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THE APPROPRIATE FORUM FOR COLLISION ACTIONS

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The appropriate forum for collision actions

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The jurisdiction of courts over collision actions is frequently challenged. Several factors encourage parties to make every effort to have their claim heard by their preferred forum. The difference in limitation regimes is the most decisive factor.

This paper compares several sets of national and international rules applicable to collision actions and evaluates them against four criteria: certainty, fairness, comity, and saving in time and costs. It concludes that most of these rules fail to satisfy these criteria. The jurisdictional rules of the European Union are more predictable than common law and Chinese rules; nevertheless, they evade the question of determining the appropriate forum and might end in deadlock.

The common law courts' attempts to find a convenient forum in collision actions are futile. From private and international law perspectives, there is no strong justification for favouring one forum over another.

The current approach of national courts and legislative trends do not indicate any inclination to adopt a multilateral approach to solving the problem of parallel collision actions. This problem can only be solved through private ordering.

Keywords: Collision, conflict of laws, jurisdiction, appropriate forum, parallel proceedings, forum non conveniens, lis pendens, anti-suit injunction, comity.

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1 Introduction

Several causes of action might arise from a collision, allowing several claimants to seek judicial relief from several defendants. On the one hand, disputes arising from a collision often involve numerous foreign elements. The nationality of the parties, their place of residence, the flags of the vessels, and the place where the collision or damages arising out of it occurred might each point to a different jurisdiction. On the other hand, it might be advantageous to the defendant of a collision action to defend or pursue its own claim in another jurisdiction. A collision, therefore, has great potential to create jurisdictional disputes.

Shipowners and other parties involved in collision actions rarely agree on a forum to resolve their disputes, and parallel collision proceedings are not unusual. This is mainly due to the significant disparities in limitation regimes.[1] Three limitation conventions are in force concurrently,[2] and some countries, such as the US and China, have not ratified any of them. US law, by contrast with limitation conventions that limit liability based on vessel tonnage,[3] allows the shipowner to limit its liability to the value of the vessel and freight pending, irrespective of its net or gross tonnage.[4] Time limits, the existence of the defendant's assets in a particular jurisdiction, and the enforceability of the judgment are other factors encouraging the parties to prefer one forum to another.

By contrast with procedural rules, the substantive law on liabilities arising out of a collision is well harmonised among states through international instruments such as the Convention on the International Regulations for Preventing Collisions at Sea, 1972 ('COLREGs') and the International Convention for the Unification of Certain Rules of Law with Respect to Collision Between Vessels, 1910 ('Collision Convention 1910'). The COLREGs are the operative rules under which the fault in a collision ought to be determined under general maritime law

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1 Andrew Tettenborn and John Kimbell, *Marsden and Gault on Collisions at Sea* (15th edn, Sweet & Maxwell 2021) [14-002].

2 The International Convention relating to the Limitation of Liability of Owners of Sea-Going Ships (Brussels 1957) (LLMC 1957) and the Convention on Limitation of Liability for Maritime Claims (London 1976) (LLMC 1976), together with the Protocol of 1996 amending the Convention on Limitation of Liability for Maritime Claims of 19 November 1976 (LLMC 1996).

3 LLMC 1976, art 6 (1); LLMC 1957, art 3 (1).

4 Limitation of Shipowners' Liability Act 1851, codified at 46 USC §30501 et seq. See Thomas J Schoenbaum, *Admiralty and Maritime Law* vol 2 (6th edn, Thomson Reuters 2018) §15-1.

administered in the forum rather than by the law of any particular country.[5] Interestingly, although the US is not a signatory to the Collision Convention 1910, the US courts have adopted its principal feature, the proportionate fault rule,[6] and apply its provisions in certain cases.[7] Despite this harmonisation, the courts might reach different conclusions when determining the degree to which each vessel was at fault. This is because there is no single correct approach to the question of apportionment,[8] and the nature of the apportionment exercise means that there is no obviously correct apportionment.[9] Reasonable minds may disagree as to the appropriate apportionment, which explains why apportionments are seldom appealed,[10] and absent clear error, appeals will be dismissed.[11]

Conflict of laws rules, therefore, play a pivotal role in collision actions but rarely attract much attention in standard conflict of laws texts.[12] The International Convention for the Unification of Certain Rules Concerning Civil Jurisdiction in Matters of Collision 1952 ('Collision Convention 1952') was concluded to establish uniform rules relating to civil jurisdiction in matters of collision. Despite being adopted by 64 states,[13] this Convention, for reasons discussed below, has not diminished parallel collision actions and their adverse effects.

This research compares both national and international jurisdictional rules for collision claims and evaluates them against four criteria: certainty, fairness and justice, international comity and saving in time and costs. It aims to design a set of ideal jurisdictional rules for determining the appropriate forum.

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5 *CMA CGM SA v Ship Chou Shan* [2014] FCAFC 90, (2014) 224 FCR 384, [99]-[101].

6 *United States v Reliable Transfer Co* 421 US 397 (1975) (US SC); Schoenbaum (n 4) §14.5.

7 *Otal Investments Ltd v M/V Clary* 494 F 3d 40 (2d Cir 2007); Nicholas J Healy and Joseph C Sweeney, *The Law of Marine Collision* (Cornell Maritime Press 1998) 318.

8 *The 'Nordlake' and the 'Seaeagle'* [2015] EWHC 3605, [2016] 1 Lloyd's Rep 656, [150].

9 Nigel Teare, 'Apportionment of Liability for Damage Caused by Two or More Vessels: Is it a Simple or a Complex Exercise?' [2024] LMCLQ 225, 243; Francesco Berlingieri, 'Jurisdiction and Choice of Law in Collision Cases and Overview of the Concept of Fault and Its Apportionment' (1977) 51 Tul L Rev 866, 878.

10 Teare, ibid, 243.

11 Schoenbaum (n 4) §5.16. For an example of the court altering the apportionment, see *The Navigator Aries* [2023] SGCA 20, [2023] 2 SLR 182.

12 Such as Lord Collins of Mapesbury et al, *Dicey, Morris & Collins on the Conflict of Laws* (16th edn, Sweet & Maxwell 2022), Paul Torremans and James J Fawcett (eds), *Cheshire, North & Fawcett: Private International Law* (15th edn, OUP 2017) and Adrian Briggs, *Civil Jurisdiction and Judgments* (7th edn, Informa Law from Routledge 2021).

13 For the latest status of the Convention, see <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002801338d5> accessed 07 April 2025.

The concepts of 'appropriate forum' or 'convenient forum' have specific meanings in the common law. At common law, the forum 'in which the case may be tried more suitably for the interests of all the parties and the ends of justice' is the appropriate forum for the trial of the collision actions.[14] The courts consider several factors in determining the suitability of a court for the interests of all parties and the ends of justice, which will be discussed below. However, as the scope of this paper is not limited to the common law, a forum is considered appropriate if it meets the quadruple criteria mentioned above. The forum must be predictable and fair for all parties to an action, respect other countries' rights, and preclude prolonged and costly parallel proceedings.

This research compares the jurisdictional rules of the European countries, common law and the PRC. Among common law jurisdictions, the focus will be on the UK and Singapore, and the US rules are particularly excluded since parallel proceedings involving forums across the Atlantic are rare. While the primary focus is on jurisdictional rules for collision actions, it is important to touch upon the rules applicable to related actions to highlight their relevance and assess the collision rules. References are also made to the substantive law applicable to collision and related actions to indicate the interplay between the substantive and procedural rules. A full examination of the substantive law and jurisdictional rules for related actions is beyond the scope of this paper.

2 Collisions and related actions

The word 'collision' is not defined in any international collision convention but typically connotes two (or more) vessels coming into contact with each other. However, it has been suggested that the only real question is whether the actionable fault of one person causes damage to another person or their property,[15] and, therefore, the contact of a vessel with an object, whether stationary or moving, would also be considered a collision – as, for example with the *Dali*'s contact with the Francis Scott Key Bridge in Baltimore in 2024. Furthermore, contact itself is not necessary for a collision, and damage caused by a vessel to another by

[14] *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460 (HL), 474.
[15] Marsden (n 1) [1-018].

putting her by or by her wash or by showing misleading lights or signals would also constitute a collision.

The word 'ship', as the main element of any definition for collision, is like an elephant that cannot be defined,[16] and it is not always straightforward to determine whether something is a ship.[17] Therefore, whether an incident constitutes a collision depends on the applicable law and the facts of each case.

A collision usually affects several maritime actors besides the shipowner and its insurers. Thus, carriers, cargo owners, salvors, and local authorities providing anti-pollution services might each have a claim against a ship involved in a collision and its owner. This section lists all the probable actions arising from a collision and examines whether hearing these actions separately in different jurisdictions would present the risk of irreconcilable judgements.

2.1 Collision actions

In common law jurisdictions, the term 'collision action' covers a wide range of actions. A collision claim under Singapore law is a claim:

> …for damage, loss of life or personal injury arising out of a collision between ships or out of the carrying out of or omission to carry out a manoeuvre in the case of one or more of 2 or more ships or out of a non-compliance, on the part of one or more of 2 or more ships, with the collision regulations.[18]

It does not include collisions between ships and fixed structures (allision).[19] The Singapore statute[20] includes this definition under the heading 'Jurisdiction in personam of General

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[16] *Vallianz Shipbuilding & Engineering Pte Ltd v Owner of the Vessel Eco Spark (The Eco Spark)* [2023] SGHC 353, [2025] 1 Lloyd's Rep 195, [1] (quoting Scrutton LJ in *Merchants Marine Insurance Co Ltd v North of England Protection & Indemnity Association* (1926) 26 Ll L Rep 201 (CA), 202.

[17] Paul Myburgh, 'Offshore Fish Farm or Stationary Ship?' [2024] LMCLQ 218.

[18] The High Court (Admiralty Jurisdiction) Act 1961 (2020 rev ed), s 5(7). This definition is derived from s 22(3) of the UK Senior Courts Act 1981, itself derived from art 4 of the Collision Convention 1952.

[19] Andrew Tettenborn and Francis Rose, *Admiralty Claims* (2nd edn, Sweet & Maxwell 2024) [3-009].

[20] In the Senior Courts Act 1981, the heading is 'Restrictions on entertainment of actions in personam in collision and other similar cases'.

Division of High Court in collision *and other similar cases*'. This indicates that under this definition, the concept of a collision is restricted to cases where there has been actual contact.

This definition is not an appropriate starting point for designing jurisdictional rules. In order to determine the appropriate forum, it is necessary to split collision actions based on the causes of action and the parties to the action.

