

CHAPTER 25 SHIPPING LAW

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SECTION 1 INTRODUCTION

25.1.1 The shipping law of Singapore broadly covers the areas of carriage of goods by sea, admiralty law and merchant shipping legislation. So far as carriage of goods by sea is concerned, Singapore law is largely similar to English law. Common law principles and two statutes, namely the Carriage of Goods by Sea Act and the Bills of Lading Act, form the body of the law on carriage by sea. The primary legislation on admiralty law and jurisdiction is the High Court (Admiralty Jurisdiction) Act of Singapore which is modelled after the UK Administration of Justice 1956. An amendment to this statute came into effect on 1 April 2004 permitting arrest of demise chartered vessel. The merchant shipping law of Singapore is embodied in the Merchant Shipping Act. It is a piece of legislation which covers somewhat diverse areas such as the powers of the port authorities, registration of mortgages, limitation of liability, registration of ships and rights of crew. There is also legislation covering specific areas such as pollution at sea.

25.1.2 This introduction to the Shipping Law of Singapore is intended to give an overview to the reader of the various areas grouped under the rubric of shipping law. For more detailed discussion, the reader is referred to the following texts written on the area (For Carriage of Goods by Sea, see Professor (now Justice) Tan Lee Meng's book, *The Law in Singapore on Carriage of Goods by Sea*, 1994, 2nd Edn; for Admiralty law, see Toh Kian Sing, *Admiralty Law and Practice*, 1998, 2nd Edition expected to be published in October 2007).

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SECTION 2 CARRIAGE OF GOODS BY SEA

25.2.1 A contract for the carriage of goods usually assumes one of two forms: a charterparty or a bill of lading. Such a contract may be entered into orally or in writing. The relief of rectification of a contract of carriage which is in writing is available in appropriate circumstances ([The An Ji Jiang \[2003\] 4 SLR 348](#)).

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SECTION 3 CARRIAGE OF GOODS BY SEA: CHARTERPARTIES

25.3.1 A charterparty is a contract whereby an entire ship, or some principal part of it, may be used by the charterer for a voyage or series of voyages or for a period of time. The three main categories of charterparty are a) time charterparty; b) voyage charterparty and c) demise charterparty.

Time Charterparty

25.3.2 A time charterparty is a contract in which the master and crew of the vessel perform services during a specified period in consideration of the payment of hire: see [Cascade Shipping Inc v Eka Jaya Agencies \(Pte\) Ltd \[1993\] 1 SLR 980](#). Under a time charterparty, the shipowner retains possession of the vessel and the master and crew are employed by him. However, the charterer is entitled to determine how the vessel is to be employed, within the agreed trading limits as stipulated in the charter. In a time charterparty, the risk of any delay rests with the time charterer. The charterparty usually sets out certain events, the occurrence of any one of which renders the vessel off-hire i.e. that the charterer ceases to be responsible for hire during that period. Such events include breakdown of the ship's machinery, insufficiency of crew, strikes etc.

25.3.3 A charterer has the obligation to nominate a safe port: *The Evia (No.2)* [1982] 2 Lloyd's Rep 307. If an unsafe port is nominated, a shipowner is entitled to ask the charterer to re-nominate another port. If the charterer refuses, the shipowner may terminate the charterparty or he may send the vessel to the nominated unsafe port but reserve his right to claim damages. The charter is obliged to supply bunkers to the vessel unless the time charter provides otherwise.

25.3.4 The duration of a time charterparty is usually subject to an express or implied margin. The charterer is obliged to re-deliver the vessel to the shipowner in the same good order and condition, fair wear and tear excepted, as the vessel was in at the time of delivery to the charterer. The re-delivery must take place by the final terminal date of the charterparty, taking into account any express or implied margin.

Voyage Charterparty

25.3.5 A voyage charterparty is essentially a contract to carry specified goods on a defined voyage or series of voyages. Like a time charterparty, the shipowner retains possession of the vessel and employs the master and crew.

