercial Court Report 2020–2021, https://www.judiciary.uk/wp-content/uploads/2022/02/14.50_Commercial_Court_Annual_Report_2020_21_WEB.pdf.

44 The Commercial Court Report 2020-2021, https://www.judiciary.uk/wp-content/uploads/2022/02/14.50_Commercial_Court_Annual_Report_2020_21_WEB.pdf.

45 https://www.cedr.com/ninth-mediation-audit-2021/?msclkid=accdf4fab66911eca8a6b03283b83243.

Appendix 1

ABOUT THE AUTHORS

ANDREW CHAMBERLAIN

HFW

Andrew Chamberlain is a partner at HFW and is the global head of admiralty and crisis management. He is a former Royal Navy officer and specialises in wet shipping cases, including salvage and wreck removal (acting for salvors as well as owners and their underwriters), collisions, fire and explosion, total loss and wreck removal. He also advises on both civil and criminal pollution liabilities, marine insurance coverage disputes and the full range of other shipping-related commercial and contractual disputes.

Andrew served at sea with the Royal Navy and had a stint with the Hong Kong Squadron before qualifying as a lawyer. As a partner at HFW since 2003, he has been heavily involved in many of the largest casualties of recent years, including MSC *Napoli* (2007), MSC *Chitra* (2010), *Costa Concordia* (2012), *Smart* (2013), *Norman Atlantic* (2014), *Eastern Amber* and *Maersk Seoul* (2015), *Burgos* (2016) and *Sanchi* and *Maersk Honam* (both 2018 and ongoing).

Andrew lectures regularly on salvage, wreck removal and casualty response and is an acknowledged expert in the field. He has been invited to be chairman of the Lloyd's Salvage and Wreck Removal conference in London (the leading global industry event) every year since 2013. He is consistently recommended in *Chambers* ('Andrew Chamberlain is highly respected in ship casualty work', *Chambers* 2022) and *The Legal 500* for his work on shipping and casualty matters, with one source commenting, 'What he doesn't know about shipping isn't worth knowing' (*Chambers* 2016).

HOLLY COLAÇO

HFW

Holly Colaço is a knowledge lawyer in London specialising in shipping litigation. She is responsible for knowledge management, and internal and external training on a range of shipping topics. She edits *The Shipping Law Review*, writes and edits legal briefings, and supports the work of the shipping practice globally.

Before moving into her knowledge lawyer role, Holly practised as a senior shipping litigator, advising on a wide variety of multi-jurisdictional and high-value shipping disputes. Her cases concerned both wet and dry shipping matters, including charter party and bill of lading disputes, collisions, groundings, salvage and unsafe port claims. She has also advised

on marine insurance litigation and has undertaken a number of related secondments with International Group of P&I Club members, handling a wide variety of protection and indemnity and defence claims, and with a major London insurer.

She has experience of English Commercial Court and Admiralty Court proceedings, and international arbitration, including LCIA, ICC and LMAA.

HFW

Level 39, Bourke Place
600 Bourke Street
Melbourne, VIC 3000
Australia
Tel: +61 3 8601 4500
Fax: +61 3 8601 4555
gavin.vallely@hfw.com
simon.shaddick@hfw.com
tom.morrison@hfw.com
carlita.bloecker@hfw.com

4th Floor, Building 7
18 Gongping Road
Hongkou District
Shanghai 200082
China
Tel: +86 21 2080 1000
Fax: +86 21 2080 1177
jean.cao@hfw.com
nicholas.poynder@hfw.com

25–27 rue d'Astorg
75008 Paris
France
Tel: +33 1 44 94 40 50
Fax: +33 1 42 65 46 25
mona.dejean@hfw.com

83 Akti Miaouli & Flessa Street
6th Floor
Piraeus 185 38
Greece
Tel: +30 210 429 3978
Fax: +30 210 429 3118
dimitri.vassos@hfw.com
anna.papadopoulou@hfw.com

15th Floor, Tower One
Lippo Centre

89 Queensway
Admiralty
Hong Kong
Tel: +852 3983 7788
Fax: +852 3983 7766
nicola.hui@hfw.com

30 Raffles Place, #24-01
Singapore 048622
Tel: +65 6411 5300
Fax: +65 6411 5355
toby.stephens@hfw.com
pooja.kapadia@hfw.comCours de Rive 13–15
6th Floor
1204 Geneva
Switzerland
Tel: +41 22 322 4800
Fax: +41 22 322 4888
william.hold@hfw.com

Level 8, Building 6
Emaar Square
Sheikh Zayed Road
PO Box 53934
Dubai
United Arab Emirates
Tel: +971 4 423 0555
Fax: +971 4 425 7941
yaman.alhawamdeh@hfw.com
tariq.idais@hfw.com

Friary Court
65 Crutched Friars
London EC3N 2AE
United Kingdom
Tel: +44 20 7264 8000
Fax: +44 20 7264 8888
gudmund.bernitz@hfw.com
simon.blows@hfw.com
jonathan.bruce@hfw.com
andrew.chamberlain@hfw.com
holly.colaco@hfw.com
paul.dean@hfw.com
thomas.dickson@hfw.com
eliza.eliades@hfw.com
catherine.emsellem-rope@hfw.com
nicholas.kazaz@hfw.com

alex.kemp@hfw.com
alistair.loweth@hfw.com
william.maclachlan@hfw.com
daniel.martin@hfw.com
richard.neylon@hfw.com
johanna.ohlman@hfw.com
michael.ritter@hfw.com
jenny.salmon@hfw.com
vanessa.tattersall@hfw.com
tom.walters@hfw.com
matthew.wilmshurst@hfw.com
anthony.woolich@hfw.com
5151 San Felipe
Suite No. 400
Houston, TX 77056
United States
Tel: +1 713 917 0888
Fax: +1 713 953 9470
james.brown@hfw.com
melanie.fridgant@hfw.com
chris.hart@hfw.com
alex.mendez@hfw.com
thomas.nork@hfw.com
svetlana.sumina@hfw.com
michael.wray@hfw.com

www.hfw.com

ISBN 978-1-80449-079-2