Shipping and law –a Handbook: Case Law gists: Supplement #1 of 2012-Dec2019

WARRANTY as a `Condition' (dating back to Kenyan V Berthan 1779) in Marine Insurance Act, if not specifically stated in Insurance contracts `broadly' under warranties (not narrowly) without conflicts, insurers might lose against assureds even if warranties were breached, as found in `Bamcell II` 1983 by Canadian SC, Nylon V QBE Insurance HKHC 1999, `Pilbara Pilot` 2006 (Aust), Newfoundland Explorer 2006 by ECC etc.

In Salomon v A Salomon HL in 1897 vide land mark judgment had established the principle of distinguishing shareholders/individuals from the personality of the Limited Liability Company; over the years, Directors have become culpubale, but not the shareholders.

It has been ruled in 1943 by US Supreme Court decision in Aguilar V Standard Oil Company that men cannot live for long cooped up aboard ships without substantial impairment of their efficiency. "No master would take a crew to sea if he could not grant shore leave. Shore leave is an elemental necessity in the sailing of ships, a part of the business as old as the art, not merely a personal diversion."

In '64 in Ocean Tramp V Sovfracht (Eugenia) ECA interpreting that v/l should follow route that was usual and customary at the time of performance, and not the route that was usual and customary at the time the parties entered into the CP, held that the contract was not frustrated in having to sail around Cape due to Suez closure.

In '75 in claim against charterers Intl Bulk carriers SA by owners of MAREVA, an initial ex-parte injunction against removal of funds out of jurisdiction granted was extended by CA finding good reasons for the same.

Finding that an arbitration provision in Seaman's contract was against US public policy and void, the Pavlon V Carnival Corp, was remanded back by Southern District Court of Florida (based on Thomas V Carnival Corp) to State Court, granting attorney's fees and costs to plaintiff seaman.

In GIANNIS NK in '98 HL held that `dangerous' cargo is not restricted to those causing direct physical damage, and included the one (Khapra beetle infested) that had caused `indirect' damage to another cargo, shipper's ignorance not excluded. Cargo on *GIANNIS NK* was physically dangerous, since, although not liable to cause physical damage to the vessel, it was liable to give rise to the loss of other cargoes shipped in the same vessel, in the context of Hague Rules "dangerous goods" refer to physically dangerous goods. In DARYA RADHE ECC had held shippers not liable for 'delay' so caused. In *Mitchell v. Steel and GIANNIS NK* involved a violation of the local laws at the discharge port, the court confined legally dangerous cargo to cases "concerned with the violation of or non-compliance with some municipal law which is of direct relevance to the carriage or discharge of the specific cargo in question.

In '99 in Royal Boskalis v Mountain QB 674 it was held that reasonable payment made to hijackers to release ship and cargo represented GA sacrifice and could be recovered as contributions from cargo and other interests. The principle can be traced back to Hicks v Palington 1590 in UK & Peters v Warren insurance 1840 in USSC.

USSC in 2000 upheld INTETANKO's appeal against Washington State through 9th Circuit Court holding that State of Washington had enacted legislation in an area where Federal interest had been manifest.

In '03 Delhi HC in STC v Govt of Bangladesh detained/arrested the ship PRANBURI in Mangalore port, after considering CPC 08, in a case under Admiralty matter, piercing the veil of beneficial ownership.

In '03 that UK Admiralty Court in ICL v Shin Tai in arrest of a sister ship (ICL VIKRAMAN lost with cargo and all hands after collision in '97) held that ICL having issued LoU and in Arbitration in England per B/L provision was entitled to constitute limitation fund in England and to proceed with its claim against Chin Tai for a decree of limitation of liability, but that the security obtained by Chin Tai as a result of the arrest proceedings in Singapore did not have to be released, an issue being that Singapore was not a signatory of 76LLMC.

In *Lian Shun* 2004 HC of HK Special Administrative Region, referring to Steedman V Schofield ECC '92, held that a barge is a ship for taking admiralty action as it 'navigate & carry cargo'. It had been held "any vessel intended for carriage of goods or passengers, and includes a barge" in India earlier.

Kuehne & Nagel agreed to pay 9.9M$ under plea agreement to settle anti-trust case launched in 2007 against freight forwarders for cartelised surcharges.

In ’08 Clarkson brokers settled two litigation claims related to brokers’ handling business paying out 54m$ to Russian state-owned tanker operators Sovcomflot and Novoship (that had merged later) between ’01 and ’04, one of which was about yearend valuation of ships.

In 2011 New Zealand Commerce Commission had pursued six forwarders: Bax Global, Schenker, Panalpina, EGL, Geologistics and K&N against collusion breaching competition law on surcharges (UK NES, Chinese CAF and Air AMS); cases were settled after HC ordered penalties in excess of US7m.

Maersk Line agreed to pay 31.9M$ to US Govt in ’12 to resolve allegations that it had overcharged Defence dept for shipping containers to Iraq and Afghanistan by inflating invoices by billing excessive late fees, billing for delivery delays, attributed to USG, billing for tracking and security services that were not provided etc
Ten NVOCCs are said to have paid 0.478M$ in penalties to settle cases brought by USFMC for violation of Shipping Act including Tariffs, cargo misdescription, inflating cubics etc

ECA in 2009 in Lansat Shipping Co Ltd v Glencore Grain BV (**Paragon)** upholding the decision of ECC held that a clause in a time-charter which provided that, in the event of late redelivery, the rate of hire for the 30 days prior to the commencement of the period of the overrun was to be increased to the higher prevailing market rate, was a penalty clause and, therefore, unenforceable.

In Union of India V Singh Builders ’09, Indian Oil Corporation V Raja Transport ’09 and in Denel Ltd V Ministry of Defence ’12, Indian SC questioning impartiality of employees as arbitrators, underlined the need for professionalism. Stating that government employees as arbitrators goes against natural justice since `no person shall be judge in his own cause’ *(Nemo iudex in causa sua***)**, outsiders/independent judges have been appointed.

In Radhakrishnan V Maestro Engr ’09 Indian SC held that when allegations of fraud and serious malpractices are involved, the case can only be settled in courts and not through arbitration.

In ’09 US USDC for Northern California sentenced Bay Pilot -having pleaded guilty due to medication that had impaired cognitive abilities- to 10months prison term and in ’10 fined shipmanager -indicted and pleaded guilty- Fleet Management 10m$ for COSCO BUSAN collision with San Francisco Bay bridge tower; they were ordered to implement a compliance plan that included training and voyage planning measures.

US CA 4th Cir upheld convictions of Somalis for “attempt to board and piracy” (of Navy Frigate) in ’10, though they had neither boarded nor robbed, by ruling that piracy includes the offense as defined by the law of nations and the concept is sufficiently broad enough to include failed attempts. A related case was reversed by CA remanded it for further proceedings consistent with the preceding.

HK District Court in ’10 sentenced the Pilots and Masters of Neftegas-67 and Yang Hai for a collision in ’08 (causing death of 18crew in Supply v/l) to prison terms. Master of Neftegas got 3yrs 2mths and his pilot 3yrs, where as Master of Yang Hai and pilot got 30months each, all for non-compliance of collision regulations.

In Fortis V Viken USCA 6th Cir in ’10 held that US jurisdiction was established by Time Charter to FEDNAV for calling at Toledo in Great Lakes (after which the case had been remitted back to DC), and later on re-appeal affirming DC’s ruling, held that though of the subrogees Viken as the owner was eligible as COGSA Carrier for one year time limit, VSM as shipmanager was not (citing US SC in HERD), and was liable as tortfeasor for damage to cargo arising out of crew negligence/delay in investigating water ingress into hold in good time.

In Nurdin Jivraj V Sadruddin Haswani UKSC in ’11 held that Arbitrators were not employees and their role is to impartially resolve disputes between parties in accordance with the terms of the agreement.

In Nov’11 Dutch SC in Rotterdam giving broad interpretation to `legal proccedings’, refused Limitation under 76 Convention in Neptune Marine Towage BV v Safmarine Container Lines NV to tug Neptun 9 (there was a `knock for knock clause’ in time CP between Dutch Time Charterers & Tug owners).

Deviating from established principles, 9th Cir CA in US held in ‘11against Pioneer Freight Futures that FFAs do not give rise to Maritime Claims; under choice of law, English law applied and it does not treat FFAs as such.

In ’11 ECC in TTMI V Statoil ASA held that though an incorrect entity was named as the disponent owner, a CP had been concluded between actual disponent owners and charterers by conduct based on recap emails with Arbitration clause and hence arbitrators having jurisdiction, case was remitted to them.

In NSCSA V BPOSC in ABQAIQ ECA in '11 held that as demurrage was invoiced within 90 days time limit (holding that "together with" did not import a strict requirement for documentation to be presented), it was not time barred though it had been mischaracterised and partly settled; the appeal was against a summary judgment that the parties had agreed would be determinative, which had found for charterers.

ECA in '11 in BUNGA MELATI DUA held that hijack/piracy of cargo was not a total loss, it was not a theft and endorsed ECC's finding that ransom payment was not illegal; as such Cargo could contribute to GA.

The US 9th Cir CoA in '11 ruled in Smallwood V Allied Van Lines that foreign arbitration clauses are invalid (under Carmack amendment) in inter-state shipping contract claims.

Netherlands SC held in '11 in CONSTANZA M that the words `a person other than the registered owner of a ship' does not equate with a demise charterer and that under Arrest Convention, arrest must be allowed only if the applicable law -*lex causae*, the law governing merits of dispute- allows arrest to be enforced.

ECC in '11 in CHRISTIAN D held that English Courts have jurisdiction to grant declaratory judgment under Arb Act to enforce a purely declaratory Arb award where there was an appreciable risk of losing party obtaining an irreconcilable judgment in another state, which it might then try to enforce within English jurisdiction.

In McIntyre Mach Ltd V Nicastro US SC in '11 denied jurisdiction over foreign manufacturer under `stream of commerce' doctrine (liability to US consumers) as that firm had not maintained active commercial set up in US.

In Dec'11 Australian Parliament passed amendments to Protection of the Sea (from Pollution) Act '83 extending strict liability to bareboat, time or voyage charterers who will face criminal penalties (this against Time and Voyage Charterers are unlike elsewhere).

Indian SC in Videocon Ind V Union of India & Anr in '11 held that Delhi HC had no jurisdiction under Sec 9 of '96 Indian Arb Act, in an Oilfield production sharing contract governed by Indian Law provided with Arb in Kuala Lumpur under English Law. SC relied on Dozco India V Doosan Infra '10, after analysing Bhatia Intl, Venture Global Eng V Satyam '08 and Hardy O&G V HOEC (Guj HC '06), **ruled that by choosing English law, provisions of Part 1 of '96 Act were excluded.**
Later
Constitution bench of 5 judges of Indian SC consolidating, reconsidering and overruling Bhatia International of '02 (delivered by 3 judges), delivered landmark arbitration decision in Bharat Aluminium in '12 that Part I of Indian Arb Act (re interim relief, setting aside etc) only applies to Arbitrations seated in India; foreign awards subject to Indian jurisdiction when they are sought to be enforced in India under Part II; Indian Courts cannot order interim relief for foreign seated Arbs and decision applies only to Arb agreements entered after 06Sep'12.
Later:
In landmark decision in '14 in Reliance Industries Ltd & Anr V Union of India, SC ruled that Indian courts do not have jurisdiction to set aside arbitral awards where parties had agreed to refer disputes to arbitration outside India : London under English law, such application if any to be made to English Courts. (Arb agreements entered before 06 Sep 12 that do not exclude Part I of Indian Arb Act are rest at ease. This closes the saga opened up by Bhatia Intl re Part I, its exclusion later, Balco reversing Bhatia; the case line runs: Bhatia, Balco, Venture Global Vs Satyam and Videocon; Quoting Sumitomo has left the door ajar for more litigation but!.

In Lozman V City of Rivera, Beach US SC granted `certiorari' for review to determine (to resolve differences of opinion amongst 11th ,5th and 7th Cir courts) whether a floating structure indefinitely moored (receiving power and utilities from ashore) is a `vessel' (triggering federal maritime jurisdiction) -to be decided in Oct'12 session.

In TRITON LARK ECC in '11 held that owners/master had to form `reasonable judgment' on whether v/l "may be, or (is) likely to be, exposed to war risks" (in Conwartime). It was remitted back to Tribunal after clarifying the preceding, to decide claims against deviation (via Cape, instead of Suez), stating that the court –reluctant to go by simple statistics- lacked jurisdiction and so did not want to trespass on Tribunal's `fact finding' duty. But it was held that the Tribunal had erred and the disponent owners should be `objectively' reasonable as for test to assess piracy risk. Since point on `degree of piracy risk' was remitted back to tribunal, it will remain unclear (till their decision is made by public or appealed against) as to whether voyage order and refusal were valid or not.

In Excalibur V Texas Keystone Inc ECC in '11 granted anti-arbitration injunction against simultaneous ICC Arbitration in New York over similar claims against same parties. Considering `*DALLAH',* novelty in this case was that the court considered it exceptional to interfere at the `outset' (and not at enforcement as in DALLAH).

Claimant's counsel had become `creative' leading to `high-spirited' claims but downplayed substantive nature of court proceedings where it had made application for freezing injunction (not obtainable in NY); claims included fraud etc the seriousness of which encouraged the judge to accept jurisdiction and decide as aforesaid.

In West tankers V Alliance SpA, Generali SpA (FRONT COMOR) ECA in '12 affirmed English Court's discretionary jurisdiction to make negative declaratory judgment made likewise in an Award. It referred to and approved of a judgment in CHRISTIAN D (African Fert & Chem V Shipsnavo & Reederi KG). EU Regl 1215/'12 adopted in Dec '12 in force from 10 Jan'15 and so hopefully help avoid such *`lis pendens'* disputes.

ECC in '11 held in *Hyundai Merchant Marine v. Trafigura Beheer (GAZ ENERGY)* that TC provision in sub-charter vide Shelltime 3 considering reasonableness & language, created an "all weathers" warranty of vessel's speed and performance, in that speed and performance was to be assessed throughout the entire period of the charter, and not limited to periods during which wind speed did not exceed Beaufort Scale 4. As a follow up, **in 2nd decision in '12** it was held that over performance (less bunker usage) would only occur where usage fell below lowest figure in warranted consumption performance range (as bunkers used within range was warranted, and not any better). It was also held that over-performance in first period could not be set off against under-performance (more bunker usage) in second period as TC did not envisage a single calculation for entire period.

ECA in '11 in EAGLE VALENCIA (ref case 135 in book) entered judgment for Charters finding that initial NOR was invalid but copy of subsequent email on readiness was not submitted with demurrage claim though raised within time of 90days as in CP, and so demurrage claim had to fail.

German Fed SC IN Und Adryatik in '11 held that HAGUE Rules constituted "conditions prescribed by law for the carriage of goods" for the purposes of Art 2 of CMR Convention. As Fire aboard could have occurred in the course of carriage by sea, the Road (Ro-Ro) Carrier was entitled to invoke Hague Rules Fire exemption.