2.1.1 Inter-ship actions

Inter-ship actions may be brought by the owners of the vessels involved in a collision against each other to determine the collision liability between the parties and to compensate their losses according to the apportioned liability. At common law, a registered owner, beneficial owner, demise charterer, or mortgagee with a proprietary or possessory right over the vessel could bring this action in tort.[21]

A collision is usually caused by the faults of more than one vessel,[22] leading to shared liability. Under the Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels (Collision Convention 1910), the liability of each vessel is proportionate to the degree of the fault committed.[23] Before the adoption of this Convention, where both ships were to blame, the English and the US courts divided the damage equally between the ships; the Dutch, German and Italian courts gave neither ship a right to recover; the Turkish and Egyptian courts divided the damage according to the respective values of the vessels; and the French, Belgian, Greek, Portuguese, Romanian and Scandinavian courts apportioned the blame between the vessels and divided the damage accordingly.[24] The main object of the Collision Convention 1910 was to make the proportional rule universal.[25]

An inter-ship action technically consists of two parts. Initially, the liability is apportioned according to the degree to which each vessel was at fault, and then the quantum of each shipowner's loss and damage is determined.

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[21] Marsden (n 1) [3-002]-[3-013].
[22] *The Regina D (Nos 1 and 2)* [1992] 1 Lloyd's Rep 543 (CA), 543.
[23] Collision Convention 1910, art 4.
[24] Louis Franck, 'Collisions at Sea in Relation to International Maritime Law' (1896) 12 LQR 260, 260.
[25] *Tower Field (Owners) v Workington Harbour and Dock Board* (1946) 80 LI L Rep 419 (CA), 445.

In addition to direct damage, a shipowner might also sustain consequential damage because of a collision. The blame for each head of damage could be divided separately. In *The Calliope*,[26] the *Calliope* ran aground shortly after colliding with the *Carlsholm*. The *Calliope* refloated under its own power but could not reach its destination on the following high water. With the assistance of a tug, the *Calliope* proceeded to an anchorage, where it grounded again twice and collided with a tug. The parties to the first collision agreed that the *Carlsholm* and the *Calliope* were 45 and 55 per cent at fault, respectively. The owner of the *Calliope* claimed 45 per cent of the damage sustained because of the subsequent grounding. The owner of the *Carlsholm* contended that the negligence of the owner of the *Calliope* caused the subsequent groundings. The court held that the negligence of the owner of the *Calliope* was a cause of the subsequent groundings but did not break the chain of causation, and the continuing effect of negligence of the owner of *Carlsholm* was also a cause of the groundings. The court, therefore, sub-apportioned the liability for consequential damage on a 50:50 basis.[27]

At common law, two possible principles are in play. Under the 'single liability principle', the difference between the quantum of the shipowners' recoverable claims must be paid by the shipowner with the smaller recoverable claim (paying party) to the shipowner with the larger recoverable claim (receiving party).[28] In other words, only one liability arose. By contrast, two liabilities arise under the 'cross liability principle'. The two liabilities could be set off against each other so that the shipowner with the greater liability would pay the other shipowner the difference between the two liabilities. Both principles, therefore, could lead to the same result unless one of the shipowners goes bankrupt or is entitled to limit its liability.[29]

The Khedive[30] indicates how the result of the application of single liability and cross liability could differ in the usual situation where a shipowner seeks to limit its liability. In this case, a collision caused damage to the vessels, *Khedive* and *Voorwaarts*, and the cargo onboard. The owner of the *Voorwaarts*, which received the more extensive damage, brought an action in rem against the *Khedive*, and the *Khedive's* owner brought a counterclaim. Both vessels were

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[26] *The Calliope* [1970] P 172.
[27] Ibid, 186.
[28] *The Caraka Jaya Niaga III-11* [2021] SGHC 43, [2021] 2 Lloyd's Rep 549, [2]; [38].
[29] Nicolas Wilmot, 'Who Has Got his Cross Liabilities Crossed?' [1989] LMCLQ 450, 451.
[30] *The Stoomvaart Maastschappij Nederland v The Peninsular and Oriental Steam Navigation Co (The Khedive)* (1882) 7 App Cas 795.

held to be equally responsible for the collision. The owner of *Khedive* set up a limitation fund and contended that the fund should be apportioned rateably between the owner of the *Voormaarts* and other claimants, and except for its counterclaim, the inter-ship action should be stayed. The owner of the *Voorwaarts*, on the other hand, argued that both the claim and the counterclaim should be stayed since they claimed the moiety of the *Voorwaarts'* damage less the moiety of the *Khedive*'s damage. The Court of Appeal, which applied the cross-liability principle, held that the owner of the *Voorwaarts* was entitled to prove against the fund half of her loss without reducing its liability to the other ship. The House of Lords, applying the single-liability principle, reversed the decision of the Court of Appeal and held that the owner of the *Voorwaats* was entitled to prove against the fund half of its damage, less half of the damage suffered by the other shipowner.[31]

Under Singapore law, the single liability principle only applies if at least two ships were at fault, suffered damage, and advanced valid claims, counterclaims or cross-claims against each other.[32] It, therefore, does not apply where the claim of one of the parties to the inter-ship action is time-barred.[33] In the *Caraka Jaya Niaga III-11*,[34] the defendant agreed to bear 60 per cent of the blame for the collision and was the paying party. The court held that the defendant's counterclaim was not maintainable and thus was not entitled to rely on the single liability principle to reduce its liability.[35] Under English law, on the contrary, a shipowner who expects to be the net payee may rely upon the single liability principle even if its claim is time-barred. In *MIOM 1 Ltd v Sea Echo ENE (No 2),*[36] Teare J held that the two-year time limit of the Collision Convention 1910 bars the remedy of bringing proceedings; the net payee is not bringing proceedings, it is merely defending itself.[37]

Where the Collision Convention 1910 does not apply, the division of loss will be subject to national law on apportionment of liability. Under English law, where the fault of the person

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31 *The Caraka Jaya Niaga III-11* (n 28), [29]–[34], citing *The Khedive*, ibid.

32 Ibid*,* [38].

33 There is a two-year time limit for bringing actions to recover damages under art 7 of the Collision Convention 1910 (see the UK Merchant Shipping Act 1995, c 21, s 190(3); Maritime Conventions Act 1911 (2020 rev ed) (Singapore), s 8(1)).

34 *The Caraka Jaya Niaga III-11* (n 28).

35 Ibid, [58].

36 [2011] EWHC 2715, [2012] 1 Lloyd's Law Rep 140.

37 Ibid, [78].

who suffered damage contributed to the damage, the damages recoverable will be reduced to the extent that it is just and equitable, considering the claimant's share in the responsibility for the damage.[38]

2.1.2 *Action for damage or loss of property, loss of life or personal injury*

A collision might cause loss or damage to property. Actions might also be brought against the shipowner for loss of life or personal injury suffered by crew, passengers, or any other person on board the vessels. In practice, these claims are usually deferred or stayed until a decision is made on liability in inter-ship actions. This avoids the costs of a multiplicity of proceedings and assists the cargo and personal injury claimants who might not have access to evidence about the collision.[39] It also enables these claimants to piggyback on hull claimants and bring their actions where the paying party's limit of liability is higher.

Where declared by the shipowner, general average expenditure might be incurred, making the cargo owner liable to the carrying ship for the general average contribution. Both the cargo owner and the owner of the carrying ship have direct claims against the non-carrying ship for a proportion of the general average contribution.[40]

Damage, loss, or personal injury might also be sustained outside the vessel involved in a collision. Actions in this category range from damage to fixed installations at sea, such as pipelines or oil rigs and labour working on them, to damage to shore installations, such as a jetty or harbour.

Article 1 of the Collision Convention 1910 states that it only applies to actions for damage to vessels involved in a collision and property or persons on board those vessels. The Collision Convention 1910, in principle, does not apply to allision.[41] However, in addition to collisions in a strict sense, it applies to other incidents caused by 'the execution or non-execution of a manoeuvre or by the non-observance of the regulations'.[42] For instance, the Convention

[38] The Law Reform (Contributory Negligence) Act 1945, c 28, s 1(1).
[39] Marsden (n 1) [16-039].
[40] *Morrison Steamship Co Ltd v Greystoke Castle (The Cheldale)* [1947] AC 265 (HL), 298; 312.
[41] *The Niase (Formerly Erica Jacob)* [2000] 1 Lloyd's Rep 455, 457.
[42] Collision Convention 1910, art 13.

applies to the grounding of a vessel carried out to avoid a collision with another ship or the allision of a vessel caused by another vessel's non-observance of the regulations.[43]

Under English law, reflecting art 4 of the Collision Convention 1910, the liability of the vessels at fault for damage to property follows the same rule as liability in inter-ship actions being proportionate to the degree of fault.[44] However, the vessels are jointly and severally liable for actions such as loss of life or personal injury.[45] Under US law, the owners of all guilty ships are jointly and severally liable for both property damage and personal injury.[46]

Vessels and their owners are not the only potential defendants of collision actions. A shipowner is only liable for its fault and the fault of employees for whom it is vicariously liable. A bareboat charterer employing the crew, an independent contractor such as a stevedore, shipbuilder, ship-repairer, or any other person whose negligence caused the collision could all be defendants in collision actions.

2.1.3 *Actions in contract*

Rights of action arising out of a collision almost always arise in tort, delict or quasi-delict. However, a contract may contain a provision, such as a duty of care, the breach of which could give rise to a right of collision action. A contractual right of action might arise under a contract between a terminal operator and a shipowner where the vessel collides with terminal facilities[47] or under a towage agreement when the tug and tow collide.[48] Almost all modern cases of collision between tug and tow are governed by standard form contracts, which contain detailed terms regarding damage and liabilities that usually are more favourable to tugs than tows.[49] Moreover, there might be a carriage of goods by sea contract between the shipowner and the owner of facilities damaged as a result of an allision. The liability of a

[43] Francesco Berlingieri, *International Maritime Conventions* vol 2 (Informa Law from Routledge 2016) 7-8.
[44] Merchant Shipping Act 1995, s 187(1).
[45] Ibid, s 188(1).
[46] Schoenbaum (n 4) §5-16; §6-15; §14-9.
[47] *Bahamas Oil Refining Co International Ltd v The Owners of the Cape Bari Tankschiffahrts GMBH & Co KG (Bahamas) (The Cape Bari)* [2016] UKPC 20, [2016] 2 Lloyd's Rep 469.
[48] Simon Rainey, *The Law of Tug and Tow and Offshore Contracts* (4th edn, Informa Law from Routledge 2017) [11.13].
[49] Ibid, [11.40]; Marsden (n 1) [5-101]-[5-102].

shipowner/carrier for a collision might be subject to the provisions of a charterparty or a bill of lading, including an errors of navigation exclusion.[50]

Cargo owners might also have a right to sue the carrying vessel or its owner under the contract of carriage. However, the Hague Rules or Hague-Visby Rules,[51] which are usually incorporated into the contracts of carriage, exempt carriers from liability for loss or damage arising out of a collision where a defence arises under art IV, r 2(a).[52] Claims for injuries suffered on board might be brought in tort. However, in practice, they often rely on employment contracts, which often provide for compensation irrespective of the employer's fault.[53]

The rule as to the division of loss does not apply to actions in contract, and the liability of the shipowner will be subject to the provisions of the contracts.

