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MARITIME LAW IN SINGAPORE AND BEYOND — ITS ORIGINS, INFLUENCE AND IMPORTANCE

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Maritime Law in Singapore and Beyond — Its Origins, Influence and Importance

*Justice Steven Chong**

1 Introduction: Singapore as a leading maritime hub

I believe many of us here today have in the course of our careers been involved in one form or another in the maritime industry. I think we can all agree that it is an enormously exciting and dynamic industry with many storms and tsunamis to tackle and overcome — in the physical, legal and financial sense. Nonetheless, it continues to maintain its appeal because the industry offers many opportunities in Singapore and beyond to those who have the aptitude, passion and energy to pursue their interest in this field. For myself, I spent some of the best years of my professional career in the practice of maritime law. Apart from the role it has played in my personal development as a lawyer, through my practice, I have made many lifelong friends in all corners of the globe, visited ports and countries which I otherwise would never have contemplated and experienced hazardous situations such as unpleasant encounters with hostile crewmembers. I recall with some trepidation an incident many years ago when a crewmember threatened me with bodily harm should I step on the gangway to board the vessel to effect the arrest. Not quite walking the plank, but close enough!

This occasion holds a special meaning for me given the voyage I had charted over the last 3 decades. I am therefore very honoured to be invited to deliver this address for the opening of the NUS Centre for Maritime Law. I hope that you would indulge me this evening, and join me in taking a step back to consider how Singapore as a maritime hub has developed, how our local maritime law has made its mark on the world, and how maritime law as a discipline has made ground-breaking jurisprudential contributions which have changed the complexion

* Judge of Appeal, Supreme Court of Singapore. I would like to record my appreciation to my Justices' Law Clerk, Ms Jamie Pang, for her assistance in the preparation of this address.

of many areas of law. This perspective will provide the necessary setting in underscoring the strategic importance of the Centre.

Since antiquity, carriage by sea has been the principal means for the carriage of goods and people over great distances due to the superior ease and safety of this mode of transportation.¹ Shipping ports at the intersection of important shipping lanes have often emerged as flourishing centres for thriving trade and commerce. As an island city positioned at the crossroads of the East and the West, Singapore had, from very early on, recognised and sought to maximise its obvious strategic geographical position. As our founding father, the late Mr Lee Kuan Yew, mentioned in his opening address at the inaugural Singapore Maritime Lecture in 2007, Singapore's *raison d'être* was its port. With that in mind, it was only natural for Singapore to aspire to develop itself into a maritime hub.

After independence, there was a growing recognition that in order to achieve that status, it was insufficient for Singapore to rely solely on its geographical advantages. It was critical that we attracted key players from all sectors of the maritime industry to be situated in Singapore.

Looking back, it is clear that the efforts we have invested in developing Singapore into a leading maritime hub have seen fruition. I would like to highlight a few of the building blocks which have been, in my view, important in enabling Singapore to achieve its ambition:

- a. First, significant ship owners and operators are now headquartered in Singapore. Singapore is home to the *Who's Who* of the ship-owning community, with over 130 international shipping groups and a total of 5,000 maritime establishments.²
- b. Second, Singapore is one of the top 10 ship registries in the world, with the total tonnage of ships under the Singapore flag reaching 82.2 million gross tonnes in 2014. We are no longer perceived, as we once were, as a flag of convenience ship registry. The annual vessel arrival tonnage also reached a record high of 2.37 billion gross tonnes in 2014

¹ Grant Gilmore and Charles L Black Jr, *The Law of Admiralty* (2nd edn, The Foundation Press Inc, 1975) 3.