25.3.6 The shipowner is remunerated by the payment of freight, which is usually calculated by reference to the quantity of cargo shipped or by a lump sum. There is a rule against the deduction of freight for damage to or loss of cargo: *Dakin v Oxley* (1864) 15 CBNS 646. In the absence of any provision entitling the shipowner to advance freight, freight is only earned when the shipowner has carried the goods to the discharge port and is in a position to deliver it to the charterer. Under the common law, a shipowner is entitled to exercise a possessory lien for unpaid freight.

25.3.7 A shipowner must ensure that the vessel is seaworthy at the commencement of the voyage: *McIver & Co Ltd v Tate Steamers Ltd* [1903] 1 KB

362. At common law, this obligation is an absolute one; it may be mirrored or modified by the express terms of the charter (*The Asia Star* [2007] 3 SLR 1). Any provision which excludes or restricts the shipowner's liability to provide a seaworthy vessel must be express, pertinent and apposite (*Sunlight Mercantile Pte Ltd v Ever Luck Shipping* [2004] 1 SLR 171).

25.3.8 The risk of any delay in the voyage charterparty lies with the shipowner. For loading and discharge operations, the incidence of risk of delay is reversed and placed on the charterer instead through a laytime and demurrage provision. Laytime begins when the vessel is an arrived vessel i.e. having reached her contractual destination, which is in all respects ready to receive or discharge the cargo and has (in the case of arrival at the load port) tendered a notice of readiness: *The Johanna Oldendorff* [1974] AC 479. A notice of readiness must only be tendered when the vessel is ready to load or discharge (the latter if expressly required under the charter); a premature notice is ineffective to start laytime running: *The Asia Star* [2007] 3 SLR 1. The voyage charterer is obliged to load or discharge the cargo within the period of laytime stipulated in the charterparty or if not so stipulated, within a reasonable time. Where the charterer fails to load the cargo within the period of laytime stipulated or within reasonable time if no laytime is stipulated, the shipowner is entitled to either demurrage (which is a form of liquidated damages, if expressly provided) or to damages for detention.

Demise or Bareboat Charterparty

25.3.9 A demise charterparty is a contract for the hire of the ship as a chattel. The charterer becomes for the purposes of the world at large (except the shipowner himself) the owner of the ship for the time being. The master and crew are his employees. Whether a charterparty operates by demise is a question of construction to be determined by reference to the language of the charterparty ([Pan United Shipping Pte Ltd v Cendrawasih Shipping Pte Ltd \[2004\] SGHC 32](#)). One other important indication is whether the master is the employee of the owner or the charterer. The charterer has possession of the vessel.

25.3.10 A demise charterer operates the vessel for the duration of the charterer as he pleases, subject to any trading or cargo restrictions specified in the charterparty. Like a time charterparty, he pays charterhire on a periodic basis. Demise charterparties are sometimes entered into as a form of long or medium term financing arrangements (see, Mark Davis, *Bareboat Charters*, at chapter 24).

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SECTION 4 CARRIAGE OF GOODS BY SEA: BILLS OF LADING

25.4.1 Broadly speaking, a bill of lading is a document signed by the carrier or by the master or other agent on behalf of the carrier stating that certain specified goods have been shipped on board a particular ship and setting out the terms on which the goods would be carried by the ship. A bill of lading serves three functions. It contains or evidences the contract of carriage, serves as a receipt for the goods carried, and is a document of title.

Bill of lading as Evidence of the Contract

25.4.2 Whether a bill of lading is evidence of the contract of carriage depends on whether it is the charterer who holds the bill of lading. Where the goods are shipped by the charterer, the bill of lading does not displace the charterparty as the document governing the contractual relationship between the shipowner and the charterer (*President of India v Metcalfe Shipping Co Ltd (The Dunelmia* [1970] 1 QB 97).

25.4.3 Where the shipper or the holder of the bill of lading at the material time is not the charterer, the terms of the bill of lading either evidences or contains the contract of carriage as explained below. As a general rule, the shipper is entitled to hold the shipowner responsible for his goods, and to claim delivery of them on the terms of the bill of lading. The shipowner cannot therefore rely on the terms in the charterparty which are not incorporated in the bill of lading. As between the shipper and shipowner, the bill of lading evidences the contract of carriage and to that extent may be supplemented or contradicted by extraneous documents. However, as between the shipowner and a consignee or indorsee of the bill of lading, the latter contains the contract of carriage.