Contracts for the carriage of goods by sea usually contain forum selection clauses. However, the courts in some jurisdictions have the discretion not to uphold an exclusive jurisdiction clause in collision actions.[54]

2.1.4 *Actions under international maritime conventions*

Actions brought under maritime conventions could also add to the complexity of collision proceedings because they may prescribe certain forums having jurisdiction over the claims brought under the convention.

The Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by the Protocol of 2002 (Athens Convention 2002), deals with the liability of the contracting and performing carrier and the limitation of such liability.[55] It sets out an

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[50] *West Tankers Inc v RAS Riunione Adriatica Sicurta SpA (The Front Comor)* [2005] EWHC 454 (Comm), [2005] 2 Lloyd's Rep 257[6]; *COSCO Shipping Specialized Carriers Co Ltd v PT OKI Pulp & Paper Mills* [2024] SGCA 50, [2025] Lloyd's Rep Plus 9, [94]-[104].

[51] The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25 August 1924 ('the Hague Rules') as amended by the Protocol signed at Brussels on 23 February 1968 ('the Hague-Visby Rules').

[52] According to this, the carrier is not responsible if the collision is attributable to the act, neglect, or default of the master or crew of the ship: see Stephen Girvin, *Carriage of Goods by Sea* (3rd edn, OUP 2022) [28.06].

[53] Marsden (n 1) 125, n 281.

[54] *The Vishva Apurva* [1992] SGCA 32, [1992] 1 SLR(R) 912, [13]; Marsden (n 1) [14-036]-[14-037].

[55] Athens Convention 2002, arts 6-7.

obligation to maintain insurance or financial security to cover liability under this Convention and provides for a direct right of action against the insurer.[56]

Claims for pollution damage constitute a significant part of collision actions. Shipowners' liability for oil pollution damage is subject to three international conventions: the International Convention on Civil Liability for Oil Pollution Damage 1969 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971. Both Conventions have been updated by the 1992 Protocols (CLC 1992 and Fund Convention 1992), which have been in force since 1996. The Fund Convention 1992 was further updated by a Protocol in 2003. They have been widely ratified.[57]

The CLC 1992 set up specific compensation regimes far more generous than the tort of negligence.[58] It establishes strict liability, compulsory insurance, and direct action against the insurer.[59] The Fund Convention 1992 establishes a regime for compensating victims when compensation under the CLC 1992 is not available or is inadequate. The 2003 Protocol provides additional compensation where the amount available from the 1992 Fund is or might be insufficient to cover established claims.[60]

Whether all liabilities are constrained by 'pollution damage' under the pollution conventions or if other damage can be claimed under national laws is debatable. In *The Prestige*,[61] the Supreme Court of Spain held that moral and pure environmental damages fell outside the type of damages covered by the CLC 1992 and awarded losses of €1,439.08m consisting of pure environment and moral damages.[62] It has been commented that although, from a semantic perspective, claims that do not fall within the definition of 'pollution damage' are unaffected by the exclusion of other remedies for such damage, this might give preferential

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[56] Ibid, art 4bis.

[57] The Fund Convention 1992, for instance, currently has 122 member states. See the latest status of IMO Conventions at <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx> accessed 7 April 2025.

[58] Simon Baughen, *Shipping Law* (8th edn, Routledge 2023) 357.

[59] CLC 1992, art 7.

[60] Colin de la Rue, Charles Anderson and Jonathan Hare, *Shipping and the Environment: Law and Practice* (3rd edn, Informa Law from Routledge 2023) 209.

[61] *The Prestige* STS 4136/2018, ECLI: ES:TS:2018:4136. For an English summary, see the CML CMI Database at <https://cmlcmidatabase.org/prestige-2> accessed 2 April 2025.

[62] De la Rue (n 60) 852.

treatment to claims that the international community has consistently agreed should not be compensable.[63]

The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 (Bunker Convention 2001) may also be relied upon following a collision. It established strict liability for the registered owner, bareboat charterer, manager and operator of the ship[64] concerning oil pollution damage from bunker oil. It also establishes compulsory insurance for the registered owner and a direct right of action against the insurer.[65]

Actions for compensation for wreck removal costs are significant because wreck removal is potentially extremely costly. The Nairobi International Convention on the Removal of Wrecks, 2007 (Wreck Removal Convention 2007), which entered into force in 2015, deals with the liability of shipowners for the costs of locating, marking and removing the wreck within the EEZ of contracting states. It requires the shipowner to maintain insurance or other financial security and provides for the right of direct action against the insurer.[66] Member states may extend the application of the convention to wrecks within their territory.[67]

2.1.5 *Recourse actions*

The receiving party will seek to recover from the paying party the costs and damages incurred because of the collision. The costs recoverable from the other vessel in fault include the cost of the salvage operation, wreck removal, anti-pollution operation, and contribution in general average. A shipowner may also be able to recover damages paid for cargo damage or loss, personal injury, and pollution damage. In addition to shipowners, cargo owners might be liable for salvage or general average contribution and seek to recover the amount of their liability as damages from the shipowners liable for the collision.

Under the Collision Convention 1910, the right of contribution to damages caused by death or personal injury is stipulated immediately after providing for the joint and several liability

63 Ibid, 148.
64 Bunker Convention 2001, art 1(3).
65 Ibid, art 7(10).
66 Wreck Removal Convention 2007, art 12(10).
67 Ibid, art 3(2).

of the shipowners.[68] Where the Collision Convention 1910 does not apply, the right of contribution might be available under national law. Under English law, where more than one person contributed to the wrong that caused the damage or loss, a tortfeasor who paid any claim in full or has suffered loss is entitled to recover a contribution from any other person liable for the same damage or loss.[69]

Two questions arise regarding recourse actions. The first issue is to what extent a shipowner who paid a claim in full may recover its share of the loss and damage from the other vessel. In other words, the question is whether any defence available to a shipowner against the claimant who has recovered the whole loss from the other shipowner is also available in a recourse action. The Collision Convention 1910 does not affect national law concerning limitation of liability or the parties' contractual obligations.[70] Under this Convention, in recourse actions, it is left to the national law to determine the meaning and effect of any contract or provision of law that limits the owners' liability towards persons on board.[71]

In *The Giacinto Motta*,[72] the Admiralty Court apportioned the liability between the vessels equally. The cargo owner brought its claim in the US against the non-carrying vessel in tort. The non-carrying vessel paid the cargo claim in full and then brought a recourse action against the carrying vessel in England. The first question before the court was whether the cargo claim paid by the non-carrying vessel was recoverable from the owner of the carrying vessel, considering that the carrying vessel was exempt from liability by virtue of the Hague Rules. The court held that the carrier's exemption under the Hague Rules was preserved by s 1(1)(c) of the Maritime Conventions Act 1911, which was based on art 10 of the Collision Convention 1910.[73]

The second issue is whether the shipowners' liability with respect to the recourse actions is limitable. Article 2 (2) of the LLMC 1996 provides that claims subject to limitation are limitable even if brought by way of recourse. There is no similar provision in LLMC 1957. Direct claims

[68] Collision Convention 1910, art 4.
[69] The Civil Liability (Contribution) Act 1978, c 47.
[70] Collision Convention 1910, art 10.
[71] Ibid, art 4.
[72] [1977] 2 Lloyd's Rep 221.
[73] Ibid, 227.

for salvage and general average contribution are excluded under art 3 of the LLMC 1976/1996 and art 4 of the LLMC 1957, but a shipowner is entitled to limitation for claims for the recovery of salvage award or contribution in general average.[74] Wreck removal claims are, by default, subject to limitation under the limitation conventions, but ratifying states may make a reservation relating to this head of claim.[75] Many jurisdictions have yet to resolve whether claims for recourse in respect of wreck removal are limitable.[76] By way of example, recourse claims for wreck removal expenses under the LLMC 1996 are not limitable under the law of Hong Kong[77] and the Netherlands[78] but are limitable under the law of Norway.[79]

2.2 Related actions

2.2.1 *Arrest of ships as security and freezing orders*

The possibility of arresting a vessel to obtain security by a court that does not have jurisdiction over the merits of the collision dispute is usually admitted.[80] The wording of the arrest conventions, the International Convention for the Unification of Certain Rules Relating to The Arrest of Sea-Going Ships, 1952 ('Arrest Convention 1952') and International Convention on Arrest of Ships, 1999 ('Arrest Convention 1999') appear to be broad enough to support the concept of security arrests.[81] The security obtained by such arrests remains available to satisfy any judgment that results from a foreign court's determination of the dispute on the merits.[82]

The subject matter of the claim in these actions is different from collision actions. Collision proceedings are restricted to establishing liability and do not extend to enforcing a judgment

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74 *The Aegean Sea* [1998] 2 Lloyd's Rep 39, 55.

75 LLMC 1957, Protocol of Signature 2 (a); LLMC 1976/1996, art 18(1)(a).

76 Patrick Griggs, Richard Williams and Jeremy Farr, *Limitation of Liability for Maritime Claims* (4th edn, Informa Law from Routledge 2004) 23-24.

77 *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd (The Star Centurion and the Antea)* [2023] HKCFA 20, [2024] 2 Lloyd's Rep 435.

78 *Scheepvaartbedrijf MS Amasus BV v ELG Haniel Trading GmbH*, ECLI:NL:HR:2018:140. For an English summary, see the CML CMI Database at <https://cmlcmidatabase.org/scheepvaartbedrijf-ms-amasus-bv-v-elg-haniel-trading-gmbh> accessed 2 April 2025.

79 *Twitt Navigation Ltd v The State/Ministry of Defence*, THOD-2021-58354. For an English summary, see the CML CMI Database at <https://cmlcmidatabase.org/twitt-navigation-ltd-v-stateministry-defence-0> accessed 2 April 2025.