² http://www.mpa.gov.sg/sites/global_navigation/news_center/mpa_news/mpa_news_detail.page?filename=nr150116.xml.

ranking Singapore as the second busiest port in the world, an achievement we have maintained for many years.³

- c. Third, we have leading shipyards such as Keppel Shipyard, which is one of the world's leaders in the conversion of Floating Production Storage Offloading units.⁴
- d. Fourth, leading Hull and Machinery insurers and Protection and Indemnity (P & I) Clubs now have offices in Singapore.⁵ Their presence in Singapore is the result of years of encouragement and courtship by various government agencies.
- e. Fifth, Singapore is the world's top bunkering port, with a total of 42.4m tonnes of bunkers sold at the Port of Singapore in 2014.⁶ Many of the leading bunker traders ply their trade in Singapore.
- f. Sixth, Singapore has a well-developed ship finance industry. We offer a wide array of alternative financing options, including shipping trusts, the first of its kind when it was launched in Singapore in 2006.⁷
- g. Seventh, the Singapore International Arbitration Centre is now one of the world's leading arbitration centres with a discrete division for maritime disputes — the Singapore Chamber of Maritime Arbitration. We now stand shoulder to shoulder with the other leading arbitration capitals of the world.
- h. Eighth, the Singapore Maritime Foundation, a private sector-led body, was recently established to foster cooperation among various sectors in the maritime industry and to

³ http://www.mpa.gov.sg/sites/global_navigation/news_center/mpa_news/mpa_news_detail.page?filename=nr150116.xml.

⁴ <http://www.keppelom.com/en/content.aspx?sid=2516>.

⁵ http://www.mpa.gov.sg/sites/maritime_singapore/what_maritime_singapore_offer/global_maritime_services/marine_insurance_services.page.

⁶ http://www.mpa.gov.sg/sites/global_navigation/news_center/mpa_news/mpa_news_detail.page?filename=nr150116.xml.

⁷ http://www.mpa.gov.sg/sites/maritime_singapore/what_maritime_singapore_offer/global_maritime_services/shipping_finance_listing.page.

forge a strong partnership between the public and private sectors.⁸ This is an important initiative to maximise synergy among all the stakeholders.

- i. Finally but certainly not the least, what about the lawyers? We simply cannot ignore them. They have played a critical role in the building process by providing cutting-edge legal support to advise on the myriad of complex legal issues facing the maritime industry. Today, we have many leading local and foreign shipping lawyers in Singapore.

It is apparent that we now have a comprehensive ecosystem to cater for the wide-ranging needs of the maritime community. With the presence of key players from the shipping industry situated in Singapore, as well as cutting-edge legal and financial expertise and infrastructure, Singapore's clout in the global maritime community has grown steadily. A few examples will suffice:

- a. We now have our own Singapore Ship Sale Form to cater to the needs of the Asian shipping community.⁹ As it provides for Singapore as the default seat of arbitration, its utility to Singapore's ambition is clear. On that score, I understand it has already opened up a new stream of cases to the SCMA.
- b. In 2012, the Baltic and International Maritime Council (BIMCO) included Singapore as one of the three official seats of arbitration (alongside London and New York) in its standard dispute resolution clause.¹⁰ Considering that the BIMCO forms are used in around 70% of the world's contracts for maritime trade, this is quite a coup.

⁸ <http://www.smf.com.sg/aboutsmf.html>.

⁹ http://www.singforms.com/theforms_ssf_about.php.

¹⁰ https://www.bimco.org/News/2012/11/16_Revised_BIMCO_Clause.aspx.

- c. Singapore is now represented on the boards of many major international maritime organisations including the World Shipping Council¹¹, the International Chamber of Shipping¹² and BIMCO.¹³

- d. Singapore also hosts major global maritime events and conferences including the Singapore Maritime Week, the Singapore International Bunkering Conference, and the International Maritime-Port Technology and Development Conference. These international conferences are very well attended and are now regular events in the corporate calendars of the principal maritime players.

Looking back at Singapore's gradual ascent into a leading maritime hub, it is undeniable that our investment in developing maritime law and dispute resolution locally has been crucial. The provision of prompt and effective judicial and legal services for the resolution of maritime disputes is fundamental to Singapore's ambition. It is worth mentioning that in the newly established Singapore International Commercial Court (SICC), we have two leading shipping jurists who have distinguished themselves at the English Bar and Bench — Justice Bernard Eder and Justice Bernard Rix — on the SICC bench.

Against this backdrop, it is my pleasure to deliver this evening's address for the opening of the NUS Centre for Maritime Law. This is a great opportunity to take stock of what we have achieved thus far as a maritime hub, and to consider what more we can do to augment our pole position. This Centre for Maritime Law has the potential to develop into a centre of thought leadership in the field of maritime law, and is a timely development which would complement the existing critical pieces in Singapore's maritime industry.