25.4.4 The terms of the bill of lading may be supplemented or superseded by the provisions of the Hague or Hague Visby Rules. Singapore is a signatory to the Hague Visby Rules which are reproduced in the Singapore Carriage of Goods by Sea Act. These Rules have mandatory application under the said Act. The application of these Rules is explained below.

Bill of Lading as a Receipt

25.4.5 A bill of lading also functions an acknowledgement by the carrier of the receipt of the goods specified in it. It usually contains various representations as to the quantity and condition of the goods. If fraudulently or negligently made, such representations may form the basis of an action in tort against the carrier by third parties who suffer loss in reliance on them, in particular consignees or financial institutions who take up and pay for the shipping documents in circumstances where, if the true facts had been stated, they would have been entitled to reject them (see *The Saudi Prince* [1982] 2 Lloyd's Rep 255).

25.4.6 Under the common law, a bill of lading is prima facie evidence of the condition, marks and quantity of the goods and date of loading as between the shipper and the shipowner. However, as between the shipowner and the consignee or indorsee, such statements in the bill of lading cannot be rebutted by the shipowner.

25.4.7 Where the bill of lading contains a statement that goods are 'shipped in apparent good order and condition', this only amounts to a representation of fact that the goods are shipped in apparent good order and condition insofar as external appearance of the goods is concerned (*Silver v Ocean Steamship Co Ltd* [1930] 1 KB 416).

25.4.8 Bills of lading are frequently claused by expressions such as 'said to contain', 'contents and quantity unknown', and 'container yard to container yard' (See, for instance, *The American Astronaut* [1979] 2 MLJ 220). The expression 'said to be' has been held to be an ineffective clausing of a bill of lading ([The Thomaseverett \[1992\] 2 SLR 1068](#)). Through effective clausing, the shipowner

can negate the statements made in the bill of lading so that in effect no representation can arise from such statements.

Bill of Lading as a Document of Title

25.4.9 A bill of lading is often described as a document of title, which enables the owner of the goods in respect of which it was issued to raise credit for an international sale. However, it is pertinent to note that a bill of lading may be regarded as a document of title only if it is an 'order' bill, under which the carrier agrees to deliver the goods at the port of discharge to a named person or to his 'order or assigns'. A straight, consigned bill of lading is not a document of title but it must nevertheless be presented before the carrier can deliver the goods shipped thereunder ([APL v Voss Peer \[2002\] 4 SLR 481](#)). An order bill of lading may be transferred by blank or special endorsement of the bill of lading. A bearer bill of lading, which is rare, may be transferred by physical delivery of the bill. A blank endorsed bill of lading functions like a bearer bill of lading, in that it may be transferred by physical delivery (*Keppel Tatlee Bank Ltd v Bandung Shipping Pte Ltd [2003] 1 SLR 295*; *APL v Voss Peer [2002] 4 SLR 481*).

25.4.10 As a document of title, the bill of lading entitles its holder to delivery of the goods against presentation of such a bill. Accordingly, a delivery to the holder of the bill of lading, even where he has not paid for the goods, discharges the shipowner from any liability, provided that such delivery was made in good faith and without notice of the holder's defect in title or competing claims for the goods. A shipowner is liable for breach of contract of carriage and/or conversion of the cargo, if the goods were delivered to a person without production of the bill of lading. A carrier who delivers cargo without surrender of the bill of lading or against the production of a forged bill of lading does so at his peril ([The Cherry \[2003\] 1 SLR 471](#), [The Jian He \[2000\] 1 SLR 8](#), [The Arktis Sky \[2000\] 1 SLR 57](#); *The Pacific Vigorous [2006] 3 SLR 374*). A seller who holds onto the bill of lading although having received partial payment from his buyer is not estopped from suing the carrier who delivers the cargo without production of the bill of lading (*The Pacific Vigorous*, supra).

25.4.11 Switching of bills of lading is a relatively common practice but is one fraught with danger to the shipowner, especially if the switching is imperfectly carried out and two sets of bills of lading are left in circulation (see [Banque Nationale de Paris v Bandung Shipping \[2003\] 3 SLR 611](#)). There is however nothing untoward if the switch is solely to conceal the identity of the original shipper from the receiver of the goods or to split a bulk cargo up into smaller quantities (*Samsung Corp v Devon Industries [1996] 1 SLR 469*).