Indian SC in Booze Allen & Hamilton Inc V SBI Home Finance has observed that disputes relating to right in rem (against property ownership, like ship etc) are to be adjudicated by courts and public tribunals are not suited for private arbitration; however contracts pertaining to services to them arbitrable

ECC in '12 in Emeraldian V Wellmix The VINE held that by accepting NOR before Port clearance, the terminal on behalf of Charterer had waived such requirement; damages caused to berthing dolphins by earlier ships had made the berth prospectively unsafe and so even though delays caused by damages and demurrage arising therefrom were excepted (as per Scale terms), damages (amounted to 5m$) were payable at demurrage rate due to `unsafe'ness; a guarantee given by a Chinese company without approval of SAFE (State Admin of Forex) was found encashable under implied English law choice made by the parties.

In Astrazeneca V Albermarle ECC (disapproving IBC V MAR LLc '09) in '12, held that interpretation of exclusion clause is a matter of construction and there is no presumption that liability deliberate (as opposed to negligent, even of repudiatory nature) breach of contract cannot be excluded.

In '12 Kerala HC allowed arrest of MAERSK RONNEBY –beneficially owned sister ship of Maersk Selester for non- delivery of cargo shipped per SAFMARINE BL.

In MED SALVADOR & GOA ECC held in '12 that under FOB contract, Sellers were not entitled to reject shorter than 7 days notice given by buyers, as under the Contracts laytime, seller's obligation would commence only on expiry of 7 days notice by the v/l, and such act had amounted to repudiation as held by Arb board; this ruling underlined that construction as truly determinant is more important than `time is of essence'.

Singapore HC in ORIENTAL BALTIC in '12 held that, just having filed only a caveat against release of a v/l in 'in rem' and not commenced any other proceedings before liquidation of her firm, the plaintiff would not be eligible to be granted leave to continue action.

In Lantra Shipping et al V USA, USCG & USCPBA Judge Gilmore of US Southern DC Justice setting aside the pleas of USCG & DoJ, ordered in '12 that the security bond be reduced from 6m to 0.75m$ and set 90day limit for taking testimony from 6 crew members of tanker MEDIATOR in a magic pipe allegation case.
In a case re Eckstein Marine Service US 5th Cir CA in '12 held that a vessel owner's petition seeking exoneration from or limitation of liability was belated, stating that plaintiff's state court complaint/claim for injuries sustained on defendant's vessel about eight months earlier had shown reasonable possibility of such a claim (exceeding limitation).

In QBE Management Services (owner of British Marine) V Dymoke & Otrs (3 Defendants who had resigned to start up Lodestar and PRO Insurance Solutions Ltd (the 4th Defendant) of P& I Mutual operations), EHC QBD in '12, expediting trial in Nov '11 (to cover the ensuing P&I Renewal period) granted springboard relief till April '12 and damages of 0.3m£ for costs of Retention, Recruitment and for employing temp Claims Adjuster.

In a landmark first judgment of its type, setting precedent, in a 21-1final decision without appeal, International Tribunal for the Law of the Sea, in March '12 delimited Bangladesh's outer continental shelf beyond 200miles, giving Bangladesh 200m EEZ and substantial share of outer continental shelf beyond 200miles, resolving a long standing dispute with Burma (Myanmar); similar dispute is said to exist with India.

Deviating from case laws, in ADELE MARINA RIZZO, USCA 9th Cir in California in '12 held that monetary dispute arising out of FFA (forward freight Agreements) does not give rise to maritime claim under Rule B.

In Metall Market v Vitoro Shpg The LEHMANN TIMBER in'12 it was held by ECC that cargo interests had to pay for lien (not waived) under GA by owners after piracy, release, towage, stowage etc, but not for storage, as owners had refused delivery. ECA in '13 held that Owners are entitled to exercise possessory lien on cargo in GA when Av Guarantee was obtained, but not Av Bond, and recover costs in exercising lien, duly mitigated.

William Skye an American Chief Officer was awarded 0.59M$ (after reducing 75% for comparative negligence) in '12, for suffering heart damage from over-working, by a jury (under Jones Act applicable to foreign ships also) against Maersk, though Maersk was not found to have violated working time regulations.

ECC in PAIWAN WISDOM in '12 holding that 2nd test in PRODUCT STAR2 applied by CA (if there was material increase in risk in the interim between contracting CP provided with Conwartime and giving Voyage orders) was not relevant, ruled that only a single test `whether it appears (in owner's/headcharterers') reasonable judgment that there is likelihood of exposure to war risks' (for rejecting voyage orders due to piracy, war etc). As such owners' liberty to reject voyage orders if vessel, cargo, or crew, "in reasonable judgment of Master and/or Owners, may be, or are likely to be, exposed to War Risks" under CONWARTIME '04 clause is not dependent on there being a material increase in risk between time of contracting & time of giving voyage order.

In DIMITRS L (Global Maritime V STX Pan Ocean) ECC in '12 held (against Arb Awards) that taxes paid and reimbursed under USGTT by head charterer to head-owner could not be passed on in the charter chain relets.

In CAPTAIN STEFANOS, ECC in '12 in Osmium Shpg V Cargill (contrary to case 212 in book SALDHANA '11) held that the bespoke clause with a comma separating capture/seizure **(viz,)** from detention or threatened detention by any authority was "plain and obvious" to cover off-hire during piracy and suspend TC hire. Contrary to Wilford on Time Charters, the court found that "plain and obvious meaning of the words" used in Conwartime allocate war risks and did not suffice to address off-hire during piracy.

In SOBRENA ECC in '12 construing indemnity provisions of a ship repair contract held that "knock for knock" providing for each party to bear its own loss/damage was excepted only to the extent of damage to repair work.

Passenger Rick Ehlert was sentenced to 2-4months in federal prison by a US DC in '12 for releasing stern anchor of RYNDAM while at sea on cruise.

In Aug '12 a crew member's (who had died on TAIJU in '11 in an accident during work), family was paid about 100k$ compensation, after his parents had filed petition under Legal Services Authorities Act with Lok Adalat.

Indian SC has ruled in separate cases concerning Motor vehicle insurance that: A licensed driver employed would cover the responsibility of the assured, and the insurer will be liable to pay claims to third parties, even if the license was found to be fraud (supposedly because it is not easy for assured to verify). Also held that an insurance cover commences when the policy was issued, even if the cheque bounces later; the insured becoming liable to pay claims to third parties (the assured having obtained statutory insurance cover).

ECC in CENK KAPTANOGLU in '12 held that on the basis of findings of fact in the arbitration award and its reasons, settlement agreement made between the parties following a repudiatory breach of contract by Owners, was voidable for duress, because conduct of Owners subsequent to breach amounted to "illegitimate pressure" for the purpose of establishing duress in law.

HK CA in Gao Haiyan V Keeneye Holdings held that there was no apparent bias –concluding after giving due weightage to Chinese Court's refusal in the exercise of its supervisory jurisdiction to set aside award- as the relevant party had waived its right to challenge before the tribunal.

ECA in GREEN ISLAND in '12 dismissed buyer's claims against sellers for cargo washed overboard, as sellers had procured appropriate contract of carriage and though the sellers had failed to procure proper insurance, even if it had done so, it would not have covered the loss. It is felt this case makes it clear that service providers like freight forwarders, giving warranty to insurers should take reasonable care to ascertain truth of facts warranted.

In '12 HK Court of 1st instance after trial of preliminary issues in A O Smith Elec Products V Blue Anchor Line & Ors held that on a proper construction of the terms of the Waybills and a letter of undertaking signed between the parties, Hong Kong procedural law, including its conflict of law provisions, governed (US COGSA could have applied, view shipment to US ports, but it was not overridden by derogation in PRC Maritime Code).

In Isabella V Shagang AQUAFAITH ECC in '12 overriding old perceptions of White & Carter V McGregor by HL in '62, ECC effectively ruled that when a TC contract is repudiated by early redelivery by a party expressing inability to perform, innocent party is entitled (**except in extreme cases**) to reject, keep contract alive and claim performance. This overrules the much touted exceptions that the parties have to cooperate and that the innocent party may not be able to claim so, having to repudiate, mitigate etc and claim the differential loss entailed. Apart from shipping, this is to impact all `contracts' where early repudiation was held to be a workable approach.

ECA in Golden Ocean V Salgaocar & Mr Anil Salgaocar in '12 held that a contract of guarantee is enforceable where it is contained in a series of documents bearing signature of guarantor or someone authorised, some of which may even be in emails. The Court examined emails sent by brokers during negotiations (on A/E basis) for a long-term time CP in which guarantee was stated, culminating in an email agreeing final outstanding terms (concluding CP & guarantee) wherein guarantee was not repeated expressly. It was also held that an e-mail salutation by a broker if duly authorised to act on behalf of the guarantor was sufficient to constitute a signature for purposes of Statute of Frauds irrespective of intention with which the broker signed (it is irrelevant whether or not broker thought that he was signing a guarantee). For a guarantee to be enforceable Statute of Frauds 1677 requires it (or a note/memorandum of it) to be in writing and signed by guarantor or an authorised person.

Financial Services Authority (FSA) in London in '12 fined Mitsui Sumitomo Insurance Company Europe (MSIEU) $3.35M for serious corporate governance failings and its former executive Chairman was fined £119,000 and banned.

Maritime NZ '12 convicted a high speed Ferry operator for failure to investigate & address causes (under HSEA) of a series of back injuries to passengers in '11 slapping $270k as fines and reparation.

HK lower court in MARCATANIA ruled in '12 that the shipowner having no contractual relationship with a third party –under slot sharing- under bailment, and being entitled to consider whether they had any lien over containers was not liable in conversion, for the delayed delivery.

ECC in GENIUS STAR1 in '12 held that apportionment of claims between cargo interests, sub-charterer, head charterer and owner were not time barred under Inter Club Agreement '96 (ICA 96 now superseded by ICA '12) –even though claims commenced after 12 months, as provisions in head charter *vis-à-vis* ICA 96, on proper interpretation, were contrary to those in ICA 96 and so ineffective.

Ref case 170 (in book), UKSC (citing WINSON 1982 AC) in KOS in '12 unanimously awarded costs incurred for discharge & loss of earnings whilst cargo on board to owners as bailees, under indemnity (by majority) in CP, as no BL had been issued and obligations to third parties had not arisen.

Indian SC in Union of India V Tantia construction in '12 held that Constitutional powers vested in Courts cannot be fettered by any alternative remedy; injustice whenever & wherever its takes place has to be struck down as an anathema to rule of law and provisions of Constitution, thus over-riding provisions for Arbitration (despite Sec 5 of '96 Arb Act providing party autonomy). State of Himachal Pradesh V Gujarat Ambuja '05, Harbanslal Sabina V Indian Oil Corp '03 relying on Whirlpool Corpn V Registrar of Trade Marks and Sanjana Wig V HindPet Corp need also be referred.

Philippines SC has held in '12 that under POEA, the company designated physician is the one to determine degree of disability or fitness to work (and not other independent doctors as in some other SC rulings stating

that the Courts will rule when in dispute between the two), and also denied disability claim that was filed more than one year earlier, after a 'quit-claim' had been signed.

ECC in Eitzen Bulk V TTMI SarL BONNIE SMITHWICK decided that the words "price actually paid" in Clause 15 of SHELLTIME 4 meant the price paid when bunkers were stemmed and not the price fixed by intermediate charter along a charter chain (after considering evidence of market place). It was recognised that SHELLTIME4 is unsuitable for charter chains as 'market' may not be `custom'.

In Daebo V Go Star '12 on the ruling of Aust Federal Court, Daebo a Time Charterer in Time Charter chain with owner Go Star lost its value for bunkers when owner withdrew v/l from head charterer, as `Romalpa clause' (retention of title till payment) was absent in their CP.

A ship surveyor for lying to USCG and a criminal investigator about dry docking of a Bolivian ship CALA GALDANA was convicted in '12 for making false statements and obstruction of proceedings.

HK Court of first instance in '12 in DECURION striking out in rem proceedings for cost of bunkers supplied held that the defendant did not exercise requisite degree of control over (ten) other vessels as required under Sec 12B(4) of HC Ordinance (equivalent of Sec 21(4) of Senior Courts Act 81 of UK), as those vessels were TC out (albeit closely connected with defendant) and so lacking control. HKCA upheld judgment on all points.

India's Madras HC in '12 held that the insurer of the vehicle was liable to pay compensation to the family of the deceased driver as he had been murdered `incidental to the use of vehicle' (the murder was for gain to steal the car). Stating that it could not be dealt under Motor Vehicles Act & setting aside a Tribunal's award for the same, it was pointed out that the compensation would fall under Workmen's Compensation Act –citing it as Social security legislation for speedier & simpler process.

In Itochu Corpn V Johann Blumenthal & Anr ECC in '12 held that the ref to Arbitration provided was singular per s 15(3) of '96Act; leave to appeal was refused by the Judge and Court of Appeal also. (However per LMAA '12 Terms (8(a)) if the reference is unclear, it would be three arbitrators).

In GREATSHIP DHRITI ECC in '12 over-ruling Arb Award regarding notice for withdrawal for non-payment of hire in Supplytime '89 amended very much in detail, referring to stricture in Co-operative Wholesale Society Ltd V National Westminister Bank '95, ruled that contextual analysis is not license to ignore plain meaning; in other words plain meaning over-rides contextual emphasis. (Owners were not obliged to give five banking days' notice for suspension of services under Time Charter)

Ref case 461 in book, finding for the owners, ECA in ROWAN (Transpetrol V SJB) in '12 held that the Standard CP terms were not to be read together with the Recap, as **the Recap terms were substitute for Standard terms; hence oil major approved was considered only as a promise and not a warranty.**

In Dampskibsselskabet Norden v Beach Building & Civil Group Australian Federal Court in '12 held that foreign arbitration agreements in voyage charter parties for carriage of goods from Australia are void (holding that Voy CP is a "sea carriage document" under Sec 11 of Aust COGSA '91); and so the Court refused to enforce two London arbitration awards issued in respect of disputes arising under the relevant voyage charter party. (But SC of of South Australia in Jebsens had ruled contrarily.) To avoid such legal logjam till the variance is settled, Arb "conducted in Australia" (as excepted by Aust COGSA) may be pursued using LMAA rules etc. **Later Full Court of Federal Court of Australia over-ruled** the preceding by 2-1 majority holding that a Voy CP was not contextually a "sea carriage document" for the purpose of s11 of COGSA91 and so foreign Arb is valid and hence áwards' are enforceable in Australia. Caution but: foreign arbitration and exclusive jurisdiction clauses in BL or similar sea carriage document relating to Australian export/import will continue to be void.

ECC in '12 awarded NOVOSHIP (a subsidiary of SOVCOMFLOT) UK about 169M$ in claims against three defendants including its former General Manager for defrauding over several years.

US Bankruptcy Judge in Delaware in '12, accepting bareboat Charterer OSG's position of inability to relet or fix vessels at rates that justify continuing to make hire payments (in crashed market), and stating that it is in the best interests of the debtors, estate, creditors and other parties with interest, threw out objections by owners to repudiation of bare boat charters by OSG as untenable.

In AKILI US 2nd Cir Court in '12 found v/l liable for cargo damage *in rem* as a COGSA carrier through implied ratification of BL. (to avoid arrest insurers had posted LoU & parties pursued `in rem' option)

In PEARL C on appeal against Arb Award ECC in '12 held that warranted speed was the benchmark against which `utmost despatch' could be measured. Comparing with HILL HARMONY, comparison of deliberate slow steaming with provision of 'error in navigation and management' was rejected.