80 Francesco Berlingieri, *Berlingieri on Arrest of Ships* vol 1 (6th edn, Informa Law from Routledge 2017) 240.

81 Paul Myburgh, 'Conflict of Laws and the Arrest Conventions' in Paul Myburgh (ed), *the Arrest Conventions: International Enforcement of Maritime Claims* (Hart Publishing 2019) 159.

82 *The Nordglimt* [1988] QB 183, 199.

or obtaining security. Arrests, however, are closely connected to collision actions because the arrested vessel might be the sole asset with which the judgment of collision actions could be satisfied.

Arrests for security could also be used to obtain jurisdiction indirectly. In *The Kallang*,[83] cargo insurers alleged damage and shortage in the cargoes, carried under bills of lading incorporating an arbitration agreement. They requested a letter of guarantee subject to Senegalese jurisdiction from the shipowner and refused to accept letters of undertaking that could either stipulate London arbitration and English law or be subject to a 'competent court or tribunal'. They then arrested the vessel. It was held that although the arrest orders were for security only, the applicant intended to use arrest to force Senegalese jurisdiction, and only the anti-suit injunction of the court prevented this result from being achieved.[84]

Contrary to civil law jurisdictions, common law courts[85] are not empowered to order the arrest of a vessel in aid of proceedings which have been or are to be commenced outside their jurisdiction.[86] However, if, pursuant to the arrest of a vessel, an Australian or English court finds that it does not have jurisdiction to determine the case upon its merits, it may order that the ship be retained as security for the satisfaction of any judgment that may be made by a foreign court.[87] Singaporean courts' power to order the security to be retained is limited to cases where the court orders a stay in favour of arbitration and to satisfy the arbitration award.[88] It has been argued that the limitations on the protective function of arrest, including its dependence on proceedings on the merits, should be discarded to improve the overall case management of shipping disputes.[89]

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83 *Kallang Shipping SA Panama v Axa Assurances Senegal & Anor (The Kallang)* [2008] EWHC 2761 (Comm), [2009] 1 Lloyd's Rep 124.

84 Ibid, [85].

85 For English law, see the Civil Jurisdiction and Judgments Act 1982, c 27, s 25(7); for Singapore law, see the Civil Law Act 1909 (2020 rev ed), s 4(10D) (a).

86 Under the law of South Africa, as a mixed jurisdiction, security arrest is allowed: see Admiralty Jurisdiction Regulation Act No 105 of 1983, s 5(3)(2). For the arrest of an associated ship by the South African court as a security for the satisfaction of contemplated judgments in Yemen, see *The Cargo Laden and Lately On board the Vessel* '*Thalassini Avgi*' *v MV Dimitris (534/1987)* [1989] ZASCA 76.

87 For English Law, see the Civil Jurisdiction and Judgments Act 1982, s 26. A similar rule applies under Australian law: see Admiralty Act 1988, s 29.

88 International Arbitration Act (Cap 143A, 2002 Rev Ed), s 7(1); *The ICL Raja Mahendra* [1998] SGHC 419, [1998] 2 SLR(R) 922, [5]; Paul Myburgh '*The Eurohope'* (2018) 24 JIML 95.

89 Verónica Ruiz Abou-Nigm, *The Arrest of Ships in Private International Law* (OUP 2011) [9.20].

Courts in most jurisdictions may issue a freezing order (Mareva injunction) restricting a shipowner from taking steps to deliberately frustrate any judgment of a foreign court that may eventually be obtained. Under English law, there is a presumption in favour of granting interim relief in aid of foreign proceedings, which recognizes that the claimant has a judgment and not merely a claim. However, the relief is usually limited to property in England and would be granted if there is a sufficient connecting link between England and the measures sought.[90]

A freezing order is not intended to provide a claimant with security for its claim but only to prevent the dissipation of assets outside of the ordinary course of business in a way which would render any future judgment unenforceable.[91]

2.2.2 *Limitation actions*

Limitation actions are actions in which a shipowner claims that its liability for a particular occurrence is limited.[92] It has been held that the right to limit liability is procedural[93] and, as such, is subject to the law of the forum. The right to limit liability may be invoked in three different ways: as a defence or counterclaim to a liability claim, in independent proceedings seeking a declaration of the right to limit, and by constituting a limitation fund.[94]

At common law, the right to claim limitation is a right that belongs to the shipowner alone, and a claimant cannot pre-empt that choice.[95] A shipowner is at liberty to choose his domiciliary court as the forum for setting up his limitation fund and establishing his right to limit his liability.[96]

The drafters of the limitation conventions did not consider the possibility of different tonnage limitation regimes. Each convention assumes that its provision will be applicable in all

[90] Dicey, Morris & Collins (n 12) [10-057].
[91] *Vneshprombank LLC v Bedzhamov* [2019] EWCA Civ 1992, [2020] 1 All ER (Comm) 911, [57].
[92] *Saipem SpA v Dredging VO2 BV (The Volvox Hollandia)* [1988] 2 Lloyd's Rep 361 (CA), 367.
[93] Girvin (n 52) [29.95]; Schoenbaum (n 4) §15.4; Liang Zhao and Li Lianjun, *Maritime Law and Practice in China* (Informa Law from Routledge 2017) [25.42].
[94] John A Kimbell KC, *Admiralty Jurisdiction and Practice* (6th edn, Informa Law from Routledge 2025) [8.110].
[95] *Evergreen International SA v Volkswagen Group Singapore Pte Ltd* [2003] SGHC 142, [2004] 2 SLR(R) 457, [47].
[96] *The Volvox Hollandia* (n 92), 379 (CA).

jurisdictions identically. If that were the case, there would not be any incentive for forum shopping, and there would probably never be parallel collision proceedings.

It has been suggested that the liability and limitation issues are crucially different.[97] The liability actions concern the events on board the vessel when the damage occurred. In contrast, the limitation actions concern the structure and management of the vessel and the question of whether anyone in the position of an alter ego of the shipowner was responsible for whatever may have caused the damage. It is not necessarily unjust or inconvenient for liability and limitation to be tried separately.[98]

However, limitation proceedings might be so closely connected to collision actions that it would be expedient to hear and determine them together to avoid the risk of irreconcilable judgments from separate proceedings.[99] A shipowner loses its right to limitation in certain circumstances.[100] It is difficult to determine whether there has been actual fault or privity or whether the loss resulted from the shipowner's personal act or omission until it is known what was done wrong at the time and place of the occurrence, which gave rise to liability. Thus, a court that has jurisdiction in a liability action will also have jurisdiction over the limitation of such liability.[101]

As explained above, there is great diversity in the limitation regimes implemented worldwide.[102] Even the limitation regimes of the countries that are parties to the same limitation convention are not necessarily the same, and there are incentives for the parties to prefer one country over the other. In *The Volvox Hollandia*,[103] both England and Holland were parties to the LLMC 1957. Nevertheless, there were advantages for each party to have the limitation claim heard in different jurisdictions to the point that they went all the way to the Court of Appeal in England and the Hague. The burden of proof, the extensiveness of discovery, and the date from which interest on limitation fund would be available differed in

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97 *Bouygues Offshore SA v Caspian Shipping Co (Nos 1, 3, 4, 5)* [1998] 2 Lloyd's Rep 461, 474 (CA); *The Volvox Hollandia* (n 92), 371 (CA).

98 *The Volvox Hollandia*, ibid.

99 *The Happy Fellow* [1998] 1 Lloyd's Rep 13 (CA), 18.

100 LLMC 1957, art 1(1); LLMC 1976/1996, art 4.

101 *The Volvox Hollandia* (n 92), 375 (CA).

102 *The Owner and/or Demise Charterer of the Vessel 'A Symphony' v The Owner and/or Demise Charterer of the Vessel 'Sea Justice' (The Sea Justice)* [2024] SGHC 37, [2024] 2 Lloyd's Rep 404, [92].

103 *The Volvox Hollandia* (n 92) (CA).

each jurisdiction, leading to the contest over jurisdiction.[104] Also, the opt-in and opt-out clauses of the limitation Conventions have resulted in significant disparities among the limitation regimes of the member states.[105] For instance, the LLMC 1976/1996 allows member states to exclude claims regarding wreck removal from limitation.[106] Both the UK and Singapore have excluded the wreck removal claims from limitation.[107]

There are also discrepancies regarding the interpretation of the limitation Conventions' provisions among their member states. Australian courts, for instance, have been open to attributing loss or damage to more than 'one distinct occasion' for the purpose of the LLMC 1976,[108] arguably contrary to the drafters' intention.[109]

2.2.3 *Direct actions against insurer*

In most cases, collision liability is paid by a combination of hull insurance and P&I cover,[110] and most collision claims, except for personal injury, are brought by insurers in subrogation to the owner of the insured property.[111]

Liability insurers do not owe a duty of care to the victims of collisions and can only be sued if the law of the court provides for a direct right of action against the insurer. Some maritime conventions require shipowners to take out insurance coverage and provide for a direct right of action against the insurers.

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[104] Ibid, 527.

[105] *Zurich Insurance Co Ltd (t/a Navigators & General) v Halcyon Yacht Charter LLP Re: 'Big Kahuna'* [2024] EWHC 937 (Admlty), [2024] 2 Lloyd's Rep 109.

[106] LLMC 1996, art 18; LLMC 1976, art 18. See also LLMC 1957, Protocol of Signature 2(a).

[107] For English law, see the Merchant Shipping Act 1995, sch 7, pt II, para 3(1); for Singapore law, see the Merchant Shipping Act 1995 (2020 rev ed), s 136.

[108] See Luci Carey, 'Pushing the Limits: How Limitation of Liability Will Apply to Maritime Autonomous Surface Ships' CML Working Paper Series, No 24/03, June 2024 https://law.nus.edu.sg/cml/wp-content/uploads/sites/8/2024/06/CML_WPS-2403-1.pdf, 36-37.

[109] Sarah C Derrington, 'Of Reefs and Men: When the Best Laid Plans Go Awry, Have We an Acceptable Way Forward?' (2017) (3)(1) ANZ Mar Law LJ 9.

[110] Andrew Tettenborn, 'The Maritime Lien: An Outdated Curiosity' [2023] LMCLQ 415; *The 'Herceg Novi' and 'Ming Galaxy'* [1998] 2 Lloyd's Rep 454 (CA), 460.

[111] Marsden (n 1) [3-026].