Rights of Suit under Bills of Lading

25.4.12 Prior to the enactment of the Bills of Lading Act ('BLA') in Singapore, which is in pari materia with the UK Carriage of Goods by Sea Act 1924, rights of suit under the bill of lading, under the 1855 Bills of Lading Act, depended on the passing of property in the goods shipped under the bill of lading by reason of the endorsement or consignment of the bill of lading. The 1855 Bills of Lading Act has since been abolished.

25.4.13 The BLA removes the linkage between contractual rights and the passing of property and allows the assertions of rights of suit against the carrier irrespective of the passing of property in the goods shipped. As such, a person

who becomes a lawful holder of the bill of lading as defined by the BLA, has, by virtue of becoming the holder of the bill, transferred to and vested in him all rights of suit under the contract of carriage as if he had been a party to that contract (see s. 2(1) of the BLA). For the purpose of the Act, the holder of the bill of lading can either be in physical or constructive possession (through an agent, for instance) of the bill (*The Cherry* [2002] 3 SLR 431).

25.4.14 Where a person with any interest or right in relation to goods to which a bill of lading relates sustains loss or damage in consequence of a breach of the contract of carriage but rights of suit in respect of the breach are vested in another person, that other person is entitled to exercise those rights for the benefit of the person who sustained the loss or damage to the same extent as they could have been exercised if they had been vested in the person for whose benefit they are exercised (see s.2(4) of the BLA).

25.4.15 A bill of lading is not transferable where it requires the goods specified in it to be delivered to a named person, omitting any language of transferability. Such a bill is described as a straight consigned bill of lading. For the purposes of the BLA, a straight consigned bill is treated as a waybill.

25.4.16 The indorsement of a bill of lading may be by a special indorsement, i.e. it may name the transferee to whom delivery is to be made. If no transferee is named, the indorsement is called an 'indorsement in blank' and the goods specified in the bill of lading are deliverable to the bearer, without indorsement. However, the bearer or holder of the bill of lading may, at any time, convert the indorsement in blank to a special indorsement by inserting in it the name of the person to whom delivery is to be made. In such circumstances, as is clear from the Singapore decision in [Bandung Shipping v Keppel TatLee Bank Ltd \[2003\] 1 SLR 295](#), the bill of lading ceases to be transferable by mere delivery and requires indorsement by the indorsee named in the special indorsement, before it is capable of being further transferred. Where an order bill of lading names a consignee, there is no requirement for the bill of lading to be indorsed by the shipper or any intermediate party before the named consignee becomes holder of the bill of lading (*UCO Bank v Golden Shore Transportation Pte Ltd* [2006] 1 SLR 1).

25.4.17 Where a person becomes the lawful holder of a bill of lading under the BLA and takes or demands for delivery from the carrier of any of the goods to which the bill of lading relates or makes a claim under the contract of carriage against the carrier in respect of any of those goods, that person will become subject to the same liabilities under that contract as if he had been a party to that contract.

Singapore Carriage of Goods by Sea Act and the Hague-Visby Rules

Scope of the Hague-Visby Rules

25.4.18 Under the Carriage of Goods by Sea Act of Singapore, the Hague-Visby Rules (hereinafter 'the HVR') have the force of law in Singapore (*The Epar* [1985] 2 MLJ 3; [Pacific Electric Wire & Cable Co Ltd v Neptune Orient Lines Ltd \[1993\] 3 SLR 60](#)). The HVR apply to every bill of lading relating to the carriage of goods between ports in two different states if the bill of lading is issued in a contracting state of the HVR, or the carriage is from a port in a contracting state, or the contract contained in or evidenced by the bill of lading provides that the rules or

legislation of any state giving effect to the HVR are to govern the carriage (see Art X).

25.4.19 The HVR apply only to contracts of carriage covered by a bill of lading, including a straight consigned bill of lading (see *The Rafaela S* [2005] All ER (D) 236), or any similar document of title in so far as such document relates to the carriage of goods by sea. The HVR apply to the period from the time when the goods are loaded on board the ship to the time they are discharged from the ship.