ECC in '12 in ED&F Man Sugar V Unicargo (LADYTRAMP) determined that on true construction of Sugar CP '99, destruction by fire of conveyor belt at loading berth, did not as a matter of ordinary language and common sense fall within exception of "mechanical breakdown at mechanical loading plant" and thus stop laytime running; likewise, administrative rescheduling of cargo operations by the port after fire did not constitute "government interference" of a nature to stop laytime running. ECA in '13 upheld the verdicts.

Vide ECC ruling in '12 in BULK CHILE, it has become clear that exercise of lien on Sub-freight for on 'Hire' in charter chains is not tenable (as in Cebu2 over-riding Cebu1) per NYPE 1946; but freight for completing voyage after `notice' would be payable (anyway under Maritime lien), as otherwise Voy Chtr/Shipper would be liable `for undue enrichment' if they had not incurred liability. On Appeal, ECA in '13 upheld ECC's ruling on Owner's interceptor Claims under BL, Effectiveness of owner's Notice of Lien and Formation of a New Contract. (Under UNCITRAL Cross-Border Insolvency Regls '06, Korean proceedings (recognised as main foreign proceedings by order of Chancery Division) under Debtor Rehabilitation Bankruptcy Korean Law staying debt recovery including realisation of security against intermediate (Korean) charterers had precluded enforcement of lien on hire for sub-freight amounting to realisation of security; however, ECC had held that it did not apply extra-territorially and anyway ECC had not allowed such lien for sub-freight on sub-hire).

In SAGA EXPLORER ECC in '12 held that Retla clause (originating in 70 case (*Tokio Marine*)'US court in Tokio Marine V Retla steamship 9th cc), regarding minor corrosion/damage to steel/timber) did not absolve carrier from identifying and describing substantial defects in BL. It endorsed the view that otherwise, Hague Rules goal of protecting BL as a commercial document on which parties rely, will be undermined.

That claims under COGSA cannot be stretched to even before performance had been started was brought forth by USDC for Southern Florida and on appeal by Federal Court (under Admiralty jurisdiction) in '12 in (Underwriter's interest in) Circuit Zone Ltd V SeaTruck wherein subrogated insurer's claim was upheld, as the Court was not persuaded to apply maritime standards to pre-delivery losses and agreed with insurers. As the standard BL did not go that far, ambiguity was interpreted against drafter. (The case is remanded to State Court to analyse tortious negligence and the ultimate significance (to the parties) may be that COGSA package limitations will not apply.

Finding Coral Princess Cruises non-compliant with Navigation and OHS Acts, and Code of Safe Working Practice, Cairns (Aust) Magistrate Court fined them 180k$ in '12 for death a crewman trapped by powered door while working on OCEANIC DISCOVERER in '09.

In '12 an Income Tax Tribunal in Chennai, reversing its own earlier decision, ruled that as assesse (Poompuhar in this case) time chartering ships from owners must deduct tax at source when paying hire, as hire is paid for use of the ship (and not royalty as held earlier). This may not apply to be ships with foreign place of residence of owners, where Tax Treaties exist.

Further, it is to be noted that **import Customs duty** of 6.18% is payable when ships are imported into Indian flag for coastal operations. When foreign going ships trade coastal, duty is payable proportionately for the coasting duration, based on 10year lifespan of ship: viz 1/120 x 6.28%/pm. **This was abolished later.**

Indian SC in '12 has held that though it is recognised that under party autonomy arbitrators may be appointed by them, upon examination of relevant facts, if there is reasonable apprehension of impartiality, the court may exercise its power to appoint an arbitrator despite the express choice of the parties.

Singapore HC in Daimler SEAsia V Front Row in '12 held that by agreeing to refer all disputes arising out of/in connection with JV to Arb under ICC Rules 98, parties had by adopting said rules including Art 28(6) excluded right of appeal to Singapore Courts under Sec 49(1) of Arb Act on question of law arising out of Award. This is first decision of a Singapore Court on exclusion of appeal Sec 49(1).

Singapore CA in ’12 in BUNGA MELATI 5 -stating that VASILIY GOLOVNIN 08 had not introduced new merits requirement of good arguable cause to be proved by arresting party- held that to invoke its admiralty jurisdiction in rem, the plaintiff is only required to prove jurisdictional facts set out in Sec4(4) of High Court (Admiralty Jurisdiction) Act on balance of probabilities.

In WESTERN MOSCOW, ECC finding on question of law, held in ’12 that owners had acquired the charterer’s right against sub-charterers for sub-hire due at the time when notice was given. (Owners as assignees of right to hire took subject to equities, their claims were susceptible to being extinguished by any sub-charter set-off, but such set-off had to have been claimed before notice of lien was given. In said case such set-off had not been claimed,) but the Freezing Order was discharged on the basis that owners had failed to show a clear risk of dissipation of assets.

ECC in UNION POWER ’12 on an “as is, where is” ship sale, in a landmark judgment ruling on whether NSF 93 -largely unamended, clause 11 in particular- excluded the term of satisfactory quality implied by s 14(2) of Sale of Goods Act ’79 found for the buyers, after a cranckpin bearing (found significantly under size & oval) caused engine damage just after a day on sailing after docking/repairs etc. The issue had boiled down to s 55(2) “an express term does not negative a term implied by the Act unless inconsistent with it”. Note: It is usual to amend NSF 93, NSF’11 has superseded it and Singapore Sale form is becoming common in the East.

In Bunge V Kyla (KYLA) in ’12 ECC ruled that though after collision CTL was settled with insurers, it had not frustrated CP, as owners had obligation to repair and maintain v/l up to insured value as so mentioned in CP.

French skipper of a racing yacht was fined £9k by Southampton Magistrates Court and had to pay £4k towards costs too in ’12, for proceeding the wrong way in traffic lane off UK’s Kent coast.
Owner and manager of a fishing v/l had to pay £180k including costs as ordered by Southampton Crown Court after admitting guilt on charges relating to Health & Safety offences under Fishing vessel safety legislation.

In Wuhan Guoyu Logistics v Emporiki Bank of Greece ECA in ’12 held that shipyard refund guarantee was in the nature of a performance bond (citing *Gold Coast v Caja de Ahorros del Mediterraneo* ‘01 CA and adopted in subsequent cases including *Meritz v Jan der Nul* ’11) . The Court deprecated the practice of quoting many `authorities’ (*stare decisis)* and opined that such documents would be “*almost worthless*” if the underlying dispute prevented payment and that as the document may have been drawn up by those with a less than total command of English wording should not be accorded “*the reverence with which one would construe a statue*”.

ECC in ’12 in FALKONERA ruled that owner’s refusal to agree to STS transfer between VLCCs was not reasonable, though ICS/OCIMF transfer guide did not contain any specific recommendations for it (based on which owner had refused and argued that they were in breach only if not so viewed reasonable by other owners). ECA dismissed an appeal against ECC ruling setting out the test for determining whether or not the Owners’ consent was unreasonably withheld.

US DC for Southern District of NY in ’12 dismissed Spain’s action on summary judgment against **ABS**, finding that Tort-based reckless behaviour standard requires a direct relationship between alleged tort perpetrator and aggrieved claimant; as ABS had no connection with Spain, it didn’t fulfil the said requirement. Spain was never intended to be a beneficiary of ABS’s classification certification. Second Circuit Appeal court concluded that even if reckless conduct could conceptually be a basis for liability, no reasonable jury could conclude ABS had acted recklessly with regard to the **PRESTIGE,** at least in a way that caused Spain’s damages.

In HANSA MURCIA ECC in ’12 held that under an implied innominate term the sellers were to extend a refund guarantee to buyers of a new-building. Though Sellers were in breach for not extending, there was time to do so, and so Buyers and Arbitrators were wrong in assuming repudiatory breach and thus termination. Buyers were thus entitled to Damages for Breach and not cancellation.

Ref Case 268 in book, in JAG RAVI (GESCO V Far East Chartering (earlier Visa ComTrade) & Binani Cement) ECC in ’11 had (tracing back Lord Wrenbury in *Weld-Blundell v Stephens* 1920 *“It has, I think, long been settled law that if an act is manifestly unlawful, or the doer of it knows it to be unlawful, as constituting either a civil wrong or a criminal offence, he cannot maintain an action for contribution or for an indemnity against the liability which results to him therefrom.”,* LOI issue in Brown Jenkinson V Percy Dalton ’57 and Laemthong Glory ’05 –wherein CA had found for Commercial Principle in its usage, Owner acting as Agent for Charterer for cargo release, being not against public policy in the absence of fraud*)* upheld validity of LOI . Cases were pursued in 3 jurisdictions and a sister ship was arrested, after cargo was released by owner, on LOI

issued by Receivers to Charterer addressed to *The Owners / Disponent Owners / Charterers".* Owner had been unaware initially of dispute on cargo quality between shipper-receiver that had got resolved in the interim. ***CA '12 upheld validity of LOI issued by Receivers (relying on Contracts (Rights of Third parties) Act '99)***, on Voyage Charterer's LOI to Owners becoming useless on their bankruptcy, and on the success of Shippers claim for damages against Owner for delivery without BL.

In TOISA PISCES ECA in '12 upholding ECC's ruling held that no credit need be given to Insurers for time/costs saved in executing unrelated repairs and surveys concurrently with repairs that had caused claims. `Want of due diligence' was equated with negligence and causative effect of first breakdown/claim was found to have persisted into off-hire periods arising after subsequent breakdowns as in `one thing leading to another'. In BP V Target Shipping ECC in '13 in a Tanker fixture using WS with Overage freight, finding `commercially surprising' anomalies, rejected contentions of both and `found a new contract'. ECA upheld it highlighting trend of applying `commercial common sense', when conflict between it (cs) and natural or literal meaning leads to ambiguity which itself calls for understanding that ambiguity exists. Thus Owner's claim for freight at WS agreed for full quantity was decided based on natural construction of recap and BPVoy94 construed together.

Appeal Court in Bordeaux in HEIDBERG in '13 recognised Owner's right to Limit under '76 Convention in a collision of '91. Though Limitation Fund had been set up quickly and despite *Cour de cassation* (French SC) overturning denial of release by lower courts after more than 2yrs, v/l had been held up on criminal charges upheld by Court of first instance, and released in '03 (a senior official from German authorities giving evidence against forgery of documents) by Appeals court. In Civil action that had resumed in '03 (after a stay of 8yrs) with allegations against owner that they had failed to ensure *"confidence and cohesion indispensable to permit them* (the crew) *to overcome difficulties which whilst unforeseen were not unforeseeable"*, lower court had found for claimants in '05. Nonetheless the *Cour de cassation* in'07 ostensibly on a point of procedure (that Appeals Court had failed to grant owner proper opportunity to address relevant issue) had remitted the case back for full rehearing. The '13 decision finally ended the case, presumably without further appeal. {In prolonged cases, in the interim, ship may have been sold/owner left the entered Club –closing out paying release Call (for open Club years usually 3) or securing by Bank Guarantee, Clubs providing for reserves in their books. If Cargo interests had closed/merged/liquidated provisions would have been made too. Costs following events usually}.

ECC in '13 in NYK v Cargill in GLOBAL SANTOSH in an "obvious mistake" of arrest of ship with cargo (that was intended) resulting in delay/demurrage -setting aside Arbitrators majority Award rejecting `Agency' issue remitted back to Arbs. ECA in '14 upheld ECC's (discretionary) decision to remit back to Arbs to determine issue of causation. Permission to appeal to SC was granted. UKSC in '16 reinstated Arbitrators' Award.

In an appeal from First Tier Tribunal and GAFTA Appeal Board, in Bunge V Nidera ECC in '13 held that Seller's cancellation pursuant to `prohibition' clause was repudiatory, entitling buyers to strict application of default provision and damages were to be assessed at time of repudiation, irrespective of train of further events. ECA upholding same (also of GAFTA Appeal Board), allowed for damages of about 3m$ at the time of buyer's repudiation (ban was not revoked and existed over delivery period) stating that casual link was required between `ban' and frustration. UKSC restoring GAFTA first tier findings in '15 awarded only nominal damages of $5 holding that (despite powerful judicial and academic dissent) events occurring after the breach could show that no loss would have been (and therefore was not) suffered. ESC in '15 reversing CA decision unanimously held that Buyers were entitled to nominal damages only, as clause 20 of GAFTA Form 49 did not exclude application of principle in Golden Victory 07. In assessing damages, it was permissible to take into account contingencies subsequent to the date of breach which would have reduced amount of damages payable. As such, Buyers had suffered no loss; embargo would have prevented Sellers from shipping the goods under the contract in any event.

ECC in '13 in CAT V GTT did not set aside an Arb Award, though a fraud was 'found' stating that disclosure of adverse results of a test would not have affected the decision of the tribunal.

Singapore HC in '13 in ATHENS in a case between Buyers and Sellers of cargo, found the Buyers liable for the delay caused in cargo discharge when v/l was moved out by port authorities to accommodate another one. This differs from HANDY MARINER and highlights the matter of `construction' in sale agreement.

ECC in ’13 overturning Arb Award (for damages only) in GRIFFON (Griffon V Firodi) in ’13 found defaulting buyers liable (to make commercial sense) for the Deposit that had to be paid within few days on contracting. Sellers had cancelled the deal one day after due date on `repudiatory breach’. On date of breach difference between market price and sale price –the conventional measure of damages- was substantially less than the 10% sale price to be paid as deposit. On Appeal ECA upheld, that deposit can be claimed by sellers, as the contract was repudiated after the time at which the deposit had fallen due.

Canadian SC granted leave to appeal (to be heard in 2014?) Federal CA’s decision in Societe Telus Com V Peracomo ‘11wherein Limitation under 76LLMC was refused. Master of REALICE had cut an active submarine cable (marked in Chart and cited in Notices to Mariners) assuming that it was abandoned. As Master also was the owner, wilful misconduct against him had been upheld by lower courts.

In ASTRA ECC in ’13 had ruled that failure to pay a single hire under TC was a breach of `Condition’ entailing owners to terminate and seek damages; it was also held that Charterers conduct tantamounted to renunciation (repudiation) and that agreement provision to pay loss of earnings constituted an unenforceable penalty clause.

ECC in ’15 in Spar Shpg V Grand China Logistics (SPAR Capella, Vega & Draco) held that consistent failure to pay hire (though backed up by guarantees of parent firm) timeously was repudiatory and hence V/Ls could be withdrawn and a claim for loss of bargain could be made’. It had been set out by Hobhouse QC in GIORGIOS C, it was stated, in obiter that payment of hire was not a condition, but an innominate term. For measure of damages, ELENA DÁMICO was followed to the effect that where there was no opportunity for replacement TC, owners are entitled to refix at their discretion: on spot market or short term time charters to mitigate. **ECA in ’16 affirmed that <u>having to pay TC hire on time was not a condition</u> (over ruling ASTRA)**, having provided for withdrawal; not for commercial certainty too, holding that it in NYPE 93 CP is an innominate/intermediate term. (The hire provisions in the new NYPE 2015 provides for termination for any failure to pay hire – irrespective of renunciation or repudiation - and claim damages in addition).

UKSC in ’13 in Prudential v Special Commission, ruled that legal advice privilege covers only advice given by members of legal profession, and so did not apply to documents relating to tax law advice given by CAs.

Singapore HC in ’13 in Astro Nusantra v PT Ayunda ruled that if an award is not challenged on jurisdiction, hearing on merits can proceed; later at setting aside or enforcement stage, jurisdiction cannot be challenged.