Under English law, a limited direct right of action against the insurer exists, allowing the claimants to take over the insured and enforce the insured's right to indemnity against the insurer when the insured is insolvent.[112]

Nonetheless, maritime insurance policies frequently, and P&I club rules almost invariably, include a 'pay-to-be-paid' clause[113] according to which the insured is not entitled to be indemnified by the club in respect of liabilities to third parties which they had incurred, unless and until the members have first discharged those liabilities themselves.[114] Such a clause indirectly excludes the right of direct action against the insurer even in case of the insured's insolvency, except where the liability of the insured is a liability in respect of death or personal injury.[115]

2.3 Analysis

A collision may result in various actions involving several distinct claimants and defendants. The following factors are relevant when determining the appropriate forum for each collision action. First, if more than one vessel is involved in a collision, the liability of shipowners for collision claims in tort will, as already explained, be in proportion to the degree to which each ship was at fault. Only one decision should be made concerning the apportionment of liability because the courts might distribute the loss and damage between the ships differently.

It could be argued that where shipowners are jointly and severally liable, the third-party actions could be heard separately. Suppose an English court is hearing an inter-ship action. In this case, the cargo actions could be brought separately in the US without the risk of irreconcilable decisions. This practice, nonetheless, could entail unfair outcomes, as in *The Giacinto Motta.*[116] The shipowner who paid the claim in full might not be able to recover from the other vessel in fault her proportion of the damage or loss because of the defences available under the law applicable to the recourse action.

[112] Third Parties (Rights Against Insurers) Act 1930, s 1(1).
[113] Marsden (n 1) [4-068].
[114] *Firma C-Trade SA v Newcastle Protection and Indemnity Association (The Fanti and Padre Island)* [1991] 2 AC 1 (HL), 8.
[115] Third Parties (Rights against Insurers) Act 2010, s 9 (6).
[116] Above (n 72), 227.

The second factor is that the direct and consequential damage following a collision could occur at different times and places, and the liability for each head of claim could be apportioned differently among the vessels at fault. It seems that it is possible to hear a claim for consequential damage separately from the claim for direct damage.

The third factor is that each claim can only be subject to one liability regime. Questions such as whether a claim, including wreck removal, is subject to limitation, the threshold for breaking limitation, and the limitation amount cannot be subject to contradictory decisions. In fact, this is one of the reasons why limitation was categorised as a procedural matter governed by the lex fori, which was elaborated by Clarke J in *Caltex Singapore Pte Ltd v BP Shipping Ltd:*

> If the right [to limitation] conferred by s 503 is in a full sense part of the substantive law of England, it would follow that similar but different tonnage limitation provisions would be characterized as part of the substantive law of other states. Suppose then a typical case of a claim which arises out of an incident which causes damage to many parcels of cargo carried under contracts of carriage each of which is governed by a different proper law none of which is English. Section 503 would presumably have no application at all. If each of those proper laws have different tonnage limitations as part of the substantive law of the state concerned the English Court would presumably have to apply each such limitation provision. That would be impossible or nearly so. That consideration alone seems to me to be a strong pointer to the conclusion that … [tonnage limitation provisions are applicable as part of the law of the forum and not as part of the substantive law of England].[117]

Under the limitation conventions, claims for salvage and general average contribution are excluded from limitation. However, both claims could be related to collision actions. General average contributions could be sought directly from the owner of the non-carrying vessel, which would raise the issue of apportionment of liability. Salvage services might be brought by one of the vessels involved in the collision. This could give rise to questions such as whether a ship which was partly or wholly at fault for the collision could maintain a claim as salvors for any services rendered by that ship and,

[117] *Caltex Singapore Pte Ltd v BP Shipping Ltd* [1996] 1 Lloyd's Rep 286, 294-295.

whether the ship in fault is deprived of its potential award to the extent that the salvage operation became necessary or more difficult because of its fault.[118] These questions should be decided by the same forum determining liability for a collision. Furthermore, a collision might be caused by the fault of the salvors themselves. Salvors' liability for the collision and their entitlement to limitation and salvage award are related and should be decided by the same forum. Moreover, a substantial part of the paying party's assets could make up for the salvage awards, making proceedings for other claims futile. Salvage claims, such as collision claims, give rise to a maritime lien.[119] Different forums could determine the priority of creditors, which could result in irreconcilable decisions.

Fourth, Berlingieri doubts that the duplication of actions can always be avoided since the defendant may institute separate proceedings when it desires to arrest the claimant's vessel located in another jurisdiction or if it doubts the impartiality and competency of the original forum. He suggests that the defendant must be given the choice of an alternative forum, and limiting this choice must be contingent upon the claimant providing satisfactory security.[120] In addition to the shipowners, the rights and interests of other parties involved in collision actions must also be considered. Cargo owners or crew, for instance, might wish to bring their claims in the contractually agreed forum where neither of the vessels was arrested. Also, coastal state authorities or maritime pollution victims would naturally prefer to initiate proceedings in their local court, which, in shipowners' eyes, might not be impartial or independent. In the absence of a set of strict uniform rules and a high degree of international cooperation by judicial systems, parallel collision proceedings and irreconcilable judgments are inevitable.

[118] Francis Rose, *Kennedy and Rose on the Law of Salvage* (10th edn, Sweet & Maxwell 2021) [8-032]–[8-035].
[119] Ibid, [14-028]-[14-033]; Toh Kian Sing SC, *Admiralty Law & Practice* (3rd edn, LexisNexis 2017) 287-294.
[120] Berlingieri (n 9) 868.

3 Jurisdictional rules applicable to collision claims

The concept of 'jurisdiction' is chameleon-like and has different meanings depending on the context.[121] In this paper, jurisdiction refers to the power of a national court to adjudicate a claim or matter. This power of the court could be exercised against a person (jurisdiction *in personam*) or a thing (jurisdiction *in rem*).

A state is not empowered to require a person to submit to adjudication by its courts unless there is some reasonable ground for doing so, including the parties' agreement and the existence of links between the territory of the forum and the defendant or the facts on which the claim is based.[122]

3.1 Maritime conventions

3.1.1 *Collision Convention 1952*

A collision action or an 'action for collision' in the words of art 1 of the Collision Convention 1952 is not defined. Nevertheless, the jurisdictional rules of this convention are not restricted to inter-ship actions and apply to any action for damage caused by one ship to another or to property or person on board such ship through the carrying out of or the omission to carry out a manoeuvre or through non-compliance with regulations even when there has been no actual collision.[123]

The Collision Convention 1952 provides the claimant with three alternative options where to bring its claim: a) the habitual residence or a place of business of the defendant; b) where the defendant ship or any other ship could lawfully be arrested or could be arrested but bail has been furnished; c) where the collision occurred when the collision has occurred within the limits of a port or inland waters.

[121] Trevor Hartley, *Civil Jurisdiction and Judgements in Europe: The Brussels I Regulation, the Lugano Convention, and the Hague Choice of Court Convention* (2nd edn, OUP 2023) 90; Adrian Briggs, *Private International Law in English Courts* (2nd edn, OUP 2023) 130-133.

[122] Hartley, ibid, 90-93.

[123] Collision Convention 1952, art 4.

It has been commented that the absence of any provisions dealing with the jurisdiction where the collision occurs outside internal waters is an anomaly, and the jurisdiction of the coastal state's courts should extend to other maritime zones.[124]

It has been suggested that this Convention aims to reduce the number of forums having jurisdiction over collision claims.[125] The reference to the notion of 'place of business' is incompatible with the purpose of reducing the number of courts having jurisdiction over the collision action because a defendant might have several places of business. This concept is much wider than the 'principal place of business' used in other maritime conventions.[126] The Collision Convention 1952 was simply an attempt to achieve unity by presenting a compromise of the common law and civil law approaches to jurisdiction; it accepted the civil law principle that a connecting factor should be established before jurisdiction can be exercised and, at the same time, embraced the common law principle of unconditional jurisdiction[127] by adding the place of arrest as a connecting factor.[128] Moreover, enumerating arrest as one of the jurisdiction bases has expanded the jurisdiction of civil law courts that normally do not recognize in rem proceedings.

Article 2 of the Collision Convention 1952 provides that the provisions of art 1 shall not in any way prejudice the right of the parties to bring collision action before a forum they have chosen by agreement. It has been commented that the choice of parties is but one of a number of permissible jurisdiction grounds. Thus, in the face of an action in one of the permitted jurisdictions in art 1, the jurisdiction agreement could not be upheld.[129] However, it is clear that art 2 was intended to prioritise the parties' agreement over the jurisdictional avenues of art 1; otherwise, the parties' agreements could have been mentioned as one of the jurisdictional bases of art 1.

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[124] Proshanto Mukherjee, 'Maritime Conflict of Laws; Zonal and Jurisdictional Issues in Perspective' in Jason Chuah (ed), *Research Handbook on Maritime Law and Regulation* (Edward Elgar Publishing 2019) 330.

[125] Marsden (n 1) [14-025].

[126] For instance, Arrest Convention 1952, art 7(1) and Arrest Convention 1999, art 8(6). See Berlingieri (n 43) 34.

[127] Common law courts traditionally had jurisdiction over any person found within the jurisdiction and had no jurisdiction over any person outside jurisdiction: Adrian Zuckerman, *Zuckerman on Civil Procedure: Principles of Practice* (4th edn, Sweet & Maxwell 2021) 5.176.

[128] Berlingieri (n 9) 868.

[129] David Jackson, *Enforcement of Maritime Claims* (4th edn, LLP 2005) [12.69].

The Collision Convention 1952 deals with the issues of parallel proceedings and irreconcilable decisions in art 1 (3) and art 3. Article 1(3) only restricts claimants from taking duplicated proceedings against the same defendant on the same facts. The claimant is, nevertheless, allowed to bring a further action after discontinuing its pending action. Article 3 contains three paragraphs. According to the first paragraph, counterclaims arising out of the same collision could be brought where the principal action is brought. Under the second paragraph, if there is more than one claimant, each claimant may bring his action before the court previously seized against the same party arising out of the same collision. The third paragraph allows the court seised of an action under the provision of the convention to exercise jurisdiction under its national laws in further action arising out of the same incident. These rules do not preclude the possibility of duplication of actions.[130] The words 'can' and 'may' in the first and second paragraphs, which could be contrasted with the words 'only' and 'shall' in art 1, suggest that the courts are not obliged to refrain from exercising jurisdiction over parallel or related actions. The purpose for which the third paragraph was included is not clear, and it has been opined that it might have been intended to reintroduce the possibility of exercising jurisdiction for indemnity actions.[131] Moreover, this article does not deal with cases with more than one defendant. As explained above, a collision typically results in shared liability, and the question is whether the defendants could be sued in the same forum to preclude irreconcilable decisions. This issue ought to be decided under the lex fori.