In the remainder of this evening's address, I will discuss how shipping cases have made profound contributions to the development of law in various fields such as contract, tort and

¹¹ Mr Ng Yat Chung, Group President and CEO of Neptune Orient Lines, is a board member of the World Shipping Council: <http://www.worldshipping.org/about-the-council/board-members/ng-yat-chung>.

¹² Mr Esben Poulsson, the president of the Singapore Shipping Association, represents Singapore on the board of the International Chamber of Shipping: <http://www.ics-shipping.org/about-ics/chairman-board>.

¹³ Mr Shaj Thayil represents Singapore on the Board of Directors of BIMCO: https://www.bimco.org/en/About/Contact/Board_of_Directors.aspx.

conflict of laws, and how Singapore court decisions have made an impact on the development of maritime law globally. For these reasons, the strategic value of the Centre to Singapore's aspiration to maintain its status as a leading maritime hub is patently obvious.

2 Contributions of maritime cases to the development of law

Before I elaborate on the contributions that maritime cases have made to the development of law, it is perhaps helpful to set out the historical background to the evolution of "maritime law" as a distinct branch of law.

Maritime law was developed in response to a need. With the rise of carriage of goods and persons by sea, disputes inevitably arose between parties. Customary law, and gradually, a maritime code, was developed to govern the conduct of traders and resolve maritime disputes in a consistent and predictable fashion.¹⁴ These rules now form the body of what we know to be maritime law today.

Given its origins, maritime law is not a field that was built around a core legal construct or concept, in the way the law of contract may be defined as the law of agreements, or the law of property as the law of the relationship between legal persons and property. Instead, maritime law may be defined as the corpus of rules, concepts and legal practices governing the business of carrying goods and passengers by sea.¹⁵ It finds its unity in the factual scenarios which it governs, rather than in a particular legal construct.

As a consequence, given that the legal relations between persons in the shipping industry are, like in any other field of commerce, governed by contractual and tortious principles, maritime law is, in a significant sense, constituted by these other more foundational areas of law. Additionally, given the international character of maritime disputes, principles of conflict of laws have become an integral part of maritime law.

¹⁴ Gilmore and Black (n 1) 3-5.

¹⁵ Gilmore and Black (n 1) 1.

Against this context, it is no surprise that maritime disputes have been fertile ground for the development of legal principles in contract, tort and conflicts. Their impact is manifest for all to see. Essential legal remedies such as the Mareva injunction or innovative contractual clauses such as the Himalaya clause owe their origins and their names to the vessels from which the disputes arose. By sampling some of the landmark shipping cases in contract, tort and conflicts, it should be self-evident that maritime cases have indeed been at the forefront of the development of many diverse areas of law.

2.1 Contract

Let me start by examining its contributions to the development of the law of contract. Maritime disputes are very often ultimately contractual disputes. Parties in the shipping trade almost invariably govern their relationships by contract, and when things go wrong, litigation ensues. As such, maritime cases have, since inception, afforded opportunities for far reaching and ground-breaking advancements in many branches of contract law.

In the field of contractual interpretation, it was the 19th century shipping case of *The Moorcock*¹⁶ which introduced the concept of implied terms into English law and established the business efficacy test for implying a term in fact. In *The Moorcock*, the court found that, in a contract between a wharf owner and a ship owner for the docking of the ship at the wharf owner's jetty, there was an implied term that reasonable steps were to be taken by the wharf owner to ascertain the safety of the jetty and, if they had not done so, to warn ship owners that this was not done. The implied term was attributed to the "presumed intentions of the parties", and was justified by the need to give the contract business efficacy. Undoubtedly, the introduction of this test has shaped our understanding of the operation of contracts in practice.

On the issue of contractual terms, I would be remiss not to mention the landmark English shipping case *Adler v Dickson (The Himalaya)*,¹⁷ which is the case from which the Himalaya clause originates and takes its name. The decision was ground-breaking in contemplating that

¹⁶ (1889) 14 PD 64.

¹⁷ [1954] 3 WLR 696.

contract law may permit a contracting party to stipulate an exemption from liability not only for himself, but also for third parties whom he engages to perform the contract or any part thereof.