Singapore CA in ’13 in Maldives Airports Co Ltd & Anr V GMR determined that a contractual right which can be and is ordinarily preserved by way of an order for specific performance or an injunction (which can also be characterised as a right which, if lost, cannot be adequately compensated by an award of damages) is considered an “asset” which may be preserved by interim order of the court under Section 12A(4) of the International Arbitration Act (“IAA”).

German Federal SC in ,13 held that the unlimited liability of a carrier under CMR Convention Art 29 is reduced in cases of contributory negligence by sender, especially if carrier was not made aware of high value of goods.

ECA in `13 in LEHMANN TIMBER held that shipowners are entitled to storage expenses incurred while exercising lien over cargo in respect of unpaid General Average contribution.

ECC in ’13 in OCEAN VICTORY ruled that Kashima as an unsafe port due to lack of proper weather forecasting for long waves (though the port built in ’69 had been called by 6600 large bulkers), when the v/l leaving port (under some mistaken assumption regarding pilotage to leave) grounded on breakwater (after dropping pilot) and became CTL due to some lack of good seamanship ‘elevated level’ cited to be required) by Master. ***ECA in ’15, after considering unusual circumstances, foreseeability etc, overturned the lower court findings.*** ECA also held that demise chrtrs - having paid for hull insurance (for their own and the head owners’ benefit) - would not have been liable to the Claimant insurers for the loss of the vessel, ***had they been in breach of the safe port warranty in the bareboat CP*** meaning that demise chrtr had no liability to pass down to end chrtr. UK SC upholding CA’s view decided that the rare concurrent occurrence of two otherwise common features of the port of Kashima, which had caused the total loss of the vessel, amounted to an abnormal occurrence, such that there was no breach of the safe port undertaking by charterers; it added that had there been a breach of the safe port undertaking by charterers, then rights of subrogation of hull insurers against, and also rights of owners to claim insured losses from, demise charterers were precluded by clause 12 of the Barecon 89 CP. As such, any claims against time charterers for insured losses under hull policy were also

precluded. SC also decided that, on correct interpretation of LLMC76 as enacted into UK Law, there was no right for time charterers to limit their liability for loss of the vessel.

Admiralty Court of ECC in '13 in EEMS SOLAR (Yuzhny Zavoid Metal v Eems Berheerder) breaking new ground relieved Master and Owners of liability from bad stowage by Charterer's stevedores as it had been contracted out (by owners), though stowage was not as per Master's plan and Cargo Securing Manual.

In ATHENA (Minerva v Oceana) ECC in '12 in a dispute arising out of off-hire, considering the ordinary meaning of `time thereby lost' in amended NYPE when v/l was drifting due to some uncertainties of disport, held that it was not off hire. ECA in '13 overruling ECC restored unanimous Arb award (off-hire provision, did not involve breach of contract in a sense requiring a causal link between unlawful act and its consequences, did not require time lost in issuing new BL and delivering them to owners, to be taken into account) holding the Master in breach of CP provision to obey Time Charterer's orders. It has been felt that by denying owners the right to appeal to SC, an opportunity to review Cl 15 of the widely used NYPE46 had been lost.

ECC in '13 in White Rosebay Shpg v HK Chain Glory Shpg determined that where Owners had initially affirmed a CP in the face of Charterers' repudiatory conduct, they were entitled to terminate if there was evidence that - after Owners' affirmation - Charterers had continued to act in repudiation of the CP. The case was remitted to the arbitrators to determine whether there was evidence that the Charterers had so acted.

Dutch CA in Dana Petroleum v Vos (VOS SYMPATHY) held that Himalaya and Knock for Knock clauses in Supplytime 05 were valid (giving 3rd parties benefits of such indemnities) under Dutch law in that they did not conflict with standards of `reasonableness and fairness' prescribed by Art 6:248.2 of Dutch Civil Code. This thus facilitates choosing Dutch law in CPs, as it was not so, if the Code was 'easily' applied earlier.

In Proton Energy v Orlen Lietuva ECC in '13 held that a binding contract had come into existence during nego when main terms agreed as a `spot deal' in speed of market, leaving (important) details to be agreed/discussed.

In '13 HKCA in Grand Pacific Holdings v China Holdings rejecting that Arbitral award should be set aside for being in contravention (procedures was not per agreement and unable to present case), noted in obiter that the conduct complained must be sufficiently serious or egregious denying due process, and added that the court had discretion to refuse to set aside award if violation had no effect on outcome or where there was no prejudice.

ECA in 13 in Fortress Value v Blue Sky, in the light of s.8 of Contracts (Rights of 3rd parties) Act '99, construed an agreement containing an Arb clasue holding that a non-party to it, was not entitled to stay legal proceedings against it, where it sought to rely on an exclusion of liability in it. This would be so, even though had the third party wished to exercise its right to indemnity, it would have been bound by the Arb clause in the agreement.

Unless English law is explicitly agreed in P&I contracts, Clubs cannot prevent third parties taking direct action in other countries as has become obvious on ruling by Commercial Court of Tarragona Spain in Oct '13 that it is not customary (contradicting a Spanish SC judgment of 2003, and so could be reversed on Appeal) and so it had jurisdiction to decide under Spanish law and thus allowed claim recovery against Club.

In Yilport Konteyer Terminali V Buxcliff KG & Ors (CMA CGM..) ECC in '13, ruling on LOI issued by Club subsequent to collision and container cargo damage, refused to interpret its terms with wider impact, but granted some disputed claim costs for box handling under LOU and adversely remarked on evidence given by expert.

In Versloot Dredging v HDI Gerling (DC Merwestone) ECC in '13 denied owner's claim from underwriters for `fraud', though claim of flooding and subsequent losses was upheld under `perils of the sea'. (It is on Appeal)

In Caresse Navigation Ltd v Office National de L'Electricite & otrs (Channel Ranger), (Coal Cargo hot spots wetted with fresh & salt water whilst dischg in Morocco, Amwelsh 79 head CP, Voy Chrtr on Proforma CP, Congen 94 BL)), though receivers (arrested v/l and allowed discharge on P&I LOI + Bank guarantee) wanted hearing in Morocco invoking Hamburg Rules, ECC in '13 held that Arbitration/English Law was incorporated

ECC in ’13 in a case involving RBS as agent of Torre asset Funding (for real estate) –affecting syndicated funding for shipping as well- ruled that a strict approach had to be taken on the construction of agency role; there is no legal duty on agent bank to pass on information, and even where there is such a legal duty, courts may be reluctant to find causal link between losses suffered and breach of duty. Even if there was a duty to pass on information, it would not have been reasonably foreseeable as flowing from breach.

In Ust Hydropower Plant v AES Hydro UK SC provided guidance as to power to grant anti-suit injunction to restrain commencement or continuation of a foreign (non-EU) court proceedings where arbitration is not provided for.

In Aspect Contracts (Asbestos) Lt V Higgins constn ECC in ’13 held that limitation period was 6years from the latest date when contract was performed under contract and tort.

In Gujarat NRE Coke & Anr V Coeclerici Asia, ECC in ’13 endorsed agreement of suspending Arb proceedings with an Award by Consent (per TOMLIN Order) to be enforced if there was further breach, holding that further substantive submissions were not necessary (for Consent Award to become effective and could be enforced), and citing TERNA, highlighted Court’s unwillingness to interfere with Arb; Award was enforced by Aust FC.

In Ds Denrite Fonds Titan Glory v Titan Maritime ECC in ’13 re adjustment of hire held that commercial common sense should not override construction, though in Chartbrook v Persimmon HL allowed that liberty.

In Louis Dreyfus v Govind Rubber Bombay HC in 13 held that by acting in furtherance of Sales contract, a contract had been entered into and by incorporating Singapore Commodity Exchange Rules, Arbitration had been agreed by the parties under `reference’.

In Deep Trading v IOC Indian SC in ‘13held that in cases arising under s11(6) the right to make appointment of Arbitrator is not forfeited within 30 days, but it must be made before the court is approached.

In ONGC & otrs v Aban Offshore, Indian SC in ’13 held that interpreting a contract is within Arb’s jurisdiction

In Shri Lal Mahal Ltd v Progetto Grano Spa Indian SC in ’13 expressly overruled an earlier SC judgement, and held that enforcement of a foreign award could not be challenged on the grounds of ‘patent illegality’.

Indian SC in ’13 in Benari Krishna Committee & Ors v Karmyogi Shelters noting the difference between the ‘party’ as defined and its agent held that service on the advocate/agent would not suffice.

Indian SC in ’13 ordered Vale and AMCI to pay 159M$ to SAIL, upholding HC view there was no valid ground for court to interfere in foreign award under s34. The award rose out of failure to deliver 75% of 1mt coal in ‘07 under long term contract. Flooding of mines was cited as cause and Vale and did not settlement meetings.

Indian SC in ’13 in Antrix v Devas, leaving the conflict between ICC and UNCITRAL Rules to be resolved by Arbitrator, held that once appointment of Arbitrator under ICC Rules is upheld, proceedings initiated there under though challengeable sould not interfered with under s11of ‘96Act.

Indian SC in ’13 in Lal Mahal v Progetto Grano re Appeal on enforceability of GAFTA Award narrowed interpretation of ‘public policy’ in earlier cases, by allowing the foreign award to stand. A development indeed!

Owners of ’89 built caper Magdalene were fined in ’13 by Aust court for pollution caused by 72kl fuel that had leaked into ballast tank; Master was found guilty, but conviction was not recorded against him.
In Great Elephant v Trafigura Beheer (CRUDE SKY) ECA in ’13 held that prima facie there was breaches of contract, delays were not beyond reasonable control, force majure exemptions were not applicable and that the illegal act of the Minister did not break the chain of causation stating ïf every arbitrary exercise of power in any

country of the world where ships come and go were sufficient to displace serious breaches of contract that might be an encouragement of lawlessness."

In Trafigua v Montanari the Valle di Codoba, ECC in '14 held that stealing of part cargo by pirates and thieves was not a transit loss covered under but it could fall under Hague and Hague Visby exemptions. Expert witness as a "legal expert" to give opinion on contentious clause, did raise some questions. Uphled by CA in '15.

HK Court in '14 ordered CMA CGM to pay Igal Dafni US$2.3m plus costs towards two years unpaid salary and three years bonus for his dismissal after an year into three year contract. Earlier he had been cleared in Singapore for a case filed against him by his former employees Zim.

Shanghai Maritime Court arrested BAOSTEEL EMOTION in Majishan after MOL failed to pay compensation of around $28.3m to Zhongwei Shipping. In 2007 the Court had ruled that MOL had to pay unpaid charter hires, losses and other damages linked to two vessels chartered from Chinese firm in '36,commandeered by Japanese Navy and later sank. The Appeal against it had been turned down by Shangahi Higher People's Court and the Chinese Supreme People's Court in '10. In '07 Shanghai Maritime Court had issued an order to pay compensation. The case was filed in '88 by grandchildren of the founder of the shipping firm. His son had lost a suit against the government in '74 due to Limitation. Two vessels had been leased to Daido Kaiunon 12month charter before Sino-Jap war of '37. In '64 Daido had merged with Nitto Shosen to form Japan Line which later merged with YS Line to become Navix Line; Navix had been absorbed into MOL in '98.Earlier MOL had paid DALU $9.5m as out of court settlement for unpaid charter hire and damges during wartime, after Shanghai Maritime Court had ruled so. Compensation cases regarding forced labour in Japan during wartime have been filed in China against Japanese firms lately.

ECC in '14 in Beijing Jianlong Heavy v Golden Ocean decided that in the context of a number of claims in arbitration under guarantees issued b y a Chinese party tribunals had jurisdiction to hear substantive disputes. ECC affirmed that arbitration clause is distinct and a different agreement from other provisions in contract of which it forms part. Arb clause is not swept away by any underlying illegality or unenforceability of the rest of the agreement. If the assumed facts that the guarantees were illegal under Chinese law were proven in the arbitrations, then their illegality would be established and the guarantees would not be enforceable. That outcome would not breach the obligation of international comity between nations.

In Yuzhny Zavod Metall v Eems Beheerder –EEMS SOLAR, Registrar of English Admiralty Court decided that Carrier could rely on a CP term providing for stowage to be responsibility of Chrtrs effectively incorporated into BL as defence to claim brought by a third party BL holder for cargo damage by bad stowage.

ECC in '14 in WISDOM C (Martrade v United Enterprises) held that the Late Payment of Commercial Debts (Interest) Act 1998 was not applicable Arb was to be in London, removing doubts about impact of said Act.

In ETA v Prime Mineral ECC in '14 held that the provision to resolve through friendly discussion was prima facie an enforceable condition precedent to the right to arbitrate. On facts, such provisions had been complied with before Arbitration commenced, it was held that the Tribunal had jurisdiction to determine the dispute.

ECC in '14 in Fulton V Globalia (New Flamenco) held that owners were not obliged to give credit to charterers for increase in value of vessel they had obtained by selling, as repudiation was not in law, cause of gain that owners had obtained. CA reversed ECC and upheld Arb award stating that the beneficial sale had been caused by the breach was a finding of fact which could not be disturbed by dressing it up as a mistake of law, holding that on Chrtrs early repudiation of TC, owners were obliged to give credit to Chrtrs for selling v/l for a greater sum than value at contractual date for redelivery, as repudiation was the cause of capital gain, it having arisen out of consequences of CP breach and being done in ordinary course of business, where there was no available market to charter the vessel. Supreme Court reversed decision of CA and reinstated that of HC holding that, on Charterers' earlier repudiation of Charter, Owners were not obliged to give credit to Charterers for capital value of selling V/L for a greater sum than value of v/l had there been a notional sale at contractual date for redelivery under the Charter, as repudiation was not the legal cause of the capital gain and the sale of the Vessel was not a successful act of mitigation for the lost income stream of hire under the Charter caused by the repudiation.

ECC in ’14 in Viscous Global Investment v Palladium Nav Copr The QUEST, determined that P&I LOU when considered in the context of dispute as a whole, and applying ordinary principles of contractual construction with common sense, binds the carrier and BL holder to arbitrate cargo claims under BL as per terms of LOU, as such agreement supersedes the CP arbitration agreement incorporated into BL.

Singapore CA in`14 in Out of the Box v Wanin Industries rejected broader approach to determine remoteness of damage for breach of contract put forth in ACHILLEAS (whether contract breaker had assumed responsibility for losses incurred - and set out an analytical framework for deciding questions of remoteness of damage. SCA approved of Robert Goff J’s statements in PEGASE holding that it was important not only to consider what knowledge a contract breaker had or should be taken to have had at the time he entered into the contract, but also to have regard to the circumstances in which that knowledge had been acquired. On such basis, most of the damages suffered by Out of the Box were too remote to be recoverable from Wanin Industries.

In *Kairos Shipping & others v Enja & Co (Atlantik Confidence)* upholding RENA, over-ruling Admiralty Court, ECA held that LOU provided by P&I Club could in principle be used to establish a limitation fund as an alternative to a cash payment into court.

In SANKO MINERAL ECC in ’15 held that a party with statutory right to an Admiralty claim in rem, which had issued its claim after the Admiralty Court had ordered sale of the v/l, did not lose its right to enforce the claim. The claim in rem could be enforced against the sale proceeds provided that the person liable in personam was the beneficial owner of the sale proceeds.