25.4.20 A carrier is bound to exercise due diligence to make the ship seaworthy before and at the beginning of the voyage (see Art 3 rule 1 of the HVR). The obligation under the Rules to exercise due diligence to make the ship seaworthy replaces the absolute obligation at common law to provide a seaworthy ship. Subject to the provisions conferring protection on the carrier in certain circumstances, the carrier is obliged under Article 3 rule 2 of the HVR to properly and carefully load, handle, stow, carry, keep, care and discharge the goods carried.

25.4.21 A carrier enjoys package and weight limitations of 10000 gold francs (S\$1,563.65) per package and 30 gold francs (S\$4.69) per kilogramme under the HVR. There is also a list of exclusions under Article 4 rule 2 of the HVR which a carrier may avail himself of provided he satisfies the obligation of exercising due diligence to provide a seaworthy vessel.

25.4.22 The carrier is discharged from all liability whatsoever in respect of the goods unless a suit is brought within 1 year of their date of delivery or of the date when the goods should have been delivered. The 1-year period may however be extended if the parties so agree after the cause of action has arisen.

25.4.23 The exclusions, time limits and limitation of liability prescribed by the HVR may not be reduced further for the carrier's benefit (Art 3 rule 8 of the HVR; see also *The Epar* [1985] 2 MLJ 3).

Jurisdiction or Arbitration Agreements in Contracts of Carriage

25.4.24 A jurisdiction or arbitration clause may be incorporated into the contract of carriage whereby the parties agree to a specific forum for adjudication of disputes arising out of the contract. Nonetheless, parties may be tempted to breach such jurisdiction or arbitration clauses so as to take advantage of certain time bar defences or higher limits of liability that may be available in forums other than the agreed jurisdiction or arbitration. Where such breaches happen, the defendant may wish to apply for a stay of the proceedings.

25.4.25 Where there is a foreign jurisdiction clause, the courts will prima facie give effect to it but have the discretion to refuse an application for a stay if the facts and circumstances are so exceptional as to amount to a strong cause to warrant such a refusal (see [Amerco Timbers Pte Ltd v Chatsworth Timber Corp Pte Ltd \[1975-1977\] SLR 258](#); *The Jian He* [2000] 1 SLR 8). There has been a string of Singapore decisions refusing a stay of action if the underlying claim is one of delivery of cargo without presentation of bills of lading, for which there is usually no defence (see, for example, [The Jian He \[2000\] 1 SLR 8](#); *The Hung Vuong-2* [2001] 3 SLR 146; *Golden Shore Transportation Pte Ltd v UCO Bank* [2004] 1 SLR 6). If a claim is essentially indefensible, a court may look upon a

stay application as a tactical or procedural ploy and decide to retain jurisdiction instead (*The Jian He*, supra; *The Hyundai Fortune* [2004] 2 SLR 548).

25.4.26 Likewise, where there is an arbitration clause, the courts will generally give effect to it. In cases governed by the Arbitration Act (generally, domestic arbitrations), the power to stay is discretionary; a stay might be refused if, for instance, the claim is clearly indisputable. However, under the International Arbitration Act of Singapore (which generally governs international arbitrations) a stay of claims falling within the arbitration clause would be mandatory; the court has no discretion to refuse to stay the action. A court is entitled to order retention of any vessel under arrest or any security furnished to facilitate release of a vessel or provision of equivalent security for the satisfaction of any award under section 7 of the International Arbitration Act if the action is stayed under Section 6.

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SECTION 5 ADMIRALTY LAW

Nature of an Admiralty Action in Rem

25.5.1 An admiralty action in rem is an action against the res (thing), which is usually a ship but could also include other kinds of maritime properties, like cargo and freight. A ship includes her apparel, tackle and stores. The action in rem is characterised by service on and arrest of the res. The defendant to an action in rem is the owner of the res (see [Kuo Fen Ching v Dauphin Offshore Engineering \[1999\] 3 SLR 721](#)). Unless released, the res will in due course be judicially sold, free of all encumbrances. The proceeds of judicial sale of the res are then used to satisfy the plaintiff's claim and the claims of other parties, if any, according to an established order of priorities.