Shipping cases have also been instrumental in developing the legal principles governing contractual breach and termination. The decision of the English Court of Appeal in *Hong Kong Fir Shipping v Kawasaki Kisen Kaisha*¹⁸ immediately comes to mind. It established the now important distinction between conditions, warranties and innominate terms for the purpose of determining whether a repudiatory breach of contract has occurred to give rise to the right of termination.

Moving along the life cycle of a contract, on the question of remoteness of damages, *Czarnikow Ltd v Koufos (The Heron II)*¹⁹ and *Transfield Shipping Inc v Mercator Shipping Inc (The Achilleas)*²⁰ have both made enormous contributions to developing the jurisprudential basis for the principles of remoteness, as well as the applicable test to determine whether losses arising from a contractual breach are too remote to be recoverable.

Shipping cases have also made their mark on the doctrine of common mistake and frustration. *Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd*²¹ is an important decision which confirmed the existence of the doctrine of common mistake at common law beyond doubt and restricted it to situations where the common mistake rendered the performance of the essence of the contract impossible. I should add for completeness that, to the extent that *Great Peace Shipping Ltd* had abolished the doctrine of common mistake in equity, our Court of Appeal continued to recognise it as a distinct doctrine in *Chwee Kin Keong and others v Digilandmall.com Pte Ltd*.²² In the area of the law of frustration, another shipping case, *Jackson v Union Marine Insurance Co Ltd*,²³ expanded the doctrine by deciding for the first time that a contract could be frustrated not only when contractual performance is impossible,

¹⁸ [1962] 2 QB 26.

¹⁹ [1967] UKHL 4.

²⁰ [2008] UKHL 48.

²¹ [2002] 1 WLR 1617.

²² [2005] 1 SLR(R) 502.

²³ (1874) LR 10 CP 125.

but also when the performance of the contract becomes radically different from that which the parties contemplated when the contract was concluded.²⁴ Subsequent shipping cases such as *Ocean Tramp Tankers Corp v V/O Sovfracht (The Eugenia)*²⁵ and *J Lauritzen AS v Wijsmuller BV (The Super Servant Two)*²⁶ further refined the principles governing the frustration of contracts, particularly when the frustrating event is the result of the actions of either one of the parties to the contract.

In Singapore, shipping cases have made their fair share of contributions to the development of contract law. Recently, in *The STX Mumbai*,²⁷ the Court of Appeal revisited the nature and conceptual basis of the doctrine of anticipatory breach in contract, and clarified for the first time the applicability of that doctrine to executed contracts.

From my brief review of significant decisions in contract law, it cannot be gainsaid that maritime cases have substantially influenced the development in this field of the law.

2.2 Tort

The same experience can be seen in several significant tort cases. Whether it be collisions at sea, or damage to vessels or cargo or personal injuries, tortious claims are common place in maritime disputes especially in situations when contractual remedies are either limited or simply unavailable.

The test of reasonable foreseeability for remoteness of damages in tort was laid down in *Overseas Tankship (UK) v Morts Dock & Engineering Co Ltd (The Wagon Mound (No 1))*,²⁸ another leading shipping case. The Privy Council departed from the then leading authority of *In re Polemis and Furness Withy & Co Ltd*,²⁹ and held that a tortfeasor was only responsible

²⁴ *Great Peace Shipping Ltd* (n 21) [64].

²⁵ [1964] 2 QB 226.

²⁶ [1990] 1 Lloyd's Rep 1.

²⁷ [2015] SGCA 35.

²⁸ [1961] 2 WLR 126.

²⁹ [1921] 3 KB 560.

for losses which were reasonably foreseeable by the reasonable person, and not for all consequences which arose directly from the tort.

The sequel to that case, *Overseas Tankship (UK) Ltd v The Miller Steamship Co Pty (The Wagon Mound (No 2))*,³⁰ also broke new ground in deciding that, when determining the standard of care owed under the law of negligence, the fact that the gravity of the damage would be very substantial and the costs of prevention small should significantly influence how a reasonable person would have acted, even if the risk of damage was very small. This case is frequently cited as one of the leading authorities to determine whether a breach of duty in negligence has occurred.