The Collision Convention 1952 has not achieved uniformity of jurisdictional rules for collision action for four main reasons. First, the scope of application of the Convention is restricted. It only applies to collisions between seagoing vessels or seagoing vessels and inland navigation craft.[132] Claims for damage caused by a vessel to a stationary object or a vessel that could not be described as seagoing or inland navigation craft and any property or person on board them are excluded. Furthermore, the Convention only applies if all the vessels involved in the collision belong to the member states.[133] Considering that many vessels fly the flag of

[130] Berlingieri (n 9) 868; Healy and Sweeney (n 7) 19-20.
[131] Berlingieri (n 43) 38.
[132] Collision Convention 1952, art 1(1).
[133] Ibid, art 8.

countries such as Panama and Liberia,[134] which have not ratified the Collision Convention 1952, most collisions do not fall within the scope of this Convention. Article 5 excludes collisions involving vessels owned or in the service of a state, even those used for commercial purposes.[135] Article 8(1) adds another layer of exclusion by enabling the member states to apply the Convention's provisions to the nationals of non-member states conditional upon reciprocity.[136]

It should be noted that art 7, which excludes cases covered by the revised Rhine Navigation Convention of 1698, does not restrict the scope of application of the convention. This is because the claims covered under these conventions differ, and there cannot be any conflict between their scopes of application.[137]

Second, the Convention provides for the jurisdiction of the courts of the country where a vessel is lawfully arrested.[138] This means that the Convention does not restrict jurisdiction for actions in rem. There is no definition of lawful arrest in the Convention. There are a few spatial restrictions for arresting a vessel under the law of the sea, but otherwise, each country has broad discretion in determining whether a vessel could be arrested for a claim.

Third, as discussed above, the Convention does not effectively deal with the issue of concurrent jurisdiction, leaving the issue to be resolved under the lex fori, and national courts employ different mechanisms to preclude parallel collision and related proceedings.

Fourth, as mentioned above, only 64 states have ratified this convention, and several important maritime states, including the PRC, the US, Brazil, the Netherlands, Russia, and Scandinavian countries, have not ratified it. This is attributable to the lack of any rule for

[134] Out of 108,789 vessels registered as of 1 January 2024, 48,348 vessels fly the flag of the top seven registers, including Indonesia (12,226), China (9,530), Panama (8,338), Japan (5,265), Liberia (5,215), Marshall Island (4,273) and the US (3,501), none of which are a party to the Collision Convention 1952. See *Review of Maritime Transport 2024* (UNCTAD 2024) 49.

[135] Healy and Sweeney (n 7) 20.

[136] The UK and Singapore have not incorporated these flag and nationality-related exclusions into their domestic laws: for English law, see the Senior Courts Act 1981, s 22; for Singapore law, see the High Court (Admiralty Jurisdiction) Act 1961 (2020 rev ed), s 5.

[137] Berlingieri (n 43) 33.

[138] Collision Convention 1952, art 1(1)(b).

precluding concurrent jurisdictions,[139] exclusion of all governmental vessels, and the absence of provisions on choice of law and recognition and enforcement of judgments.[140]

During the 1970s, the drafter of the Collision Convention 1952, the Comité Maritime International (CMI), commenced work on a project to revise this Convention in collaboration with the International Law Association (ILA), with a view to widening the scope of application and preparing rules that may obtain broader support, thus bringing about greater uniformity.[141] The International Maritime Organization (IMO) also confirmed the need for such a revision.[142] The project resulted in a draft convention titled International Convention on Civil Jurisdiction, Choice of Law and Recognition and Enforcement of Judgments in Collision Matters, 1977 (London Draft).[143] However, as the title suggests, the London Draft was too ambitious and never became a final convention.[144]

The London Draft, among other things, replaced the concept of 'place of business' with 'principal place of business', added the place of the constitution of funds to the options of the claimant where to bring its action (art 2(1) e), and clarified that the convention would not govern jurisdiction and choice of law in limitation of liability cases (art 9). Interestingly, the London Draft does not provide for compulsory jurisdiction for counterclaims or related actions either (art 3). The concept of 'compulsory counterclaim', which originally had some support, was unanimously abandoned because it was envisaged that it would encourage forum shopping.[145]

3.1.2 *Arrest Conventions*

Arrest conventions set out a few restrictions on the jurisdiction of forum arresti over exercising jurisdiction over the merits. Under the Arrest Convention 1952, the forum arresti only has jurisdiction if its domestic law gives jurisdiction or in one of the following cases: (a) if the claimant has his habitual residence or principal place of business in the country in which

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[139] Berlingieri (n 9) 868.
[140] 'Report of the 31st International Conference of the CMI, Rio de Janeiro' (CMI 1977) vol III, 154.
[141] 'Report of the 31st International Conference of the CMI, Rio de Janeiro' (CMI 1977) vol II, 92.
[142] Ibid.
[143] Ibid, 104-113.
[144] Vesna Tomljenović, 'Maritime Torts – New Conflicts Approach: Is It Necessary?' in Petar Šarčević and Paul Volken (eds), *Yearbook on Private International Law* (Kluwer Law International 1999) 271.
[145] CMI Report vol III (n 140) 164-166.

the arrest was made; (b) if the claim arose in the country in which the arrest was made; (c) if the claim concerns the voyage of the ship during which the arrest was made; (d) if the claim arose out of a collision or in the circumstances covered by art 13 of the Collision Convention 1910; (e) if the claim is for salvage; (f) if the claim is upon a mortgage or hypothecation of the ship arrested.[146] Under the Arrest Convention 1999, the forum arresti has jurisdiction unless a refusal is permitted by its domestic law and a court of another state accepts jurisdiction. [147]

Under both conventions, the forum arresti is restricted from exercising jurisdiction if the parties have agreed to submit the dispute to another jurisdiction.[148] The conventions do not, however, elaborate on how the forum arresti should exercise its discretion regarding a stay of proceedings.[149]

It has been stated that the problem of concurrent arrest or parallel proceedings is not dealt with under the arrest conventions and falls to be resolved by the jurisdictional rules of the forum arresti.[150] However, the arrest conventions seem to have effectively reduced the risk of parallel proceedings. Under both conventions, it is, in principle, not possible to arrest a vessel more than once in respect of the same maritime claim. A rearrest or multiple arrest is only allowed if the security provided under the first arrest is inadequate.[151] However, there is nothing in the arrest conventions to suggest what security is adequate and under the law of which country the claim amount should be determined. Furthermore, since the second arrest is purely a security arrest, it should not give jurisdiction over the merits to the forum arresti. Nevertheless, these conventions do not deprive a court of exercising jurisdiction on the merits of these cases.

The function of this mechanism is very similar to lis pendens. However, the Court of Justice of the European Union has held that the Arrest Convention 1952 does not contain any provision on lis pendens.[152] Article 3(3) of the Arrest Convention 1952 prohibits a second

[146] Arrest Convention 1952, art 7(1).
[147] Arrest Convention 1999, art 7(2).
[148] Arrest Convention 1952, art 7(3); Arrest Convention 1999, art 7(1).
[149] Myburgh, 'Conflict of Laws and the Arrest Conventions' in Myburgh (n 81) 160.
[150] Ibid.
[151] Arrest Convention 1952, art 3(3); Arrest Convention 1999, art 5.
[152] *Owners of Cargo Lately Laden on Board the Ship Tatry v Owners of the Ship Maciej Rataj* C-406/92, [1999] QB 515.

arrest by the same claimant for the same claim in the jurisdiction, particularly of another contracting state. The lis pendens is concerned with the situation where proceedings are brought before two courts, both of which have jurisdiction, and only governs the question of which of those two courts is to decline jurisdiction in the case.[153]

3.1.3 *Limitation conventions*

Limitation conventions do not contain any rule directly affecting jurisdiction. Two main jurisdictional issues arise out of limitation proceedings: which forum has the power to hear limitation claims, and which forum has jurisdiction for claims on the merits, which are subject to limitation. The drafters of the LLMC 1976 pointed out that, unlike other maritime conventions, a limitation convention applies to a large number of diverse claims, and thus, it was quite impossible to adopt provisions on the appropriate forum.[154] Nevertheless, limitation conventions contain some restrictions that indirectly control the parties' where to take proceedings for their collision or limitation claims and the court's power to hear them.

Both the LLMC 1957 and LLMC 1976/1996 provide that the rules relating to the constitution and distribution of the limitation fund and questions of procedure shall be decided by the lex fori.[155] The only restriction under the LLMC 1957 is that a limitation fund must be constituted in a contracting state.[156] Article 10(1) of the LLMC 1976/1996 allows contracting states to make the right to limit liability conditional upon the constitution of a limitation fund. According to Art 11 of the LLMC 1976/1996, an application for the constitution of a fund may be submitted to the court of the country in which legal proceedings in respect of the claim subject to limitation are instituted.[157] However, the LLMC 1976/1996 does not indicate what constitutes 'legal proceedings' and in which jurisdiction 'legal proceedings' could be instituted.

It has been argued that art 11 neither provides the limiting party with the right to launch a pre-emptive strike nor prevents it from doing so; a shipowner may constitute a fund even

[153] Ibid, [26].
[154] *Travaux Préparatoires of the LLMC 1976 and of the Protocol 1996* (CMI 1997) 302.
[155] LLMC 1957, arts 4 and 5(5); LLMC 1976/1996, arts 10 (3) and 14.
[156] Berlingieri (n 43), 348.
[157] LLMC 1976, Article 11.1.

before the institution of any legal proceedings, provided that it can establish jurisdiction in its chosen forum.[158] This argument is not compatible with the scheme of the limitation conventions, which envisages limitation as a response against claims rather than a pre-emptive measure.[159] Also, a review of the *travaux préparatoires* of the LLMC 1976/1996 indicates that art 11 was not meant to give shipowners an unlimited right to choose the limitation forum. In fact, the US delegation proposed to place reasonable limits on the ability of the limiting party to initiate proceedings. This delegation, admitting that it was difficult to formulate a proposal incorporating the forum non conveniens principle into the Convention, proposed to provide national courts limited authority to decline limitation actions in a forum that would be inconvenient to all or a majority of other parties or otherwise impede the just and efficient resolution of claims arising from an incident. This proposal was rejected because it was thought that the limitation proceedings would not be initiated before a claimant brought an action, and a shipowner should always be allowed to establish a fund where a claim is brought against it in order to enjoy the benefits conferred by art 13.[160] A broad interpretation of 'legal proceedings' is not compatible with the intention of the LLMC 1976/1996 drafters and makes the first sentence in art 11(1) redundant.