25.5.2 However, frequently, this procedure does not culminate in the judicial sale of the res as the owner of the res will furnish security for the claim and the res is then released. When the owner elects to defend the action, the action thereafter continues as a hybrid action; i.e. in rem and in personam (see *The August 8* [1983] 2 AC 450).

25.5.3 The subject matter of an admiralty jurisdiction is set out in limbs (a) to (r) of section 3(1) of the High Court (Admiralty Jurisdiction) Act ("HC(AJ)A"). Section 3(1)(a)-(r) is largely similar to section 20(2)(a)-(s) of the UK Supreme Court Act, 1981.

Invocation of Admiralty Jurisdiction

25.5.4 In Singapore, a res can only be arrested if it comes within the territorial waters as well as port limits of Singapore (see [The Trade Resolve \[1999\] 4 SLR 424](#)).

25.5.5 As far as the invocation of admiralty jurisdiction is concerned, section 4 of the HC(AJ)A permits an action in rem to be brought in 4 situations, i.e. i) an action in rem being brought against the ship or other property in respect of claims that come within section 3(1)(a)-(c) and (r) of the HCAJA; ii) an action in rem being brought against ship, aircraft or other property encumbered with a

maritime lien or other charge; iii) an action in rem for claims that come within section 3(1)(d)-(q) of the High Court (Admiralty Jurisdiction) Act, which permits an action to be brought against the ship in connection with which the claim arises provided that it was at the time the cause of action arose owned, chartered or under the possession or control of the person ("the relevant person") who would be liable in person and who at the time of commencement of the action (i.e. issuance of the admiralty writ) is the beneficial owner as respect all its shares or any other vessel which is beneficially owned as respect all its shares by the relevant person at the time of commencement of the action. Sister ship arrest is therefore permissible under section 4(4) of the Act; and iv) with effect from 1st April 2004, an action in rem in respect of claims that come within section 3(1)(d)-(q) of the High Court (Admiralty Jurisdiction) Act, which arise in connection with a ship provided that owner / charterer / person in possession or control of the ship in connection with which the claim arises when the cause of action arose is the demise charterer of the ship at the time the action in rem is commenced. Admiralty jurisdiction is invoked when the vessel is either arrested or served with the writ in rem ([The Fierbinti \[1994\] 3 SLR 864](#)).

Principle of 'One Claim, One Ship'

25.5.6 Given that sister ship arrest is allowed under Singapore law, when a writ is issued, the practice is to name the offending and sister ships which can be proceeded against in one writ. However, after having invoked admiralty jurisdiction against one ship in respect of one claim, the plaintiff cannot proceed against any other of the ships named in the writ for the same claim. He should strike the names of the other ships out of the writ: see [The Damavand \[1993\] 2 SLR 717](#) applying *The Banco* [1971] P 137. There is nothing to prevent a claimant from amending a writ to remove from it one of several claims, which can then form the basis of a separate admiralty action in rem ([The Damavand \[1993\] 2 SLR 717](#)).

Procedure for Arresting a Vessel

25.5.7 An admiralty action is commenced by the issuance of a writ in rem. An arresting party has to apply for a warrant of arrest, in support of the application of which, an affidavit must be filed. An arresting party has the duty to make full and frank disclosure to the court of all material facts ([The Rainbow Spring \[2003\] 3 SLR 362](#); *The Inai Selasih* [2006] 2 SLR 181; *The Vasilij Golovnin* [2007] SGHC 116). The vessel is arrested when the warrant of arrest is affixed for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure (see order 70 rule 10 of the Rules of Court). After a vessel is arrested, she comes under the custody of the sheriff of the High Court of Singapore.

Caveat Against Arrest

25.5.8 A person who wishes to prevent the arrest of a ship or other property can lodge a caveat against arrest. The caveator agrees to put up a bail to prevent arrest of the vessel. Although the caveat does not guarantee that an arrest will not be made, it nevertheless acts as a deterrent to arrest. This is so because unless the plaintiff can demonstrate that there was a good and sufficient reason for arresting despite the caveat, the court may order him to pay damages to the caveator for any loss arising out of the arrest, as well as discharge the warrant of arrest.