In Carlos Soto SAU v A P Møller – Maersk AS (SFL Hawk) ECC held that because of rejection clauses in irrevocable Letter of Credit, ownership of goods will not pass to buyer vide B/L on delivery/endorsement, but OWNERSHIP DID PASS as per Sec 25(1) of Sale of Goods Act 1979.

In Shagang South-Asia (HK) v Daewoo Logistics (NICOLAOS A) ECC in ’15 held that express choice of the seat of arbitration implied a choice of curial Law.

In ’15 HKCA in Antwerp Diamond Bank NV v Brink’s Inc in a case involving carriage of goods by air where the goods were mis-delivered to the buyer without payment or the consent of the plaintiff bank, CA overturning decision of trial judge held that the bank was entitled to sue the carrier for conversion as the seller had pledged the goods in its favour. The pledge was completed when the goods were delivered to the freight forwarder for carriage under an air waybill showing the Bank's agent and receiving bank in Hong Kong as consignee.

In ’15 HK Court of First Instance in th*e* ALAS renamed *Kombos* refused Chrtr’s plea to strike out in rem writ and arrest warrant on the grounds that the shipowners’ cause of action in rem did not merge in the arbitral award so long as, and to the extent that, it remained unsatisfied. Plaintiff shipowners had obtained an arbitral award in London against chrtrs for unpaid hire and damages, but award had remained unsatisfied. Shipowners then issued an in rem writ for unpaid hire and damages in HK and had arrested there a vessel owned by Chrtrs.

ECA in ’15 in Standard Chartered Bank v Dorchester LNG (2) Erin Schulte held that completion of indorsement of BL by delivery required voluntary & unconditional transfer of possession by holder to indorsee & unconditional acceptance by indorsee under section 5(2)(b) of COGSA ‘92. In this case indorsee had not accepted BL on first presentation under LoC; nevertheless holder’s claim against indorsee sounded in debt (rather than in damages). When indorsee later paid debt at a time when cargo had already been delivered to a third party, there was deemed to be an indorsement of BL pursuant to LoC. In consequence, title to sue carrier under BL misdelivery of cargo vested in indorsee under section 2(2)(a) of the 1992 Act.

ECC in Hamburg Bulk Carriers the GLORY SANYE in ’15 setting aside Arb award held that obligation to redeliver north of Suez by Chrtr (though there was a diversion to discharge cargo near Port Said) was *res inter alios acta* -a thing done between others does not harm or benefit others under doctrine that holds that a contract cannot adversely affect rights of one who is not a party to the contract.

ECC in MSC v Cottonex in ’15 held in inordinate delay in taking delivery of cargo that carrier was obliged to accept repudiatory breach where there was no legitimate purpose in keeping the contract alive.

ECC in Impala Warehouse v Wanxiang (Singapore) in ’15 holding that the Warehouse receipts held to evidence as contractual terms (as opposed to being mere receipts) granted antisuit injunction.

ECC in ’15 in PST Energy v OW Bunker –RES COGNITAS- where bunker had been sold on credit terms containing retention of title clause and acknowledgement that bunkers may be consumed before payment, (resulting in no title or property to pass at time of payment), held that such sale fell outside “contract of sale” outside Sale of Goods Act. So sellers were not obliged to comply with s49 to maintain an action for price and so unpaid sellers could sue for payment as debt (even where sellers had failed to pass property).

Singapore HC in ’15 in Coal & Oil v GHCL dismissing an appeal stated that per ’07 SIAC Rules mere power than duty was imposed on the Arb Tribunal, to declare proceedings closed. As such, absence of such declaration did not amount to breach of natural justice; also that 19 month delay was not a violation of public policy to set aside the award.

ECA in Metall Market OOO v Vitorio Shipping (Lehmann Timber) in ’15 on shipowner exercising lien for GA against failure of consignee to issue bond supported by insurer’s guarantee, instead providing only insurer’s guarantee for a small portion of cargo, and so diverting vessel to another port and warehousing cargo, held that security demanded by shipowner was reasonable, acceptance of partial guarantee was not a waiver or discharge of lien, and so was entitled to recover storage expenses in exercising lien.

ECC in Maestro Bulk v Cosco the “Great Creation” decided that damages for untimely redelivery notices are prima facie calculated by reference to the period between (a) the actual redelivery date, and (b) the notional redelivery date had redelivery occurred after all contractually required notices had been properly given, starting from the date of the notice actually given. A claim for difference between market hire rate and lower hire rate of follow-on fixture (the untimely notice of redelivery having deprived owners of the full contractual notice period in which to find a follow-on fixture), for the full duration of the follow-on fixture, **was rejected**.

ECC in Glencore Energy v Cirrus Oil Services in ‘15 held that a binding contract existed between the parties for the sale of crude oil when the defendant had accepted a “firm offer” by claimant which had set out main terms. Though the full trading name of buyer was not stated in the offer, it could be made clear by looking at previous dealings between the parties. Further, claimant’s claim for damages under ss.50(2) and (3) of Sale of Goods Act 1979 was not one for lost profits, but to compensate seller for loss of the bargain. As such, it was not excluded by Clause 32.1 of BP 2007 General Terms and Conditions for CFR Sales incorporated into the contract.

ECC in ’15 in Glencore v MSC - MSC KATRINA, concerning use of voluntary ERS –Electronic Release System- introduced by the port, ruled that ERS did not discharge a carrier from obligations to deliver in accordance with BL. Computer generated pin codes had been issued to negotiable BL holders at discharge port to take delivery. It was held that provision of pin code fell short of provisions in COGSA ’92. So it had turned out to be a tool in facilitation. ECA in ’17 later found carrier liable (part of cargo was stolen before Glencore collected it, probably because pin codes were hacked). Its supplying pin codes to Glencore and instructing to release cargo against correct pin codes did not fulfil its obligations as carrier to deliver to Glencore.

ECC in Louis Dreyfus v MT Maritime in ’15 held that future trading losses can be recovered as damages for repudiation of a voyage charter party. It was pointed out that previous decisions (based on difference between that could be earned and that in fact was earned) were only prima facie and can be departed from if a ship owner proves that he had suffered a different kind of loss. This is in line with Flame v Glory Wealth (’13) and Bunge SA v Nidera (’15) striving to achieve compensatory principle, comparing what actually happened after a breach with what would have happened had there been none.

Singapore HC in Precious Shipping & Ors v OW Bunker FE & Ors – 2nd case in regard to problems arising from OW Bunker bankruptcy, Court determined that interpleader relief (procedure whereby a party holding property facing competing claims does not know to which claimant property should be released seeking Court’s aid in resolving the matter) could not be granted to parties (principally ship charterers) that had purchased bunkers from intermediate sellers – the OW companies - as (amongst other reasons) in Singapore the physical suppliers, who had sold the bunkers to OW companies but not been paid for them, had no prima facie claim against those bunker purchasers. So no competing claims on which interpleader jurisdiction could be founded.

In Royal & Sun Alliance v ECM a USDC in ’15 held that though Carmack Amendment was applicable, there was `material deviation’ due to security failure; also held that said Carmack did not provide for cost recovery. US 9th Circuit Court of Appeals Reports:CROWLEY MARINE SERVICES v. MARITRANS. The district court credited Maritrans' arguments, finding that because the two vessels were operating according to agreed maneuvers, Rules 8 and 13 of the COLREGS did not apply. To reach this decision, the district court invoked

Rule 2, which provides that "[i]n construing and complying with these Rules due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which may make a departure from these Rules necessary to avoid immediate danger." Rule 2(b). Although noting that the plain language of the special circumstances exception in Rule 2 did not provide such an exception on its face, the district court found that "courts have either expanded the scope of Rule 2(b)'s special circumstances or have created a wholly separate category of special circumstances involving vessels operating in concert and pursuant to agreed manoeuvers." Thus freed from the restrictions of Rule 8 and Rule 13, which would have focused on Maritrans' fault for failing to avoid the Sea King, the district court found Maritrans to be only 25% responsible for the accident. The judgment of the district court is REVERSED, and this case is REMANDED for further proceedings consistent with this opinion.

Netherlands SC in Kingdom of The Netherlands v Owners of yacht Qubio held that owners are not only liable for the costs of removing the wreck, but also for the costs of other action that the Dutch State can reasonably be obliged to take, such as marking the place where the vessel sunk, even if this is done merely as a temporary or precautionary measure. Earlier case law of the Supreme Court of the Netherlands had held that the owners of a sunken vessel were liable for the costs of removing its wreck if the wreck created such a danger that the Dutch State was reasonably obliged to remove it.

In '15 Indonesian SC upheld ruling of West Jakarta HC in PT Bangun Karya Pratama Lestari v Nine AM Ltd, which nullified and voided a loan agreement between the parties. It was on basis that contract did not have an Indonesian version and so ran foul of Law 24 of 2009 ("Indonesian Language Law").

In Wellesley v Withers '15 ECA held that where a cause of action lies concurrently in contract and tort, the contractual remoteness test would apply.

In a collision involving car carrier City of Rotterdam departing Immingham under pilotage and inbound RoRo Primula Seaways in Dec'15, both Master & Pilot of outbound v/l were faulted and sentenced to four months in prison for their involvement. Capt. Ruslan Urumov and pilot Gehan Sirimanne pleaded guilty to conduct of endangering ships; Pilot had to pay $60,000 in court costs too that was covered by his former employer ABP.

In '16 Singapore CA in STX Mumbai v Bunker suppliers held that insolvency amounted to anticipatory breach, in the said case as there was close biz relationship between the defaulter and parent insolvent company.

In '16 ECC in Louis Dreyfus SA v MT Maritime Management BV (MTM Hong Kong), involving repudiation of a VC, upheld an Arb award that had held damages for positional loss were recoverable in addition to profit loss on repudiated charter. When assessing damages, primacy was to be given to the compensatory principle. Thus, subject to principles of causation, mitigation & remoteness, claims for losses resulting from repudiation of a VC were not limited by reference to prima facie measure of damages established in Smith v Thomas M'Guire, namely, for loss of profit on the repudiated charter for unexpired period of CP.

ECA in '16 in Shipowners' Mutual P&I v Containerships Denizcilik Nakliyat, clarifying test to be applied in determining whether Clubs must defend claims in jurisdiction in which they are brought or whether Clubs can rely upon choice of law/jurisdiction within Club rules and seek an anti-suit injunction preventing any action from being prosecuted abroad, found in favour of the Club on all contentious points, dismissed appeal, granting anti-suit injunction as maintainable, supporting English Law/London Arb against proceedings in Turkey.

UKSC in '16 in PST Energy & Shpg LLC & Product Shipping and Trading SA v OW Bunker Malta Ltd & ING Bank NV (RES COGITANS) upheld decisions of CA & HC ruling the effect that the bunker supply contract in said case was not a contract of sale but *sui generis* [of its own special type}. Significantly, it allowed Owners right potentially to consume bunkers for propulsion before paying for them. Thus Owners could not escape paying for bunkers by arguing that Sellers had failed to transfer property in the bunkers to them, which property sellers did not have as they had not paid their own suppliers.

In ’18 US CoA for 2nd Circuit in a case related to OW bunker saga, affirming USDC for Southern Dist of NY, agreeing with USCoA of 11th Circuit, ruling that lien for bunker supply can be created only by law -and not through contract- held that maritime lien for bunker supply belongs to bunker trader not physical supplier. A v/l’s chrtr had ordered bunkers from O.W. Denmark, who had subcontracted to O.W. USA, who in turn had subcontracted with physical supplier, CEPSA. ING bank had become the assignee of O.W. Denmark’s rights by way of a financing agreement. The case is also before the U.S. Courts of Appeal for the Fifth and Ninth Circuits, and decisions from those courts ought to be issued in the next several months; appeals therefrom too.

ECC in Star Bulk & Tankers (Germany) v Cosmotrade SA (Wehr Trave) addressed as to whether or not the Charterers had the right under the charter to order the vessel to perform a second voyage, despite the vessel already having completed one voyage or “trip”. It found in favour of Charterers, emphasising that a trip charter is a time charter, where a vessel is taken on hire for a period of time rather than chartered for a single voyage from one area to another. During this time, v/l remains under the directions and orders of the Charterers in respect of its employment and so the use of the word “trip”, then, is misleading and hence a “red herring”.
The Court found in favour of the Charterers on the following grounds:
a. There is no single definition as to what constitutes a “trip”. A trip could be a single voyage carrying cargo from one port to another or any number of possible permutations of this, such as multiple loading ports with discharge at one singular port, or perhaps a series of consecutive loading and discharging operations, all at different ports along a given route. All might be described as involving a single “trip” and so, therefore, the reference to “one” time charter trip is of little if any assistance.
b. Whether or not the Charterers were entitled to make a second voyage in this particular instance depended very much upon the construction of the charter and specifically whether or not the port of Sohar was excluded as a loading port. The Court found that Sohar was within the agreed trading limits and was not inconsistent with the contractual route, since it fell between Dammam and the permissible discharge ports of New Mangalore/Cochin, and between Dammam and Colombo (which was the closest redelivery port).
c. Neither, as was submitted by the Owners, were Charterers restricted from loading at Sohar by the use of the phraseology “…via eastmed/black sea…” and “to redsea/pg/india/fareast…” in the charter. Use of the words “via” meant “by way of” and “to” simply denoted contractual route. Therefore Charterers were entitled to direct the vessel to load and discharge as they wished, within the agreed trading limits and on the contractual route.
4. Finally, the Court rejected the Owners’ argument that if the Tribunal was correct that the Charterers had the right to perform another voyage, then the charter would be open-ended. The Court found that the Charterers were restricted by the agreed trading limits and by the contractual route. If the Owners were correct in their position that the trip should have ended at the final discharge port of Dammam, this would have been commercially unattractive to the Charterers, who would have been forced to ballast the vessel to the redelivery area and pay hire to the Owners without the possibility of earning freight.

UKSC in ’16 in Versloot V G. Insurance held that underwriter’s fraudulent device defence (that in common law makes the claim infructuous) for an insured peril does not apply to "collateral lie" that turns out to be true facts.

In Baker v. Gulf Island Marine Fabricators US CA for 5th Circuit affirmed denial of benefits under Longshore and Harbor Workers' Compensation Act (LHWCA) to an employee allegedly injured in employer's waterside marine fabrication yard while building a housing module designed for use on a tension leg offshore oil platform (TLP). The court held that the TLP is not a vessel and that plaintiff's activities did not have a sufficiently substantial nexus to outer continental shelf (OCS) operations.

In Golden Endurance v RMA Watanya ECC in ’14 had ruled that English Courts had jurisdiction under Paramount Clause of H/H-V rules. In ’16 in a parallel proceedings ECC ruled that Moroccan judgment (where Hamburg Rules applied) was not entitled to recognition in England.

In a groundbreaking judgment in ’16 in Atlantik Confidence loss due to fire etc, limits under the Convention on Limitation of Liability for Maritime Claims 1976 (as amended) was broken, concluding on deliberate scuttling.

