

## CML Seminar Series: Recent Developments in Trade Finance

14 September 2023  
Amara Singapore



On 14 September 2023, the Center for Maritime Law (CML) at the National University of Singapore, Faculty of Law, hosted the CML Seminar Series: Recent Developments in Trade Finance. Professor Christopher Hare, Visiting Associate Professor at CML and Associate Professor of Law at the University of Oxford presented the seminar.

During his seminar, Professor Hare discussed several key topics, including the most recent cases on the scope and application of the UCP 600, the challenges posed by sanctions in UCP 600 transactions, and the fraud exception.

Regarding the first topic, the case of *Heytex Bramsche GmbH v Unity Trade Capital Ltd* [2022] EWHC 2488 was examined. This case addressed several important issues, starting with the status of non-bank issuances, given that the UCP 600 consistently references 'banks'. Secondly, the interpretation of the UCP 600 was discussed. In line with *Fortis Bank SA/NV v Indian Overseas Bank* [2011] EWCA Civ 58, it was emphasised that the UCP must be interpreted in accordance with its underlying aims and purposes, reflecting international practice and the expectations of international bankers and traders. A literal and nationalistic approach must be avoided. Professor Hare pointed out that due to this international approach, courts will not readily deviate from the international regime. Any wording indicating an intention to deviate from the UCP 600 must be clearly drafted. The third issue addressed was the effect and interpretation of 'soft clauses' in letters of credit. Professor Hare highlighted the

court's differentiation between acceptable and unacceptable soft clauses. Finally, the court dealt with the issue of incorporating a trader's standard terms into a letter of credit.

In addressing the topic of sanctions, two cases were examined: *Celestial Aviation Services Ltd v Unicredit Bank AG (London Branch)* [2023] EWHC 663 (Comm) and *Celestial Aviation Services Ltd v Unicredit Bank AG (London Branch)* [2023] EWHC 1071 (Comm). In the former case, the court considered whether a bank could justify a refusal to pay under Russia (Sanctions) (EU Exit) Regulations 2019 No 855, reg 28 (as amended) under US Sanctions. In the latter case, the court considered whether a paying bank could rely on the statutory defense outlined in the Sanctions and Anti Money-Laundering Act 2018, s 44.

The final topic addressed was the continued challenge posed by fraud to the autonomy principle of the letter of credit, especially concerning 'round tripping' cases. The case of *Unicredit Bank AG v Glencore Shipping Pte Ltd* [2022] SGHC 263, involved a repo-style transaction. This was examined as the court considered various claims made by an issuing bank against the beneficiary. Finally, the case of *Winston Oil Trading Pt LTD v Overseas- Chinese Banking Corporation Ltd* [2023] SGHC 220 was considered. This case considered the elements of the 'fraud exception', the nature of the 'nullity exception' and the application of the 'unconscionability principle'.