Wrongful Arrest

25.5.9 A party may be liable if the arrest of a ship is carried out mala fides (in bad faith) or with crassa negligentia, i.e. gross negligence implying malice ([The Kiku Pacific \[1999\] 2 SLR 595](#); [The Inai Selasih \[2006\] 2 SLR 181](#)). The test for arresting a vessel is not based on absence of any reasonable or probable cause in the arrest of the vessel. Where the arrest of a vessel is prolonged in bad faith, or with crassa negligentia, an arresting party can be liable for wrongful continuation of arrest ([The Evmar \[1989\] SLR 474](#)).

Security

25.5.10 A shipowner whose ship has been arrested or threatened with arrest may wish to seek release of the ship or stave off the arrest by providing security for the plaintiff's claim. The usual forms of security are bail, letters of undertaking from a protection and indemnity ('P&I') club and bank guarantees. Payment into court as a form of security in respect of the plaintiff's claim is also available but is rarely used. Although the form and terms of security are matters for the parties to negotiate and agree upon, a Singapore court may order a plaintiff to accept a P&I club letter of undertaking instead of bail: see [The Arcadia Sprit \[1988\] SLR 244](#). However, as stated in [The Arktis Fighter \[2001\] 3 SLR 394](#), a court would refuse to do so if there is evidence that the club may be unable to honour the security which it offers to furnish in favour of its member shipowner.

25.5.11 In determining the amount of security to be furnished, the court should be satisfied that the amount which is to be provided is likely to be sufficient to meet the claim, even if this may occasionally lead the court to err on the side of generosity. The plaintiff is entitled to security on a reasonably best arguable case together with interest and costs ([The Moschanthy \[1971\] 1 Lloyd's Rep 37](#)).

Liens

25.5.12 There are generally three types of liens relevant to admiralty law: i) maritime lien; ii) possessory lien and iii) statutory liens.

25.5.13 A maritime lien is an encumbrance or charge on the res, which accrues from the moment the underlying claim giving rise to it attaches, travels with the res, survives any change of ownership of the res (except one that is consequential upon a judicial sale) and is carried into effect by an action in rem. As a general rule, a maritime lienholder enjoys a higher priority than other kinds of maritime claimants. The established categories of claims which give rise to maritime liens are salvage, damage done by a ship, master's wages, master's disbursements, crew's wages and bottomry.

25.5.14 Unlike maritime lien, a possessory lien is only effective if the person seeking to enforce it against a chattel comes into possession of the chattel lawfully and retains uninterrupted possession of the chattel. A possessory lien is a creature of the common law. It is not accompanied by a right of sale, unlike a pledge, nor does it confer any title on the holder, unlike a mortgage. The lien usually accrues to the benefit of a party who has rendered improvement or repairs to or otherwise done work on the chattel, such as ship repairer or a salvor in respect of properties successfully salvaged. A shipowner also has a lien on all goods coming to the same consignee on the same voyage for the freight due on

all or any part of them. The lien can also be exercised by salvors against properties which have been successfully salvaged.

25.5.15 The fact that a ship is subject to a possessory lien cannot however prevent it from being arrested. The lien is not extinguished where the vessel is arrested by a party other than the lien holder, as arrest only transfers custody and not possession of the vessel to the Sheriff: [The Dwima I \[1996\] 2 SLR 670](#).

25.5.16 A statutory right of action in rem refers to the right of the claimant to invoke admiralty jurisdiction by means of an action in rem in respect of a claim which does not attract a maritime lien. It is sometimes called a statutory lien. Claims which can be enforced by way of a statutory lien are set out in Singapore in section 3(1)(a)-(r) of the High Court (Admiralty Jurisdiction) Act of Singapore. Although it is the arrest that gives a claimant his pre-judgment security, the institution of the action in rem starts with the issuance of the writ in rem. Upon its accrual by the issuance of the writ in rem, the statutory lien attaches to the ship and remains enforceable against a bona fide purchaser of the ship without notice, unless the vessel has been judicially sold.