In *A Line Corp v Stolt Tankers BV*,[161] the Supreme Court of the Netherlands stated that the *travaux préparatoires* of the LLMC 1996 confirmed that art 11 was not intended to set out any rule on jurisdiction,[162] and held that art 11 restricts the power of the courts to allow the constitution of a fund to cases where 'legal proceedings' are instituted in their jurisdiction.[163] Legal proceedings must be interpreted broadly and include initiation of arbitration proceedings, a request for attachment of assets for securing the claim, or a request to order a preliminary witness hearing to obtain evidence.[164] This contradicts the Dutch Supreme

[158] Baughen (n 58) 411; Michael N Tsimplis, 'The Effect of European Regulations on the Jurisdiction and Applicable Law for Limitation of Liability Proceedings' [2011] LMCLQ 307, 313.
[159] Kimbell (n 94) [8.108].
[160] Travaux Préparatoires of the LLMC 1976 and of the Protocol 1996 (CMI 1997) 293-296.
[161] ECLI:NL:HR:2020:956. For an English summary, see the CML CMI Database at <https://cmlcmidatabase.org/line-corp-v-stolt-tankers-bv-0> accessed 2 April 2025.
[162] Ibid, [3.1.3].
[163] Ibid, [3.1.5].
[164] Ibid.

Court's earlier decision in *The Sylt*,[165] where it was held that a conserving measure, such as arrest, cannot be considered as a legal proceeding.[166]

It has been suggested that whether a fund could be established in England where the substantive claimant had not commenced proceedings there is undecided.[167] The High Court of England and Wales has held that art 11 restricts the shipowner's right to constitute a limitation fund where legal proceedings are commenced in order to provide certainty,[168] and arbitration proceedings could aptly be described as 'legal proceedings'.[169] Nevertheless, the English Court of Appeal, in the context of an action in order to obtain a limitation decree and in response to an argument made by way of analogy from art 11, held that art 11 does not deal with jurisdiction; it is in form permissive since it does not contain the word 'only' contrary to art 10(1);. Moreover, the expression 'legal proceedings… in respect of claims subject to limitation' in art 11 is wider than the expression 'action to enforce a claim subject to limitation' used in art 10(1), and it is arguable that 'legal proceedings' include proceedings brought by the party invoking limitation.[170]

Article 13 of the LLMC 1996 and art 2(4) of the LLMC 1957 contain a restriction for initiating parallel collision actions. According to these rules, a claimant who has registered his claim against a fund constituted by the shipowner is barred from exercising any right in respect of such a claim against any other assets of the shipowner. The effects of these rules are very restricted because they only limit the claimants' options who register their claim against the fund only in the State Parties to each limitation convention. Suppose a shipowner constitutes a fund in China which is not a party to any limitation convention. In that case, these conventions do not preclude claimants from claiming the fund and simultaneously arresting the delinquent vessel in a state party to any of the limitation conventions. Furthermore, they only restrict claimants who have registered their claims against the fund and the claimants

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[165] *Universal Overseas Ltd v MS 'Sylt I' Schiffahrtsgesellschaft P Voss und C Horst KG*, ECLI:NL:HR:1992:ZC0529 cited in Francesco Berlingieri, 'The 1976 Limitation Convention: A Dangerous Decision of the Dutch Supreme Court' [1993] LMCLQ 433, 433-434.

[166] Berlingieri, ibid.

[167] Baughen (n 58) 471, n 68.

[168] *ICL Shipping Ltd v Chin Tai Steel Enterprise Co Ltd* [2003] EWHC 2320 (Comm), [2004] 1 WLR 2254, [49].

[169] Ibid, [28].

[170] *Seismic Shipping Inc v Total E&P UK Plc (The Western Regent)* [2005] EWCA Civ 985, [2005] 2 Lloyd's Rep 359, [61].

are not obliged to make their claims against the fund. Most of the LLMC 1976/1996 drafters thought it would be unfair to force claimants to bring their claims where the shipowner establishes a limitation fund.[171]

Vessels or other properties arrested or attached prior to the establishment of a fund may only be released if the fund is constituted in a few specific jurisdictions, including where the vessel is already arrested.[172] Any subsequent arrest or attachment is also prohibited.[173]

3.1.4 *Other maritime conventions*

The Athens Convention 2002 provides the claimant with several options for initiating proceedings, including the place of permanent residence or principal place of business of the defendant and the state of departure or that of the destination according to the contract of carriage.[174] The same rule applies to direct actions against insurers.[175] The Convention also authorizes the parties to agree on a forum after the occurrence of the incident which has caused the damage.[176]

Under the CLC 1992 and the Bunker Convention 2001, the courts of the coastal states where pollution damage has occurred or where preventive measures have taken place have exclusive jurisdiction over claims.[177] The same jurisdictional rule applies to direct actions against the insurer under these conventions.[178] The jurisdiction of the coastal state courts extends to pollution damage caused in both territorial waters and EEZ.[179] Under the CLC 1992, the limitation fund could be established in any contracting state where the action is brought or, if no action is brought, where an action could be brought.[180] The courts of the state where the fund is established have exclusive jurisdiction over all matters relating to its

[171] *Travaux Préparatoires of the LLMC 1976 and of the Protocol 1996* (CMI 1997) 322-327.
[172] LLMC 1957, art 5(2); LLMC 1996, art 13(2).
[173] Berlingieri (n 43) 387.
[174] Athens Convention 2002, art 17 (1).
[175] Ibid, art 17(2).
[176] Ibid, art 17(3).
[177] CLC 1992, art 9(1); Bunker Convention 2001, art 9(1).
[178] De la Rue (n 60) 854. It has been suggested that the issue of jurisdiction for direct actions is not solved by the CLC 1992, and it should be referred to national jurisdictional rules: Paul Myburgh, 'Taxonomizing Third-Party Rights of Direct Action Against Maritime Liability Insurers' in Özlem Gürses (ed), Research Handbook on Marine Insurance Law (Edward Elgar Publishing 2024) 205.
[179] CLC 1992, art 2; Bunker Convention 2001, art 2.
[180] Ibid, art 5(3).

apportionment and distribution.[181] It has been commented that the establishment of a fund does not affect the jurisdiction of the courts of other member states over the merits of claims. However, the forum where the fund is established must decide whether the shipowner is barred from limiting liability.[182]

Under the Fund Convention 1992, an action against the fund must be brought in the court which has jurisdiction over the action for pollution damage under the CLC 1992. If the state where the pollution damage has been brought is not a party to the Fund Convention 1992, the claimant may bring its action where the fund has its headquarters or competent forum under the CLC 1992.[183]

3.2 Brussels-Lugano regime

The jurisdictional rules of European Union are contained in the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (2007/712/EC) (Lugano Convention 2007) and the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) replacing as from 2015 the original Brussels I Regulation (Brussel Regulation 2012).[184]

The Lugano Convention 2007 is a close copy of the Brussels Regulation 2012, and together, these conventions regulate international jurisdiction in civil and commercial matters in the courts of European Union countries, Denmark, Switzerland, Norway and Iceland (Brussels-Lugano Regime).[185]

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[181] Ibid, art 9(3).

[182] De la Rue (n 60) 165.

[183] Fund Convention 1992, art 7(3).

[184] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters).

[185] The Brussels-Lugano Regime applies to some of the dependencies and overseas territories of the EU Member States, including Guadeloupe, French Guiana and the Canary Islands. The issue of jurisdiction between the EU countries was originally governed by the 1968 Brussels Convention on jurisdiction and enforcement of judgements in civil and commercial matters, which was replaced by the Brussels I Regulation in 2002. It is not entirely clear which of the dependencies and overseas territories of the EU Member States are still subject to the Brussels Convention: Hartley, (n 121) 30-34.

The jurisdictional rules of the Brussels-Lugano Regime apply to both in rem and in personam collision claims.[186] The scope of this regime is limited to 'civil and commercial matters'. Some of the related actions to collision action are thus excluded and subject to national jurisdictional rules. For instance, an action by a public authority in order to recover the costs of wreck removal from the liable person is not a civil or commercial matter.[187]

The Brussels-Lugano Regime, in line with the Union's respect for international law, fosters the notion that obligations undertaken by member states under international instruments should not be altered without the consent of other parties to those international instruments.[188] Thus, it gives priority to conventions to which member states are parties.[189] This means that where a provision in a maritime convention covers a given jurisdictional question, the provision of that convention will apply in place of the provisions of the Brussels-Lugano Regime. The Collision Convention 1952 and Arrest Convention 1952 are among the specialized conventions, the effect of which was ring-fenced by the Brussels-Lugano Regime.[190] It is disputed whether the effect of the conventions on limitation of liability for maritime claims, including the LLMC 1976, is also preserved.[191]

Where a maritime convention contains certain rules of jurisdiction but no provision as to lis pendens or related actions, the Brussels-Lugano mechanisms apply to avoid parallel proceedings.[192]

Nevertheless, in relations between the members of the EU, the provision of the maritime conventions will not prevail over the rules of the Brussels-Lugano Regime if their application would compromise the underlying principles of the Brussels-Lugano Regime, including the

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[186] Ibid, 170.

[187] Case 814/79 *Netherlands State v Reinhold Rüffer* [1980] ECR 3807 [16].

[188] Cristina M Mariottini, 'Article 71' in Marta Requejo Isidro (ed), *Brussels I Bis: A Commentary on Regulation (EU) No 1215/2012* (Elgar Commentaries in Private International Law series 2022) [71.03].

[189] Brussels Regulation 2012, art 71(1); Lugano Convention 2007, art 67(1).

[190] *The Netty* [1981] 2 Lloyd's Rep 57, 59.

[191] Marsden (n 1) [14-068]; Tsimplis (n 158), 313-314; Nigel Meeson and John Kimbell, *Admiralty Jurisdiction and Practice* (5th edn, Informa Law from Routledge 2018) [8.121]; Peter Schlosser, 'Report on the Convention on the Association of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters and to the Protocol on its interpretation by the Court of Justice' (1979) C 59 OJEU 71, [124]; Vesna Lazić and Peter Mankowski, *The Brussels I-bis Regulation: Interpretation and Implementation* (Edward Elgar Publishing 2023) [2.463].