In AQASIA in ’16 ECC held that Art IV Rule 5 of Hague Rules does not apply to bulk cargoes due to lack of relevant ‘package’ or ‘unit’; this doubt has been open for last 90yrs! In ’18 ECA dismissed appeal upholding HC’s judgment that HRs "package or unit" limitation provision does not apply to bulk cargo; in any event it was

held there was no applicable "unit". If carrier had succeeded, outcome could have limited recoveries for many bulk cargoes; It is a positive decision for cargo market.PS***: Hague Visby & USCOGSA includes bulk cargoes!***

In ’16 in Essar v Norscot ECC in landmark ruling held that Arb Tribunal can award litigation funding costs (including uplift & success fees) paid to professional litigation funder as ‘other costs’ under s59(1)(c) of ’96 Act

ECC in ’16 in Shagang South-East Asia Trading v Daewoo Logistics held that where parties had agreed on venue of Arb there had to be clear words to displace presumption that Curial law (law governing procedure of Arb) was the law of the place of arbitration. A provision “English law to be applied” did not suffice, as it was most likely referring to choice of substantive law, that is the Law governing claim made in the Arb reference.

ECC in ’16 in FSL-9 & Otr v Norwegian Hull Club (FSL NY) decided that the Club was entitled to summary judgment in its favour basis that owners did not have liberty to apply to court to require Club to increase amount of its undertaking under LoU issued to Owners subject to English law & exclusive jurisdiction of London HC.

In Regulus Ship Services P.Ltd -v- Lundin Services (AHTS HARMONY 1) ECC in ’16 has clarified meaning of ‘light ballast condition’ and defined scope and effect of a delay claim under the TOWCON form. Guaranteed speed was not considered to be implied (requiring business efficacy to be imparted).

In KAMILLA ECC on appeal from Arb upheld in ship arrested by authorities on finding seawater wetting 1% of cargo, suffering substantial financial loss, that foreseeability was not the right test, but seaworthiness was.

ECA in ’16 in MSC v Cottonex Anstalt held that demurrage on cargo container was up to the time that it was no longer possible (frustration) to perform the obligation. At first instance demurrage had been granted till shipper had indicated that they could not deal with the cargo (dispute between cargo interests), viz: repudiation.

In ‘16 UKSC overturning lower courts in DC MERWESTONE found for owners against H&M insurers holding that ‘the lie is dishonest but the claim is not’ wherein owners had lied about a flooding alarm.

In ’16 USCA 5th Circuit acquitted Ch Eng Fafalios of indictment by Jury and lower court about ORB entry (whistle blown and admitted by him) finding that Master is the responsible person per US ACT; it is on appeal.

ECC in ’17 in ST Shipping & Transport v Kriti Filoxenia held that in the absence of a specific provision in Charterparty, Charterers lost their right to cancel the Vessel for late arrival, if they had already exercised their right to re-nominate the port of loading.

ECC in Transgrain Shpg (S’pore) Pte Ltd v Yangtze Navigation (HK) in the context of a claim by Owners against Charterers for indemnity under the Inter-Club Agreement in respect of cargo damage arising from delay at discharge port, Court held that the word “act” in clause 8(d) of Inter-Club Agreement bore ordinary and natural meaning of “act” and did not require that there should be fault. Charterers’ action in ordering v/l to wait off discharge port for 4 months was an “act” for purposes of that clause and therefore Charterers should bear 100% of the cargo claim in accordance with the Inter-Club Agreement; in ’18, ECA upheld on appeal.

ECC in ’17 found against owners of ARUNDEL CASTLE1 in appeal against arb award, Recap of main terms over riding detailed CP. Meaning of ‘port limits ’was considered, which relied upon NOR being valid as. NOR had to be tendered within port limits. Owners’ argument that meaning of port limits should include area in where vessels are commonly ordered to wait by port authority and where the port authorities exercise control of shipping, even if it is outside the confines of the port as defined in charts was rejected by Tribunal and Court.

In Maersk Tangier in '17 it was held that: Hague-Visby Rules were compulsorily applicable, notwithstanding that carrier had issued waybills rather than BL. Judge declined to follow El Greco v. Mediterranean Shipping [2004]2 Lloyd’s Rep 537, in which the Federal Court of Australia held that Article IV Rule 5(c) of the Hague-Visby Rules requires cargo to be enumerated in the bill of lading “as packed”. The Court gave further guidance on what constitutes a “unit” in the Hague and Hague-Visby Rules, following the decision of Sir Jeremy Cooke in The Aqasia [2016] 2 Lloyd’s Rep 510. The judgment also contains useful guidance on how the package limits in both sets of Rules are to be calculated in practice. The claim had arisen out of damage to a cargo of large unpackaged pieces of tuna stuffed in three refrigerated containers, during carriage by the Defendant container line. The Judge was asked to determine a number of preliminary issues relating to package limitation.

Were the Hague-Visby Rules compulsorily applicable? It was common ground that the contracts of carriage initially contemplated the issue of bills of lading, but that after delays during carriage the parties agreed that waybills would be issued instead, to prevent further delays at the discharge port. The Hague-Visby Rules only apply to contracts of carriage which are 'covered by a bill of lading' (Article I(b)). A waybill is not a bill of lading for the purposes of the Hague-Visby Rules: The Rafaela S [2005] 2 AC 423. The carrier therefore argued that because waybills had been issued, the Hague-Visby Rules did not apply. The Claimant successfully argued that the Hague-Visby Rules nevertheless had the force of law in relation to the contracts of carriage, pursuant to the Carriage of Goods by Sea Act 1971. The relevant question is not whether a bill of lading is actually issued, but whether the issue of a bill is contemplated under the terms of the contract: this is established by a series of English and Commonwealth cases in which bills of lading were contemplated but never issued, usually where the cargo was damaged during loading and was therefore never actually shipped (e.g. Pyrene v Scindia [1954] 2 QB 402). The Judge therefore accepted the Claimant's argument that the Hague-Visby Rules could apply not only where no bill of lading or other carriage document was issued, but also where a waybill was issued in place of a bill of lading. In such a case, the contract was 'covered by a bill of lading' for the purposes of Article I(b).

What is a 'unit' for the purposes of Hague Rules & Hague-Visby Rules? The carrier argued that the individual tuna pieces could not be said to constitute 'units', because they could not have been shipped breakbulk (e.g. in a reefer vessel) without further packaging. Each piece was approximately 20 to 70 kg, and unpackaged. In The Aqasia [2016] 2 Lloyd's Rep 510, Sir Jeremy Cooke recently held that 'unit' meant 'a physical unit for shipment' such that there were no 'units' in a bulk cargo. But that did not address what was required for a physical item to constitute 'a physical unit for shipment'. Andrew Baker J declined to follow the reasoning of the majority. and held that Article IV.5(c) does not require enumeration of the cargo "as packed". It merely requires that the number of packages or units inside the container is accurately stated in the bill of lading. In this case, the waybills stated that the containers contained a certain number of pieces of tuna. Each piece of tuna was in fact a 'unit'. The waybills therefore accurately enumerated the number of units in the containers.
Calculation of the limit: The judgment also contains useful guidance on how the applicable limits should be calculated. The Judge held that the package / unit limit applies to each individual package. As such, if the limit is £100 per package and there are two packages in the container, of which one suffers £500 of damage and the other suffers £1 of damage, the claim overall will be limited to £101 (not £200).

Washington State SC in '17 in Tabingo v American Marine LLC, guided by special protection afforded to seamen whohave been considered wards of Admiralty, held that seamen may recover punitive damages broadly in an unseaworthinesss claim under general maritime law.

ECC in '17 in Oldendorff GmbH & Co KG v Sea Powerful II Special Maritime Enterprises (Zagora) held that owners were entitled to protection of a LOI since disport agent had acted on behalf of person named in LOI as the one to whom cargo delivery was to be made. Same would have been the case if owners had had an honest belief that disport agent was acting on behalf of person named in the LOI, even if that was not in fact the case. In De Wolf Maritime v Traffic Tech (CAP JACKSON) where value of cargo stowed on deck had not been declared and clean BL issued without mentioning stowage on deck, Canadian Federal Court ruled in '17 that Carrier was liable for loss, but limitation of liability was allowed (HV Art IV (5)(a)) as there was no reckless act. It is to be noted that such a case of recklessness was not considered in depth as such a determination would have required an assessment of facts and not just a question of law.

Judicial Committee of UK Privy Council in Bahamas Oil Refining Co v Cape Bari Tankschiffahrts decided that, while it is permissible for owners of a vessel to contract out of or waive their statutory right of limitation, on the true construction of the conditions of use in this case, the owners of the vessel had not agreed to do so; so they were entitled to a declaration of their right to limit liability for damage to a terminal caused by their vessel.

In Magellan Spirit, when owners sought to rely on an exclusive jurisdiction clause in CP (and amend BL so), to allow them anti-suit injunction against cargo interests in Nigeria, Court held that BL should not be rectified to incorporate CP jurisdiction clause as there was no relevant continuing common intention capable of supporting a claim for rectification. In ANNA BO, cargo interests arguing against incorporation of CP tried to argue that incorporation of CP into BL was limited to freight; court rejected it saying that CP was clearly incorporated.

In L&L Marine USDC for ED of Louisiana applying the concept that, when a tug boat leads a towing operation, the tug, through its "dominant mind," is responsible for safe navigation of entire flotilla and "has the duty to exercise such reasonable care and skill as navigators would exercise under similar circumstances" in conjunction

with language of lead tug owner's H&M policy found that the hull insurer was required to reimburse tug owner's protection and indemnity ("P&I") insurer for cost of defending an underlying lawsuit; it is on appeal.

Singapore HC in Posidon and antr v/l, confirmed that, in determining the order of priorities between competing claimants to the proceeds of a ship's sale, the proposition that the established order of priorities may be altered if the equities in any particular case demand it, is part of Singapore law, emphasising that established order of priorities may only be departed from, in exceptional or special circumstances.

Federal Court of Canada Ontario in De Wolf Maritime Safety BV v Traffic-Tech International Inc (Zagora) has decided that cargo carried on-deck, undeclared as such, was still to be considered as 'goods' under Hague Visby Rules and so the Rules still applied carrier could rely on the limitation of liability as stipulated in Art IV(5)(a).

Singapore HC in DSA Consultancy (FZC) v Eurohope unequivocally confirmed that its admiralty jurisdiction under its Admiralty Jurisdiction Act cannot, at present, be invoked by an action in rem for the sole purpose of obtaining security in aid of foreign court proceedings. It took the view that legislative intervention would be required to allow vessels to be arrested for such a purpose. The judgment also appears to suggest that if the law is not completely settled and there is arguably a basis for invoking Court's admiralty jurisdiction, the Plaintiff who obtains warrant of arrest on such basis may not be considered to have proceeded with an arrest in bad faith.

ESC in '17 in LONGCHAMP allowed Owners expenses incurred for crew during period v/l was detained whilst Owners were negotiating quantum of ransom demanded by pirates. Interpretation should be ***purposive*** and not literal, unconstrained by technical rules of English law or by English legal precedent, but on broad principles of general acceptation, directing attention to unadorned language of the article, was the take away handed out.

In '17 Louisiana Appellate court in Pile Driving v Chabert Insurance Agency found no liability on the part of insurance agent for failing to procure marine insurance cover for a vessel though insurance application had been submitted for quote and the certificate of insurance issued to the policyholder. It is a reminder that completing an insurance application does not mean that cover is bound, even where agent issues a certificate of insurance. The insurance agent had procured P&I and hull cover for two barges earlier; the 3rd vessel was subject of the case. Agent had submitted client's application to a marine insurance broker, who had sent it to its underwriter. When clients request marine cover on a vessel, they must fill out application which is submitted to underwriter for a premium quote. Agent explained that the quote would not be binding until received from underwriter and premium is paid. It turned out that agent had contacted marine insurance broker several times between date the application was completed and when the vessel sank in order to ask for an update on receiving the quote, but a quote was never received. The court affirmed trial court's decision. Appellate court determined that the agent was not responsible for the client's losses based on failure to use reasonable diligence to place insurance or to promptly notify client it failed to obtain the cover. The court also found that the client could not have reasonably relied upon certificate of insurance ***because the certificate, unlike the binder, contained a disclosure that it was issued for informational purposes only and did not amend, extend, or alter the policy's coverage.***

In '17 ECA in SCF Tankers (Fiona Trust) v Yuri Privalov & Otrs, in a Freezing order (Mareva injunction) and the resultant Cross-Undertaking, dismissing an appeal against an award of damages under crossundertaking for losses suffered by worldwide freezing injunction and security undertaking, upheld the order that appellants pay to respondents 59.8m$ in damages, plus 11.04 m$ as interest. It was on basis that respondents had established prima face that freezing order and security undertakings were effective causes of their loss. The ECA was not convinced that respondents' failure to make an application to court for permission to use secured funds for investments, (that could have been done to mitigate losses) meant that legal causation was not established. Further, the Judge at first instance was entitled to take into account the "practical dilemma" the respondents faced in making such an application and indeed, the appellants' likely opposition to the same.

ECC in '17 in Dainford Navigation Inc v PDVSA Petroleo SA on application pursuant to s44 of 96 Arb Act for sale of a crude oil cargo on MOSCOW STARS that was subject of a CP lien exercised by Owners in respect of sums outstanding under CP (and 11 other firms), in a ever first judgment, ordered for the sale of cargo.

In Sino Channel V Dana Shpg & Trdg considering issues of ratification, implied actual and ostensible authority, after detailed review of evidence of relationships and dealings, inferred that actual implied authority had existed.

ECC in ’17 in CSSA Chrtg&Shpg V Mitsui where there was no express ETA or date when v/l expected ready to load but cancelling date only, Chrtrs were awarded damages for owners failing to commence approach voyage. ECA upheld it in ’18 stated there was an absolute obligation to commence approach voyage in reasonable time.

ECC in ’17 in Teekay Tankers V STX Offshore & Shipbldg, because of the commercial terms that were left open (option to exercise liberty to order 3 more tankers on the 4 ordered) to be agreed by the parties, that was contended to be void for uncertainty and unenforceable, as no such term as to delivery dates could be implied, and so the option agreement was void. Had it been valid, the damages would have amounted to 117-139m$!

In Starnet v LA Marine, Louisiana DC in’17 ruled that no cover was available under time-hull insurance policy for v/l that had sank. Water had entered ER shaft stuffing boxes and packing gland assemblies. The policy had included a Liner Negligence Clause that covered losses caused by specified machinery including "breakage of shafts" & "any latent defect in machinery or hull." It provided that loss must not have resulted from want of due diligence by Assureds, Owners or Managers. Insurer had claimed, as defense, that insured violated the American Rule. The court explaining that American Rule consists of two warranties that federal maritime law implies in every time hull insurance policy: an "absolute warranty of seaworthiness on inception of the policy" and a "modified, negative warranty, under which insured promises not to knowingly send a vessel in an unseaworthy condition", focused on whether insured had exercised "due diligence", found that v/l sank because of leak through stuffing boxes caused by overstuffing of packing material against the shafts that had worn down and led to failure of compression seal around them, and explained that due diligence is judged under an objective standard, "rather than v/l owner's subjective beliefs regarding acceptable practices.