Priorities

25.5.17 The relative priority between claims is a vital issue when the sum total of the claims exceeds the value of the res, as it determines the order in which these various competing claims will be satisfied out of the funds lying in court representing the proceeds of sale of the res. The rules of priority are characterised as procedural and are therefore governed by the lex fori (The Halcyon Isle [1981] AC 221).

Orders of Priority

25.5.18 If there are various claims to the proceeds of sale of the res, the prima facie ranking of claims in order of priority is as follows: -

- sheriff's expenses;
- costs of the producer of the fund;
- maritime liens (except for a possessory lien which accrues before the maritime lien);
- possessory lien;
- mortgages; and
- statutory liens.

25.5.19 The prima facie order of priority set out above is not immutable, in that courts have claimed for themselves a discretion to alter this prima facie order where there are the special circumstances which warrant it (see The Eastern Lotus [1980] 1 MLJ 137).

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SECTION 6 VARIOUS ASPECTS OF MERCHANT SHIPPING AND OIL POLLUTION LEGISLATION OF SINGAPORE

Limitation of Liability

25.6.1 Limitation of liability of shipowners for maritime claim is dealt with statutorily under Part VIII of the Merchant Shipping Act (Cap. 179). Such claims include those for death or personal injury, loss or damage to goods occurring on board or in connection with the operation of a ship.

25.6.2 Prior to the Merchant Shipping (Amendment) Act 2004, the regime for limitation of liability based on tonnage of the vessel was that of the 1957 International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships (hereinafter 'the 1957 Convention'). With the amendment, Singapore adopted the Convention on Limitation of Maritime Liability for Maritime Claims 1976 (hereinafter 'the 1976 Convention'). Under the 1976 Convention, the limitation figures are set higher than those under the 1957 Convention but it is extremely difficult to break limitation. However, the amendment only affects liability arising out of a casualty which takes place after 1 May 2005. Liability arising out of an occurrence which took place before the new Part VIII comes into effect i.e. before 1 May 2005 would continue to be governed by the 1957 Convention. (See, for instance, *Antara Koh Pte Ltd v Eng Tou Offshore* [2005] 4 SLR 521.)

25.6.3 A catalyst for the adoption of the 1976 Convention is the decision of the Court of Appeal in *The Sunrise Crane* [2004] 4 SLR 715, which involves a claim for damage caused to the 'PRISTINE' by the defendants' failure to give full details of the dangerous nature of a cargo of contaminated nitric acid which the 'PRISTINE' had undertaken to receive for disposal. Although the defendant shipowners had appointed competent masters and officers to serve on the 'SUNRISE CRANE' who were specifically trained to handle dangerous cargo such as nitric acid, this did not absolve the defendant from its own duty to ensure that there was a proper system on board the vessel for dealing with the cargo. Hence, the requirement under the 1957 Convention of absence of fault and priority on the part of the owner was not satisfied. It was observed by the Court of Appeal that the protection accorded to shipowners under the 1957 Convention had at times become illusory. Legislative amendments, as set out above, quickly followed, resulting in the adoption of the 1976 Convention.

Oil Pollution

25.6.4 In Singapore, there are two primary statutes governing oil pollution. They are i) Merchant Shipping (Civil Liability and Compensation for Oil Pollution) Act (Cap. 180) (hereinafter 'CLC') and ii) Prevention of Pollution of the Sea Act (Cap. 243) (hereinafter 'PPSA').

25.6.5 The CLC was enacted to bring into effect in Singapore, the International Convention on Civil Liability for Oil Pollution Damage 1992 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992. The CLC governs oil pollution caused by any 'ship constructed or adapted for carrying oil in bulk as cargo'.

25.6.6 The PPSA was enacted, essentially, to give effect to the International Convention for the Prevention of Pollution from Ships 1973 as modified and added by the Protocol of 1978 (MARPOL) and other international agreements. Broadly speaking, the PPSA seeks to impose criminal liability for the discharge of oil and other pollutants from ships into Singapore water. Further, section 18 of the PPSA provides that owner of the ship found to have discharged the pollutants shall be liable to the appointed authority for costs of any measure reasonably taken by

the appointed authority to remove the discharge as well as the costs for preventing or reducing any damage caused in Singapore which results from such discharge.

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