In the shipping trade, goods are often handled by many parties and every so often, parties who suffer economic loss from another party's negligence have neither title nor a contractual remedy in respect of the damaged cargo carried by sea but nonetheless bear the risk of loss and damage under the contract of sale. A series of English shipping cases including *The Wear Breeze*,³¹ *The Irene's Success*³² and *The Aliakmon*³³ were important in confining the right to sue in negligence for damage to goods carried on board vessels to either the owner or person with possessory interest in the goods.

In *Man B&W Diesel S E Asia Pte and Another v PT Bumi International Tankers and Another Appeal*,³⁴ the Singapore Court of Appeal provided much clarity on the principles governing the recovery of pure economic loss. In that case, the court found that imposing a liability on the engine manufacturers in tort for the ship owner's pure economic loss arising from the breakdown of the ship's engine would be inconsistent with the arrangement that the parties had voluntarily entered into with the contracting shipyard. Accordingly, it adopted a restrictive approach to disallow the recovery of pure economic loss in tort in situations where allowing such recovery would effectively result in an alteration of the contractual bargain entered into by the parties.

³⁰ [1967] 1 AC 617.

³¹ [1969] 1 QB 219.

³² [1982] QB 481.

³³ [1986] AC 785.

³⁴ [2004] 2 SLR(R) 300.

2.3 Conflict of laws

Finally, we come to conflict of laws. Shopping and shipping cannot be more different experiences or activities, but yet, forum shopping regularly occurs in the context of maritime disputes. The reason for the prevalence of forum shopping in shipping disputes is obvious. Ships sail from port to port, giving rise to connecting factors between the commercial activities conducted on the vessel, and many different legal jurisdictions. The comparative differences in the procedural and substantive maritime law of these various ports of call create variety and choice, which lies at the root of forum shopping.

For this reason, it is hardly surprising that the leading forum shopping case arose from a shipping dispute — *Spiliada Maritime Corporation v Cansulex Ltd, The Spiliada*.³⁵ Forum shopping must be regulated and controlled. To do so, the House of Lords “fashioned” a shopping policy — the doctrine of forum non conveniens. At the heart of the doctrine is the question whether there is, prima facie, some other available forum that is clearly more appropriate for the trial of the action. The court would not ordinarily be deterred from granting a stay just because either party will be deprived of certain juridical advantages such as damages awarded on a higher scale, or more generous limitation periods.

Similarly, in Singapore, shipping cases have made important contributions in further refining the doctrine of forum non conveniens. *The Rainbow Joy*,³⁶ for example, established for the first time in Singapore that the doctrine of forum non conveniens was not limited to situations where the competing forum was a court of law; the principle of comity required Singapore courts to recognise other competent forums, including an arbitral tribunal.

Even more drastic measures are sometimes required to curtail the shopping habit. This is as true for forum shopping, as it is for retail shopping. This led to the development of another judicial tool — the anti-suit injunction. Again, it comes as no surprise that the leading cases in

³⁵ [1986] 3 WLR 972.

³⁶ [2005] 3 SLR(R) 719.

this area also emanated from shipping disputes such as *The Abidin Daver*³⁷ and *The Albaforth*.³⁸

Choosing a suitable forum for the adjudication of disputes is extremely important for shipping disputes. Equally important is the choice of law that governs any dispute arising from international contracts between parties. Both can have profound impact on the accrual of a cause of action, the right of arrest and the limitation of liability to name a few. Given the cross-border nature of maritime disputes, shipping cases have also played a key role in the development of the choice of law rules that govern international contracts. For the origins of the rule that parties are free to choose the law that governs their international contracts, one need only go back to two 19th century shipping cases *Peninsular and Oriental Steam Navigation Co v Shand*³⁹ and *Lloyd v Guibert*.⁴⁰ Today, the leading case on this subject is none other than the seminal decision of the Privy Council in *Vita Food Products Inc v Unus Shipping Co Ltd*.⁴¹ At the risk of stating the obvious — this is yet another shipping case.