In CAPE BONNY Tankschiffahrts v Ping An Property and Casualty Insurance, wherein cargo insurers had declined GA contribution on basis that Owners were in breach of contract for failing to exercise due diligence before and at start of voyage to make vessel seaworthy as metal particles were present in lube oil system downstream of the filters, ECC in ’17 found that the history of crank web deflections showing increase to -0.28mm being unusual so indicating abnormal wear- and failure of prudent engineer to take bearing clearance measurements to check wear, was causative failure to exercise due diligence before and at commencement of voyage. Court finding that wear was most likely to have been caused by metal particles not properly filtered because of damage to filter mesh concluded that it was not causative of the casualty. Engine had relatively modest running hours, and crank web deflection readings on no 1 bearing were well within limits. Notwithstanding that, Owners are obliged to have a proper system to monitor the information provided by the ship and were expected to spot the problem well before the breakdown. Their failure to do so was a failure to exercise due diligence before and at start of voyage. Owners claimed they were not in breach of contract of carriage stating that main engine failure was due to sudden and catastrophic damage to #1 main bearing, it having been caused by metal particles which were present in L.O piping since the v/l was built, that these particles broke off and ended up damaging bearing and it was not discoverable by exercise of due diligence. Insurer pointed out that the damage to #1 main bearing was avoidable as crank web deflections two months before breakdown should have alerted Owners to the problem as also trends in the lube oil analysis. Engine manufacturers reported that it might have been possible to detect the "maturing bearing failure" as a result of crank web deflections. Expert for Owners giving evidence as to what would be expected of technical superintendent for Owners at the time when technical reports were sent in by Ch.Engr, was of the view that scrutiny of reports by technical superintendent or manager of v/l was not required unless C/E reported a problem, though it was contrary to duty of ship owners having to ensure safe and efficient management of v/l (under ISM) that cannot be discharged by relying on Master or C/E. Owner took position that L.O sample analysed by Shell was considered normal and the wear evidenced by crankshaft deflections did not make v/l unseaworthy; but when v/l broke down main bearing #1was stuck having turned 45 degrees; journal was also cracked. Court did also state that burden of proof falls on party claiming GA expenditures.

In ’17 because of a London Arb Tribunal finding that CP clause only incorporated liability provisions of ICA and not the requirement to provide security as contained in clause 9 of 2011 Agreement, IG has amended the recommended CP clause wording issued in 2016. The amended clause reads “Cargo claims as between Owners and Charterers shall be governed by, secured, apportioned and settled fully in accordance with provisions of the Inter-Club NYPE Agreement 1996 (as amended 2011), or any subsequent modification or replacement. It shall take precedence over any other clause purporting to incorporate any other version of the ICA-NYPE into CP.

In ’18 in JIA A HAI in a collision case, a court disposed of in summary judgment denying cargo insurer AIG to avoid GA contribution based on a plea of failure of systems to avoid collision and hence lack of due diligence.

In Seatrade v Hakan (Aconcagua Bay) ECC in '18 in an appeal pronounced that 'always accessible' means a vessel must be able to both enter and depart from berth, stating that `always' accessible meant always usable.

ECC in '18 in Kyokuyo v AP Moller Maersk held that the phrase "package or unit" had the same meaning in both Hague and Hague-Visby Rules. In containerized transport, it demands a consideration of the actual contents of the container. Looking through the notionally transparent walls of the container, in this case each individual frozen tuna loin constituted a unit of cargo. Regarding limitation of liability, a separate limit of 666.67 units of account applied to each frozen loin.

ECC in '18 in Luk Oil v Ocean Tankers (Ocean Neptune) decided that the terms of CFR sale contract were such that waiting time offshore enroute to disport (as agreed by way of an implied contract between Buyers-Sellers) was a claim for detention, to be compensated at the demurrage rate, plus the value of bunkers consumed for the waiting period. As such, claim for detention was not subject to the demurrage claims presentation time-bar.

ECC in '18 in Agile Holdings Corporation (Claimant) v Essar Shipping Ltd (Defendant) decided on appeal from Arb award, that for charterers to obtain a 50/50 apportionment of cargo liability between themselves and owners on grounds of the first proviso to clause 8(b) of ICA NYPE Agreement 96, CP must contain clear provision of intention to pass *complete* responsibility for cargo handling to shipowners.

In Deep Sea Maritime Ltd v Monjasa A/S (ALHANI) holding the words "in any event" in Article III Rule 6 are sufficiently wide (referring to cases in context of Article IV Rule 5 where package limitation under the Rules was held to be wide enough to apply to various types of breaches) ECC ruled that one-year time bar in Article III Rule 6 of Hague Rules is wide enough to apply to misdelivery claims including cargo delivery without BL if it had taken place within period of responsibility under Hague Rules. (it was on proceedings against Owners in various jurisdictions for damages of misdelivery of bunker fuel cargo discharged without BL to wrong party.) Adding that one year time limit was not said to be limited to specifics, it was stated that it is well-established that a cargo claimant cannot circumvent limitations and exclusions in the Rules by suing the shipowner for torts of negligence or conversion, or for breach of bailment; commencement of suit in other than exclusive in a jurisdiction incorporated in BL was also stated to be insufficient for the purposes of protecting the time-bar under Article III Rule 6.

ECA in '18 in Sinocore Intl v RBRG Trading (where in the seller had commenced Arbitration in China subject to Chinese law and obtained an award in respect of buyer's breach of contract -buyer having exhausted appeal process in China -seller seeking to the Chinese Arb award making an application that the award be, effectively, converted to a judgment of EHC, buyer resisting on the ground that it would be contrary to public policy to recognise or enforce it, {seller had by its own admission, in the course of the transaction, presented false bills of lading to the issuing bank to obtain payment under the letter of credit}, Chinese Tribunal having found that such fraud was not causative) echoing ECC, held that "a predisposition in favour of enforcement of NY Convention awards" and that references to public policy was "not intended to furnish an open ended escape route". Guiding principles were identified: Reliance on public policy to prevent enforcement should be approached with extreme caution; If tribunal (with jurisdiction) has found there is no illegality, English court should re-open investigation into facts only in exceptional circumstances; If, on facts, there is no illegality under governing law but that there is under English law, public policy requirements to refuse support of enforcement is to be viewed against Intl public policy and not English domestic public policy. For public policy to be relevant, degree of connection between relevant fraud and enforcement is important; as such sellers new ground before CoA that lower court had failed to apply new more flexible approach to illegality as propounded by SC in Patel v Misra failed as the approach in that case was not contemplated as being relevant to the context of enforcement of international arbitration awards. This decision reinforces English law approach to the international arbitral process.

ECC in '18 in Troy Maritime SA v Clearlake Shipping, decided that a tribunal's decision on whether deviation of a vessel had been for a "reasonable purpose" was a finding of fact, and could not be successfully appealed as a point of law under section 69 of the Arbitration Act 1996.

In a case hinged on whether a bank becomes an original party to BL when a sale falls through and new switched bills are issued, ECC in '18, up on the bank commencing arbitration proceedings against the owner in respect of claims under s10 of BL relating to another cargo on board the v/l, and owner bringing counterclaim against the Arab bank for demurrage and/or damages for detention under the second switch bill, the bank contending that it was not a party which had undertaken any obligations under second switch bill and was not party to arbitration agreement and so challenging jurisdiction of Arb tribunal, referring to the doctrine of separability -the starting

point for which is the principle that an arbitration agreement has a separate and independent existence from that of the matrix contract in which it is found- stating that section 67 application succeeds on arbitrability issue and so ruled it inappropriate to express a view on the substantive issue, leaving it to the tribunal to decide further.

NY Southern District found Chemicals manufacturer Deltech 55% and NVOCC 45% liable for the fatal fire in 2012 on board MSC Flaminia clearing operator (MSC), owner (Conti) and technical manager (NSB Niederelbe) of any liability in the fire. The fire had started in boxes containing Divinylbenzene under high temperature radiating a lot of heat. (For the said reason, they are not to be shipped during the summer months.) Stolt- Nielsen had failed to inform MSC -who placed the containers next to the fuel tanks- on the risks of the cargo and had delivered the containers ten days ahead of their departure at the terminal and had spent in the full sun.

ECC in ’18 in an appeal on point of law from Arb tribunal (finding that Master’s negligence fell under Hague art 4.2(a))ruled that strapping for grain cargo in a hold was to Charterer’s account (though Master could have loaded without strapping by keeping a hold empty and two holds slack as per loading computer).

ECA in ’18 in Halliburton v Chubb held that an arbitrator need not be removed for not disclosing appointments in multiple disputes with overlap; IBA, Indian Act and others recognise Shipping and Trading as special cases).

UK SC in ’20 dismissed appeal, retaining test for apparent bias unchanged as in *Porter v Magill* ’02.

UKSC in Halliburton v Chubb in landmark decision on overlapping cases under s24 confirmed and clarified the obligation on arbitrators to make disclosures in overlapping multiple appointment situations to avoid doubts as to their impartiality, while at the same time highlighting and distinguishing the unique characteristics of sector-focused arbitration, such as maritime, sport and commodity references, where the engagement in multiple overlapping arbitrations does not need to be disclosed, because it is not generally perceived as calling into question an arbitrator’s impartiality or giving rise to unfairness.

London Tribunal in ’18 considering ‘free of salt’ in a CP for steel cargo, held that there was no evidence that silver nitrate testing was customary when loading steel products, practically it was unrealistic to require or expect holds of v/l in maritime environment ever to be entirely free of salt, sensible commercial interpretation was along the lines ‘free of any significant presence of salt’ and not `free of any salt whatsoever’. (Balance of evidence suggested that rusting found on pipes was most likely attributable to marine environment while waiting for loading, as on discharge cargo survey had found traces of chlorides attributing to weather or condensation).

ECA upheld lower court’s decision in NatWest Markets plc v Stallion Eight Shipping in ’18 stating that owner had not demonstrated `injustice’ whilst disagreeing that settled practice of not requiring a cross-undertaking in case of arrest could only be changed by the intervention of Parliament or the Rules Committee, saying it is for Court to reconsider position if properly informed as to views of maritime community on practical ramifications of any proposed changes and preferred route to be adopted; thus a 20yr old judgment hangs in balance!

ECC in ’18 in Glencore v Freeport (Lady M) held that there was subjective mental element to barratry; and that “fire exception” in Hague/HV Art IV (2)(b) applied even to fires caused by barratry; ECA in ’19 upheld same.

ECC in ’18 summarily held that compensation clause for supplying steel (advance of $61.8m$ at 12% over Libor) between Uttam Galva and Cargill was not one of penalty, stating that it was not unconscionable or exorbitant being not dissimilar to market rate for unsecured loans, for assuming significant credit risk to protect legitimate interest; also not illegal under Indian law.ECC affirmed the true test of a penalty was authoritatively laid down in Makdessi v Cavendish Square Holdings BV [2015] UKSC 67, and disapproved an overly rigid reading of the test set out in Dunlop Pneumatic Tyre Company Limited v New Garage and Motor Co Limited [‘15] AC. PerMakdessi it is reminded that question is not whether default compensation rate is genuine pre-estimate of claimant’s damages after default but whether default compensation rate has legitimate commercial justification and whether the rate is in all circumstances exorbitant. It is also worth noting that where contract is expressly governed by English law, illegality under foreign law would be irrelevant, unless illegality under foreign law would render contract unenforceable as a matter of English law. One instance is where a contract requires a party to do something unlawful in the place of performance – that is the rule in Ralli Bros v Compania Naviera Sota y Aznar [1920] 2 KB 287. The Ralli Bros rule was, however, inapplicable in the present case because defendant was required to perform its payment obligation in Singapore not India.

ECA in ’17 in Volcafe & Ors v CSAV in claim for condensation damage to coffee beans carried in unventilated containers, held that, once carrier had shown a prima facie case for application of defence of inherent vice of

cargo per Art IV Rule 2(m) of Hague Rules, burden shifts to claimant consignee to establish that exception did not apply because of carrier's negligence. **ESC in '18 setting aside CA**, **upholding ECC, unanimously held** that carrier has legal burden of disproving negligence proving that they took due care to protect cargo from damage arising, including from its inherent characteristics. It was held that as bailee carrier is liable for loss or damage during voyage unless it proves on balance of probabilities that loss or damage was not caused by any breach by it of Art III.2 cargo care duties, or that one of defences in Art IV.2 applies. To bring within Art IV.2 defences, carrier must also prove that loss or damage was not caused by its own negligence or breach of Art III.2. So, in practice, burden is on carrier in any cargo claim to disprove causative negligence. **Supreme Court overturned** CA's *Glendarroch (1894)* and rejected dicta of HL in *Albacora SRL v Westcott & Laurence Line* 1966 SC(HL) 19 and of Aust HC in *Great China Metal Industries v MISC Bunga Seroja*1999. High threshold that must be met before appellate court can interfere with primary findings of fact was driven home. The case had hinged on inadequacy of paper (and invoice/payment proof for same) laid for LCL shipment before stuffing.

ECC in v DHL denied Globalink the Rule against Set Off on the basis that it should not be extended for services provided by a freight forwarder; in other words there should be no set off against `Freight' payments for claims.

ECC in '19 in Sonact Group v Premuda SpA dismissed a challenge to an award ordering Charterers to pay to Owners USD600,000 (an agreed sum settling claims under a voyage charter) together with interest and costs, holding that the parties obviously intended the arbitration clause in the charter to continue to apply in the event that the agreed sum settled by email correspondence was not paid.

ECC in Sucden Middle-East v Yagci Denizcilik Ve Ticaret Limited Sirketi - (Muammer Yagci) in an appeal against a partial final award on a question of law, held, in allowing the appeal, that a cargo seizure by the local customs authorities at disport following presentation of false documents to obtain inward clearance and assess duties on cargo – which led to 4.5month delay in discharge – was a loss of time caused by 'govt interferences' within meaning of Cl28 of the Sugar Charter Party'99 and so that time was excepted from laytime. It is to be noted that it is an aberration from familiar shipping law principles as restrictive approach is taken in applying laytime and demurrage exceptions given charterers' obligation to discharge the cargo within the laytime, party seeking to rely on an exception should not be responsible for circumstances brought about and relied on within the defined exception and party seeking to rely on an exception must take reasonable steps within a reasonable time to seek to mitigate situation as practicable and a less literalistic (last-in-time) approach is taken to assess causation, by seeking to identify dominant and effective cause of the incident. No appeal is being made from this judgment, for reasons unrelated to the merits on the clause 28 question.

ECC in '19 in Pan Ocean Vs China-Base held –in an oil shipment including switched B/L, Customs seizure for mis-description, application for anti-suit injunction etc- that when Exclusive Jurisdiction Clause (EJC) is issued in writing on unilateral basis, clear written consent by counter party is necy under Art 25 Brussels Recast Reg.

ECA in '19 allowing appeal over ECC and Arb Award in Ark Shipping v Silverburn Shipping held maintaining Class under a Bareboat charter was (absolute, but) not a condition per se branding it innominate term.

ECC in Arb award in Eleni Shipping Vs Transgrain in '19 held that TC hire during piracy is not payable, imparting objective meaning to the language adopted by the parties adding that if there are two possible constructions of a clause, the Court should prefer the construction consistent with business common sense.

English Admiralty Court in '19 in NatWest Markets plc v Stallion Eight Shipping Co SA -"Alkyon", dismissing Owners' application for the release of the ship from arrest, held that a defendant to a claim for the arrest of a ship is not entitled to a cross-undertaking in damages from a claimant in respect of the damage an arrest can cause. To grant such a cross-undertaking would be contrary to (1) the principle that a claimant in rem is entitled to arrest as of right, (2) the long-standing practice of the court not to require a cross-undertaking and (3) appeal court authority, which the court was bound to follow, unless or until Parliament or the CPR [Civil Procedure Rules] Rules Committee make provision to the contrary following proper public consultation.