Finally, it is worth mentioning *The Siskina*,⁴² a very important decision on the court's jurisdiction to grant a Mareva injunction in aid of foreign proceedings. The House of Lords reasoned that a right to obtain an interlocutory injunction was not a cause of action in itself, but was dependent on there being "a pre-existing cause of action against the defendant arising out of an invasion, actual or threatened by him, of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court". The fact that the foreign defendant had assets in the UK was insufficient to give the court jurisdiction over it. For many years, the position in Singapore on *The Siskina* was not settled. This led to a lucrative migration of Mareva injunctions being sought in Singapore instead of London. Unfortunately for lawyers, that source of work has now come to an abrupt

³⁷ [1984] AC 398.

³⁸ [1984] 2 Lloyd's Rep 91.

³⁹ (1865) 3 Moo NS 272 (PC, Mauritius).

⁴⁰ (1865) LR 1 QB 115.

⁴¹ [1939] AC 277. See Yeo Tiong Min, 'The Effective Reach of Choice of Law Agreements' (2008) 20 SAclJ 723, 725 [3].

⁴² [1979] AC 210.

halt following the Singapore Court of Appeal's decision in *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and Another Appeal*⁴³ which finally endorsed *The Siskina* approach.

Now that I have sketched out the contributions of shipping cases in the development of these areas of law, you can well appreciate why I have always subscribed to the view that a lawyer aspiring to practise shipping law should do just fine if he or she is well acquainted with the principles of contract, tort and conflicts. Many of the young lawyers I have worked with over the years have developed into competent shipping lawyers even though they did not read shipping law or admiralty practice in law school. The only non-legal requirement for a successful shipping lawyer is the spirit for adventure.

3 The influence of Singapore law in the development of maritime law

Given the popularity of Singapore as a forum for the adjudication of shipping disputes, it perhaps apposite at this juncture to examine how the Singapore courts have evolved its own maritime jurisprudence, which in turn has influenced other mature maritime jurisdictions such as the United Kingdom, Australia and Hong Kong. A survey of some of these decisions will bear testimony to our courts' growing influence in this area of law, which only serves to highlight the strategic importance of the Centre.

The single decision which placed the Singapore courts on the map of maritime law is *The Permina 108*.⁴⁴ Decided in 1977, some 25 years after the 1952 Arrest Convention, the decision defined (somewhat generously at that time) the scope of the sister ship arrest rule. It was held to cover ships beneficially owned by the charterer of a vessel in connection with which the claim arose. There was no requirement of common ownership for both the offending and sister ships. In the process, it departed from a dictum of Lord Diplock in the House of Lords decision of *The Eschersheim*,⁴⁵ which required both the offending ship as well as the arrested one to be beneficially owned by the same party. *The Permina 108* subsequently received endorsement in a number of Commonwealth countries, including Hong Kong (*The Sextum*),⁴⁶

⁴³ [2006] 1 SLR(R) 112.

⁴⁴ [1977] 1 MLJ 49.

⁴⁵ [1976] 2 Lloyd's Rep 1.

⁴⁶ [1982] HKLR 356.

New Zealand (*The Fua Kavenga*);⁴⁷ as well as the UK (*The Span Terza*),⁴⁸ where the endorsement was both judicial and legislative.

Another important Singapore decision is *The Daien Maru No 18*.⁴⁹ The plaintiffs were members of the crew on board a vessel, and had commenced an in rem action against the owners of the vessel. The plaintiffs obtained summary judgment following the entry of appearance by the ship owners. Thereafter, the plaintiffs arrested the vessel. The key issue was whether a vessel could be arrested *after judgment was obtained*, or whether the plaintiffs, having obtained final judgment against the defendants, had lost the right of arrest as the plaintiffs' cause of action had merged in the judgment.

L P Thean J departed from the English case, *The Allesta*,⁵⁰ and found that a vessel could be arrested after judgment was obtained. In his view, whilst the plaintiffs' claim had indeed merged in the judgment, it did not follow that the right to security in the ship was lost or extinguished by such merger. He reasoned that in the English cases, the right of arrest was lost not because of the merger but rather because bail had been provided to secure the release of the vessel. In such situations, the bail had effectively replaced the res. The judgment obtained in the in rem action was a judgment in rem against the res as well as a judgment in personam against the defendant (given that the defendant had entered an appearance). It therefore followed that the judgment could still be enforced against the res by a remedy in rem — the procedure of arrest.