ECC in '19 in Sea Master Shipping Inc v Arab Bank (Switzerland) Ltd in application under Sec 67 of the Arb '96 challenging Tribunal's decision that it lacked jurisdiction to decide against the lawful holder of a BL (Bank), on a claim for demurrage and detention brought by Vessel's Owners, held that the intended effect of COGSA '92 on arb clauses was to bind holder of BL to arb clause incorporated, by reason of him being treated as an

original party to the contract of carriage under sec 2 of the Act. So, for the Tribunal to have jurisdiction over the Bank, it was not necessary for the Bank to have first assumed liabilities to the carrier under section 3 of the Act.

ECA in ’19 in Classic Maritime Inc v Limbungan Makmur Sdn Bhd and Lion Diversified Holdings Bdn held that Charterers were unable to rely on the relevant Exceptions clause (clause 32) of the COA as a defence against failure to supply or ship the five cargoes in issue was unrelated to the bursting of the dam at the mine that supplied the loadport – the relevant exception in clause 32 – as they would not have performed the COA in any event. Resultantly ECA upheld the decision at first instance. ECA also held that Owners were entitled to recover substantial damages because the factual impossibility to perform the COA due to the dam burst was not a defence to Charterers where they were unable to rely on clause 32. On this point, ECA overruled ECC.

In Ga-Hyun chung v Silver Dry Bulk, in a dispute that had arisen out of sale of a ship, ECC in ’19 ruled that it had jurisdiction, as matters under s67 are those set out in s30 and they were not ‘facts’ as decided by arbitrator.

ECC in A v B (The “GA”) in a challenge on award for certain damages for a vessel’s failure to comply with Oil Majors Eligibility Clause, dismissing it, held that: tribunal’s identification and application of the compensatory principle in awarding net loss of profits and wasted expenditure (on hire and bunkers), where both of them each related to different periods of time, was not obviously wrong and was in line with the leading texts (Chitty and McGregor) as the loss of profits was calculated net of the expenses incurred to earn those profits; and as there was available market and Chrtrs’ losses were calculated on basis of profitable fixtures that probably would have been performed, there was no error of law in conclusion that losses should not be discounted for loss of chance.

ECC in Quiana Navigation SA v Pacific Gulf Shipping (Caravos Liberty) dismissing Owners’ appeal on a point of law against an arb award held that in the first sentence of the BIMCO Non-Payment of Hire Clause the phrase “the hire” and “the payment due” referred only to the amount of hire that fell due for the first time on such due date and did not refer to any hire that first fell due on an earlier date, even if it remained overdue. Resultantly, as held by Arb tribunal Owners were in renunciatory and/or repudiatory breach of charter when they withdrew the vessel from Charterers’ service for non-payment of hire that had fallen due on an earlier due date (despite that hire having been wrongfully withheld at that earlier date).

ECC in MUR Shipping v Louis Dreyfus (Tiger Shanghai) on an appeal on a point of law against Arb award held that Charterers had failed to present “all available supporting documents” to Owners within 12 months required by claims presentation clause. It was because a contemporaneous survey report made at loadport for Chrtrs that had not been presented in time but was later relied on to support Charterers’ claim in arbitration was a relevant supporting document. The survey report itself was not privileged and went to heart of issue as to whether Owners had unreasonably refused to allow feeder holes to be cut into vessel’s hatch covers to enable loading of cement clinker cargo. That refusal had prompted Charterers to terminate charter by accepting Owners’ conduct as a repudiatory breach and to pursue a claim for the consequences. Hence ECC upheld Award as Charterers’ claim was time barred and extinguished.

ECC in Amalie Essberger Tankreederei & Co KG v Marubeni Corp (Amalie Essberger) dismissing Charterers’ application, seeking a summary judgment on basis that Owners’ claim had no real prospect of succeeding, held that rider clause 5 of CP which required certain defined documents to be presented in support of a demurrage claim, meant no more than that the claim and the supporting documents must be received by Charterers before expiry of 90-day period prescribed by the claims presentation time bar and so it did not impose obligation for all supporting documents to be presented at one and same time as the demurrage claim itself to Charterers.

In ’19 UK SC has granted permit to appeal againt ECA decision in Evergreen Marine v Nautical challenge in collision case between Box n VLCC ships in Jebel Ali exit channel. Being first case on collision since ’76 to get to such appeal, it will examine issues of Rules 9 and 15-17.

US SC in ’20 ruled that CITGO refinery terminal in New Jersey has to pay back pollution costs (of about 133m$ of which 88m$ had been reimbursed by US Oil Spill liability trust fund) paid by owner of tanker ATHOS 1 for ‘04 pollution case due to striking of an unchartered nine-ton anchor, upholding Safe Berth warranty.

ECC in ’20 in Globalink Transport’n & Logistics v DHL Project & Chrtg concerning application for summary judgment in claim by Globalink for freight due under freight forwarding services contract with DHL, dismissed Globalink’s application on basis that DHL had an arguable counterclaim which could be applied as a defence by way of set-off. Longstanding principle in English law preventing set-off against claims for freight did not apply to freight forwarding contracts which merely obliged the forwarder to arrange for the carriage of goods.

ECC in ’20 in Ocean Perfect Shipping Limited v Dampskibsselskabet Norden AS whether a safety investigation report produced by the UK’s Marine Accident Investigation Branch (“MAIB”) could be admitted in evidence in an arbitration held that as arbitrations fell within the definition of “judicial proceedings” in Merchant Shipping (Accident Reporting and Investigation) Regulations 2012, reg.14(17), court’s permission was required under reg.14(14) to admit into the arbitration an MAIB report, but permission was refused because the interests of justice in admitting the report into arbitration did not outweigh the prejudice or likely prejudice to any future accident safety investigation or relations between the UK and another state or international organisation.

UK Admiralty Court in a benchmark ruling in’20 under ’76 LLMC in Splitt Chrtg n thers v Saga n others concluded that ordinary meaning of operator of a ship in Art 1(2) embraces not only manager entity that with owner’s permission directs employees on board and operate I in the ordinary course of business.

Indian SC in ’20 in Cochin Port v Arebee ruled that Indian Ports cannot hold shipowners, vessel/steamer agents liable for storage and demurrage once Port has taken charge of containers & cargo, and given a receipt for them. In the first instance Kerala HC found that the word *“may”* in Sec 61& 62 of Major Port Act imposed obligation Ports to dispose of the goods asap where consignee fails to take delivery.SC also confirmed that an endorsement on BL by steamer agent indicating that goods have been delivered is not an endorsement under the 1856BL Act.

ECC in ‘20 in SK Shipping v Capital Maritime Trdg Corp considering implied representations on one contract term to the effect that it will in fact be capable of complying with the terms of the contract (ref Larissa ’83 and Kingscroft v Nissan ‘99] and whether Larissa was correctly decided unwilling to conclude that Larissa had been incorrectly decided (or that the approval of that decision in Kingscroft was itself erroneous), held there was no implied representation.. More specifically, there were good reasons why mere offer of a speed and consumption warranty by a shipowner should not be held to involve implicit representation as to vessel’s actual performance levels. As regards the suggestion that Owner had represented that it believed it would be capable of complying with CP terms, such representation was only apt to be implied where the contractual term required the party in question to act, or refrain from acting, in a certain way. A representation of this nature ought not to be implied where, as here, one of the parties to a contract had offered a warranty as to a particular state of affairs with the warranty being concerned with allocation of responsibility for certain costs in relation thereto.

ECC (Admlty)in ’20 in *Argentum Exploration Limited v 2391 bars of Silver formerly laden on board SS TILAWA & all persons claiming interest in and/or to have rights in respect of Silver*, recovered from wreck of *TILAWA* torpedoed/sunk in Indian Ocean in Nov ’42 NW off Maldives, denied claim by owners of the silver, Govt of Republic of SA to immunity from suit pursuant to the State Immunity Act 1978 and the Salvage Convention 1989. SA purchased silver from India in ’42 for use in the South African Mint. In ‘17 Salvors successfully recovered it, delivered it to Receiver of Wreck and claimed salvage. The key issue was whether SS *TILAWA* and the silver were “*in use or intended for use for commercial purposes*” when the cause of action in salvage accrued. The application engaged two different competing interests, the interests of the Salvors in access to justice and the interest of the Government in being immune from jurisdiction of the Admiralty Court.

ECC in ’20 in Apache North Sea v INEOS FPS Ltd ruling on interpretation of consent provisions in contract where such consent is not to be “unreasonably withheld”, held that INEOS was not entitled to demand increase in tariff as condition to provide consent as seeking to change tariff as condition for consent, INEOS attempting to impose a “fundamental revision” to the parties’ bargain which was inconsistent with terms of contract and thus unreasonable. Relying upon *Sequent Nominees Ltd v Hautford Ltd* ’20, it was confirmed, acknowledging importance not to “*trespass on issues which are properly part of evaluative exercise*” for consenting party, that even if a consent provision requires a standard of “reasonableness overall terms of contract is to be considered..

ECC in ’20 in KLine v Priminds (Eternal Bliss) on appeal from Arb, that chrtrs failed to disch within laytime developing on 'BONDE' (’91), in `virtual’ judgment, held that claims (for cargo damage paid by carrier to consignees) are payable beyond demurrage, for breach, for delays in disch due to congestion/lack of storage as: Dem (i) was not exclusive remedy for sole breach (ii) did not encompass loss of additional and different kind from that for which demurrage compensated (for detention to v/l itself as a freight-earning chattel), and there was no need at law to prove additional/different (separate) breach of charter to claim unliquidated damages.

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ECC in Sea Master Shpg v Arab Bank dismissing owner's appeal on question of law under s69 of 96 Act held in context of claim by owners for damages in lieu of demurrage from cargo interests that there was no implied term in BL that cargo would be discharged in reasonable time and so BL implied that it can be dischd'd/warehoused. The issue arose due to question of implied terms against contractual terms, Common Law impacting critically.

In Enka Insaat v OOO insu Chubb, UK SC in '20, applying common law rules, clarifying which law governs validity and scope of Arb when there is no express choice of law for Arb, and when law of contract and seat differ, ruled that Arb should be governed by express or implied choice of parties, and in the absence of such choice, Arb is to be governed by law that it is most closely connected.

In *Septo Trading Inc v Tintrade Limited*, ECC in '20 held that due to qualifying effect of an incorporated trade clause, Cert of quality was binding only as to price and payment allowing buyer's claim for off-spec fuel.

In Nautica Marine v Trafigura, ECC in '20 ruled that `subject to supplier's approval' was a precondition than a performance condition.

In '20, in collision of 8 vessels (moored, anchored etc) in Suez Canal south bound convoy in '18, ECC held that first collision between V/L 8 & 7 was real & effective cause for later collisions. And so V/L 8 was totally liable.

In '20 Singapore CA in China Coal Solution v Avra Commodities, held that the parties hadn't entered into a formal agreement on the basis of four emails exchanged because a party who had insisted on 'standard terms' of agreement would not easily be allowed to resile from its position alleging that thos terms did not apply.

In '20, claimant succeeded challenging jurisdiction of Tribunal with ECC, in Environment Devonport v NTO Shpg the Nortrader, application under s67 of 96Act, that it was a party to contract of carriage evidenced by BL wherein it had been wrongly named as shipper.

ECC in Palmali Shpg v Litasco in '20 in summary judgment held that in claim for alleged failure to perform COA, owners who had other options must account such expenses in quantifying net loss.

The Dera Commercial Estate -v- Derya Inc (The "SUR") [2018] EWHC 1673 (Comm) is on appeal; it is about limitations, bias etc.

ECC in '20 in Herculito v Gunvor (cargo) per s69 of Arb act on appeal from award on point of law, held that the BL had not incorporated terms of CP about piracy insurance cover recovery; right to appeal granted.

In '20 ECA in Sports Direct Int v FRC considering status of communications between claimant and its advisors arising out of distance selling and avoiding VAT in other EU jurisdictions,whether reports on a firm's approach to business and tax structures were protected by legal professional privilege, reaffirmed the principle that to attract privilege the report must have as its sole or dominant purpose litigation, either actual or in contemplation.

In '20 ECC in Lavender v Ibrahima Sory & Otrs in MAJESTY denying appeal against Arb award in favour of cargo interests, having to determine whether ref time extensions "*as per the above Bill of Lading*" should be read as extending to claims under the LoU, on facts, ***considering commercial common sense*** found that parties had agreed to resolve claims under BLs in consolidated arbitration under the LoU, especially since LoU predated extensions and so they were extensions of time in respect of that single reference; **lack of clarity in drafting LoU by Owner's Club** was the underlying issue.

ECC in '21 in Imperator v Bunge in Coral Seas on appeal against awrd by owners turned down deductions from hire on account of slow speed due to prolonged anchorage fouling (BIMCO antifouling clause not inserted?)

ECA in 21 agreeing with ECC held that separate entities within intl group of comps should not be permitted to act as experts for different parties in related arbitrations, upheld injunction granted by the judge against entire expert group. Though judge had granted inj basis that for experts to act in 2 arbs would breach fiduciary loyalty duty owed to Claimant client, CA found conflict of interest breaching terms of confi'y agreement with claimant.

Singapore CA in '21 in Rakna Arakshaka v Avant Garde decided that a party that chose not to participate in Arb and not avail of recourse to court vide Art16(3) Uncitral & s10(3) of IAA was entitled to apply for setting aside.

ECA in 21 in Noble (disponent owner) v Primids (TAI PRIZE on Voy Chtr) upholding ECC (that had set aside Arb award finding Soyabean cargo was damaged due to heating/apparent condition not `reasonably' observable by Master) denied appellant's claim to recover settlement as carrier made with shipper per Chinese court order.

In '21, bound by New York law that had earlier found that funds received to recoup a debt need not be returned if they `discharge a valid debt, the recipient made no misrepresentations to induce the payment and it did not have notice of the mistake', lower court ruled that 500m$ (of 900m capital asset managed as administrator, instead of 7.8m$ interest) of Revlon credited by CITI Bank to its lenders to pay off debts. CITI is appealing.

UKSC in '21 in a bench mark judgment, in a collision case at entry to a channel in Evergreen v Nautical, among other points raised and addressed, accepted that steady bearing is an indicator of risk of crossing.

Singapore HC in (1) POS Maritime NX S.A. & (2) Pan Ocean Co. Ltd. v. Owners/Bareboat Charterers of MV Caraka Jaya Niaga III-11 in a collision case in which both vessels were at fault, found that Single Liability Principle applied only when the claims of both vessels are not time-barred, and that a shipowner who is a net payor would only be able to rely on Single Liability Principle to reduce liability if its counterclaim were timely. The principle is usually applied in both-to-blame collision cases allowing net payor to reduce its liability.

In Mookda Naree ECC reversing award, imparting commercial sense, ruled in '21 that "cargo claims' refers to claims under that current charter (and not related other claims/arrests etc) as it would be extremely difficult for chrtrs to obtain insurance if acceptability of `cargo claim' is `wide' as tribunal had awarded.

In Regal Seas V Oldendroff regarding index linked freight calculation in '21, ECC referring to *Financial Conduct Authority -v- Arch Insurance and others* UKSC '21, held that objectivity of reasonableness when entering into contract implied by the language should be the deciding factor.!