This decision was a bold departure from the English common law position as it stood then. It is indeed very gratifying that almost 20 years later, Justice David Steele in *The Ruta*⁵¹ observed that the effect of the then new UK Admiralty Practice Directions may have effectively reversed *The Allesta* and adopted the Singapore approach. *The Daien Maru No 18* has also been cited with approval by the Hong Kong courts in *Alan Soh v The Owners of the Vessel Columbus*

⁴⁷ [1987] 1 NZLR 550.

⁴⁸ [1982] 1 Lloyd's Rep 225.

⁴⁹ [1983-1984] SLR(R) 787.

⁵⁰ [1974] 1 Lloyd's Rep 40.

⁵¹ [2000] 1 WLR 2068.

*Caravelle*⁵² and *The Alas*.⁵³ In *The Alas*, Justice Peter Ng agreed that a plaintiff who has obtained judgment should still have the right to arrest the vessel, and applied the reasoning in *The Daien Maru No 18* to a situation where the plaintiff had already obtained an arbitral award. Not only has *The Daien Maru No 18* received judicial approval, the weight of learning subsequent to *The Daien Maru No 18* has also been in its favour.⁵⁴

In maritime law, the ease of providing security to procure the release of a vessel from arrest is critical. After all, time is money to ship owners. In *The Arcadia Spirit*,⁵⁵ the Singapore High Court held that it has the jurisdiction to compel a claimant to accept a letter of undertaking from a reputable P & I Club of sound financial standing in exchange for the release of a vessel from arrest. In doing so, the High Court relied on an unreported New Zealand decision *The Pacific Charger*, and departed from the English position, which had long held that such letters of undertaking are purely private arrangements with which the Court will not enforce acceptance. This is a decision of substantial import given the significant presence of P & I Clubs in Singapore. It was certainly an important development that made Singapore a more attractive business environment for ship owners and charterers.

Finally, our courts in *APL Co Pte Ltd v Voss Peer*⁵⁶ made law in the area of straight consigned bills of lading. The legal issue was whether the carrier could deliver goods to the person expressly named in a straight consigned or non-negotiable bill of lading without the presentation of the bill of lading. This was an area that attracted considerable academic comment because in a typical negotiable bill of lading, delivery of cargo must be made against the production of the bill of lading. The issue that confronted the Singapore courts was whether a distinction should be made between these two different forms of bills of lading.

The Singapore Court of Appeal, affirming the decision of the High Court, held that, by issuing a straight consigned bill of lading, the parties must have intended to retain all the other

⁵² [2002] HKCFI 73.

⁵³ [2014] 4 HKLRD 160.

⁵⁴ See *Columbus Caravelle* (n52) [17], which cites DC Jackson, *Enforcement of Maritime Claims* (3rd edn, LLP 2000) [14.83]-[14.84] and N Meeson, *Admiralty Jurisdiction and Practice* (2nd edn, LLP 2000) 134.

⁵⁵ [1988] 1 SLR (R) 73.

⁵⁶ [2002] 2 SLR(R) 1119.

features of a bill of lading, other than the characteristic of transferability. Apart from looking at the intentions of the parties, the Court of Appeal also held that the result it reached made sense from a commercial perspective. Such a result avoided the question of whether a bill was a straight bill or an order bill, and thus also obviated attendant litigation arising from that potential confusion. Moreover, this approach gave both the buyer and seller a fair measure of protection, allowing the bill of lading to retain its function as security for payment and security to obtain financing. Soon after *Voss Peer* was decided, the English Court of Appeal followed the decision in *Jl MacWilliam Co Inc v Mediterranean Shipping Co SA (The Rafaela S)*,⁵⁷ which was eventually affirmed by the House of Lords.⁵⁸ The Australian Federal Court in *Beluga Shipping GmbH & Co v Headway Shipping Limited and Anor*⁵⁹ also cited and adopted the position in *Voss Peer*.

From these examples, it can be seen that Singapore courts have made important contributions to the development of maritime law around the world. This is a clear acknowledgment of the growing influence of our jurisprudence. English courts rarely cite decisions of other jurisdictions, let alone follow the lead taken by other courts. With two of the world's leading shipping experts coming on board the Singapore International Commercial Court, as well as our current crop of shipping judges in the High Court, I expect that the Singapore courts will continue to play an important role in the global judicial discourse on maritime law.

4 The role of the NUS Centre for Maritime Law — what lies ahead?

I now turn my attention to this evening's host — the NUS Centre for Maritime Law. The stage is now set for the Centre to further shape Singapore's future as a leading maritime hub, and in particular, to propel Singapore forward as a thought leader in maritime law. My overview of the impact of shipping cases illustrates one elementary point — there are ample materials and opportunities to keep the Centre sufficiently busy for years to come.

⁵⁷ [2004] 2 WLR 283.

⁵⁸ *Jl MacWilliam Co Inc v Mediterranean Shipping Co SA (The Rafaela S)* [2005] 2 WLR 554.

⁵⁹ [2008] FCA 179.

It may be useful to draw inspiration from the achievements and contributions of other similar centres. They provide us with a useful benchmark and a glimpse into what the NUS Centre for Maritime Law can achieve. The Institute of Maritime Law in the University of Southampton, for example, has established itself as a leading centre of maritime law expertise and undertakes consultancy on all aspects of maritime and shipping law for law firms, multi-national enterprises, the European Parliament, and the World Bank. It also organises professional courses in maritime law for legal and non-legal practitioners in the maritime industry. The Hong Kong Centre for Maritime and Transport Law, a part of the City University of Hong Kong, as well as the Scandinavian Institute for Maritime Law, are other examples of maritime law centres that have made important contributions to both the jurisdictions and regions that the centres are situated in.

The success of those centres demonstrates what the NUS Centre for Maritime Law can likewise achieve. As I speak, many exciting plans are unfolding at the NUS Centre. An important project that has already been set in motion is the collaboration with the Comité Maritime International to create a database of case law decisions on international maritime conventions. This database will be an invaluable resource for maritime law practitioners both locally and abroad. I am convinced that this initiative would achieve buy-in from maritime lawyers, which will go a long way to giving prominence to the work of the Centre.

The Centre has also established partnerships with several renowned maritime law experts. I understand that the Centre will soon be hosting two visiting research professors: Professor Zhao Jinsong, a Partner of AllBright Law Offices and Dean of the International Shipping Law School at East China University of Political Science and Law, and Professor Jason Chuah, Professor at City University London and editor of the Journal of International Maritime Law. Such collaborations will only serve to attract other eminent scholars to our shores.

Finally, the Centre will be hosting its first academic conference on guarantees and indemnities in maritime law in December 2015, in collaboration with Queen Mary, London, and the TC Beirne School of Law, University of Queensland. No doubt more such conferences are in the pipeline.

With these exciting developments, I look forward in anticipation to the role that the NUS Centre for Maritime Law will play in the advancement of maritime law in Singapore, and in the region. In my view, it will be critical for the Centre to continue attracting leading experts for research on maritime law, and to build strong connections with similar maritime law centres and other important players in the shipping industry. It is my hope and belief that the Centre will not only develop into a centre of academic excellence, but will also be a crucial pillar in supporting the shipping Bar in Singapore by maintaining a practical and commercial focus in its research, by providing opportunities for practitioners in Singapore and the region to update their knowledge of maritime law, and by encouraging an interest in the practice of maritime law. I hope that in the not too distant future, our courts can call upon the Centre for assistance in providing independent amicus briefs on complex issues of maritime law.

Singapore will undoubtedly benefit from having a centre dedicated to the research of maritime law. I recall with fondness my participation as a young member of a strategic task force set up by Singapore's then Trade Development Board some twenty years ago to develop Singapore into a maritime hub. At that time, that ambition certainly appeared quite daunting and rather remote. But history has shown that whatever we have set out to achieve, we usually deliver. The maritime landscape in Singapore is now even more mature and conducive for the Centre to achieve pre-eminence in the development of maritime jurisprudence globally. I wish the Centre all the best as it strives to position itself as a leading maritime law centre in the region, and in time to come, perhaps even in the world. There will be the expected inclement weather from time to time and the occasional engine breakdowns but with an able master on board in Professor Stephen Girvin to helm the ship, I am confident that the Centre will be able to safely navigate the challenging currents that lie ahead. Have a smooth and successful voyage.

Thank you.