[192] *Tatry v Maciej Rataj* (n 152), [24].

principles of predictability and legal certainty, sound administration of justice, minimization of risk of concurrent proceedings, and mutual trust in the administration of justice in the EU.[193] A European court, for instance, ought not to strictly interpret the maritime convention's provisions if it would increase the risk of concurrent proceedings.[194]

3.2.1 *General rule*

The basic rule in the Brussels-Lugano Regime is that a person domiciled in a state must be sued in that state's courts.[195] The courts of the state where a defendant is domiciled always have jurisdiction to hear the case unless the parties agree otherwise[196] or the action is subject to the exclusive jurisdiction of a specific court.[197]

Where the defendant is not domiciled in a member state, the rules of the Brussels-Lugano Regime do not, in principle, apply, and the domestic law of the European country shall determine the jurisdiction.[198] There are four exceptions to this principle, including where the court of a member state has exclusive jurisdiction,[199] where the parties agreed on the jurisdiction of a member state,[200] consumers' claims under consumer contracts,[201] and actions against employers under employment contracts.[202]

The parties to a collision action rarely agree on a court to have jurisdiction to settle their dispute, and the subject matter of the collision claims is not subject to exclusive jurisdiction under the Brussels-Lugano Regime. Therefore, the Brussels-Lugano Regime would not be applicable to collision and related actions where the defendant is not domiciled in a member state.

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193 Case C-533/08 *TNT Express Nederland* [2010] ECR I-4107, [49]-[52].
194 Hartley (n 121) 428.
195 Brussels Regulation 2012, art 4.1; Lugano Convention 2007, art 2.1.
196 Brussels Regulation 2012, art 25.1; Lugano Convention 2007, art 23.1.
197 Brussels Regulation 2012, art 24; Lugano Convention 2007, art 22.
198 Brussels Regulation 2012, art 6.1; Lugano Convention 2007, art 4.1.
199 Brussels Regulation 2012, art 24; Lugano Convention 2007, art 22.
200 Brussels Regulation 2012, art 25; Lugano Convention 2007, art 23.
201 Brussels Regulation 2012, art 18.1; Lugano Convention 2007, art 16.1.
202 Brussels Regulation 2012, art 21.2.

A person is domiciled where it has its statutory seat, central administration, or principal place of business.[203] A person could have more than one domicile under the Brussels-Lugano Regime.[204] This is because a party's domicile must be determined under the law of the forum or, if a party is not domiciled in the state whose courts are seized of the matter, the law of the state in which it is claimed that a person might be domiciled. [205]

3.2.2 *Special rules*

Under the Brussels-Lugano Regime, contractual collision claims could be brought in the place of performance of the obligation in the question, namely where the services were provided or should have been provided.[206] As to services provided to vessels, where the vessel was located at the time of the collision would typically be where the services were or should have been provided. It has been suggested that services under a ship management contract would be provided at the manager's place of business.[207]

Under the Brussels-Lugano Regime, in matters relating to tort, delict or quasi-delict, a person may also be sued in the courts of the state 'where the harmful event occurred or may occur'.[208] It was argued that it is difficult or impossible to determine the place where the event giving rise to the damage occurred. Therefore, a claimant has the right to choose between the place where the damage occurs and the place of the event giving rise to that damage to sue the defendant.[209] The place where the damage occurs includes only initial damage, and the claimant's options do not extend to where the indirect consequences of the harm initially suffered were faced.[210] An action by a consignee of goods carried by sea, even if the consignee is the holder of the bill of lading, is not considered contractual but rather a matter related to tort, delict or quasi-delict.[211]

[203] Lugano Convention 2007, art 60; Brussels Regulation 2012, art 63.
[204] Hartley (n 121) 99.
[205] Lugano Convention 2007, art 59; Brussels Regulation 2012, art 62.
[206] Brussels Regulation 2012, art 7.1; Lugano Convention 2007, art 5.2.
[207] Marsden (n 1) 569, n 216.
[208] Brussels Regulation 2012, art 7.2; Lugano Convention 2007, art 5.3.
[209] Case C-21/76 *Bier v Mines de Potasse d'Alsace* [1976] ECR 1735, para 19.
[210] C-364/93 *Marinari v Lloyds Bank Case* [1995] ECR I-2719; para 21.
[211] Case C-51/97 *Réunion européenne v Spliethoff's Bevrachtingskantoor* [1998] ECR I-6511, [26].

In the context of shipping disputes, it may be difficult or impossible to determine where the damage or the event giving rise to that damage occurred.[212] Therefore, the place where the damage arose in the case of an international transport operation is the place where the actual maritime carrier was to deliver the goods.[213] The place where the damage to goods occurred cannot be either the place of final delivery or the place where damage was ascertained for two reasons. First, the place of final delivery where the damage was ascertained in most cases is where the plaintiff is domiciled, and such attribution of jurisdiction is against the intention of the drafters of the Brussels-Lugano Regime. Second, the place of final delivery can change during the voyage, making it incompatible with the objective of the Brussels-Lugano Regime to provide a clear and certain attribution of jurisdiction.[214]

It has been argued that as in the case of damage to goods in transit, damage to a vessel on passage would be suffered at the place of delivery, but in the case of damage to a vessel in port, the locus of the vessel concerned would be where the damage is suffered.[215] However, it seems that the rationale behind extending the cargo owner's options to the place where the damage occurred does not apply to collisions nowadays. With the advent of new technologies, it is easy to track vessels and pinpoint precisely the place of collision.

There is no provision in the Brussels-Lugano Regime regarding the offshore extent of the jurisdiction of coastal courts in matters relating to tort, delict or quasi-delict. There is no dispute that coastal courts have jurisdiction over harmful events that occur in their territorial waters. However, it is unclear whether they also have jurisdiction in case a harmful event occurs in their exclusive economic zone or the continental shelf.

In *Weber v Universal Ogden Services*,[216] the European Court of Justice found that work carried out by an employee on fixed or floating installations positioned on or above the continental

[212] Ibid, [33]; Melis Özdel, 'Fundamentals and Cross-Cutting Topics of Maritime Law and EU Regulation' in Henning Jessen and Michael Jürgen Werner (eds), *EU Maritime Transport Law* (Nomos Verlagsgesellschaft 2016) 202.
[213] *Réunion européenne*, ibid, [35].
[214] Ibid, [33]-[34].
[215] Marsden (n 1) [14-064].
[216] Case C-37/00 *Herbet Weber v Universal Ogden Services Ltd* [2002] ECR I-2013.

shelf in the context of exploring and exploiting natural resources is to be regarded as work carried out in the territory of the state.[217]

In *Conocophillips (UK) Ltd v Partnereederei MS Jork*,[218] a claim was brought in tort for damages for negligence against a shipowner in connection with a collision between a vessel and an unmanned oil platform that occurred in the EEZ of the United Kingdom. The Commercial Court of England found that it has jurisdiction over the claim since the UK was exercising its exclusive or sovereign rights within its EEZ and because art 60(2) of UNCLOS provides the UK with exclusive jurisdiction over installations and structures within its EEZ.[219]

In *Virgin Media Ltd v Joseph Whelan T/A M & J Fish,*[220] a claim was brought by the owner of the fibre optic telecommunications cable damaged by a trawler against the shipowner. The collision and, therefore, the act of negligence occurred in the UK's EEZ. The Admiralty Court, comparing the facts with *Conocophillips*,[221] concluded that it had no jurisdiction over the claim. According to the Admiralty Registrar, the main difference between the two cases was that the coastal state had exclusive jurisdiction over an unmanned oil platform. However, all states enjoyed the freedom of laying submarine cables in the EEZ.[222]

The Admiralty Registrar agreed with the submission of the defendant that the court of a 'coastal State will only have jurisdiction where the damage occurring within the EEZ arises out of a particular activity over which the Coastal State has sovereignty or an exclusive right to perform under UNCLOS and/or where it is granted exclusive jurisdiction in respect of the activity'.[223] This submission, however, seems contradictory because the damage to the cable arose from scallop trawling, which undoubtedly is an activity over which the coastal state has an exclusive right to perform under art 56 of UNCLOS.

It has been suggested that the jurisdiction of coastal states would extend to cases where a person, such as a diver or seaman, was injured while working on the matters enumerated in

[217] Ibid, [36].
[218] [2010] EWHC 1214 (Comm).
[219] *Virgin Media Ltd v Joseph Whelan T/A M & J Fish* [2017] EWHC 1380 (Admlty), [30].
[220] Ibid.
[221] Above (n 218).
[222] Above (n 219), [31].
[223] Ibid, [32].

art 56 of UNCLOS, including fishing.[224] According to this interpretation, the coastal state's court would have jurisdiction over a collision action brought by a seaman injured in a collision but not over the inter-ship action.

The Brussels-Lugano contains two special rules concerning maritime claims: art 7(7) on salvage and art 9 on limitation of liability. They were both introduced in 1978 when the UK and Ireland acceded to the Brussels Convention.[225] Art 7(7) is modelled along the lines of the Arrest Convention 1952.[226] According to this article, a dispute concerning the payment of remuneration claimed in respect of the salvage of cargo or freight could be brought where the cargo or freight has been arrested to secure such payment or could have been arrested, but security has been given. There is one condition to exercising jurisdiction under this article: it must be claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage. Article 7(7) confers direct jurisdiction to the forum arresti. Nevertheless, the arrest itself might be subject to substantial or procedural requirements under the law of a member state that must be satisfied.[227]

The Brussels-Lugano Regime contain a specific rule for limitation proceedings. According to art 9, the forum that has jurisdiction in actions relating to liability from the use or operation of a ship, also has jurisdiction over claims for limitation of liability.[228]

The purpose of art 9 is to enable a shipowner who anticipates a liability claim to initiate limitation proceedings in the court of its domicile, where it could be sued but, under other provisions of the Brussels-Lugano Regime, may not bring an action.[229] It is not clear why Dicey, Morris & Collins state that if the claimant has already brought a liability action in a contracting state, the shipowner could only bring a limitation action by way of counterclaim in the courts where the liability action is brought.[230] Referring to this comment, the English Court of Appeal in *The Volvox Hollandia* reached the same conclusion.[231] This conclusion was based on the

[224] Marsden (n 1) [14-065].
[225] Lazić and Mankowski (n 191) [2.462].
[226] Ibid, [2.389].
[227] Hartley (n 121) [10.11].
[228] Brussels Regulation 2012.
[229] Schlosser Report (n 191) 110.
[230] Dicey, Morris & Collins (n 12) [13.025].
[231] *The Volvox Hollandia* (n 92), 372-373 (CA).

Brussels-Lugano Regime's provisions on lis pendens and related actions, which are discussed below. However, under the Brussels-Lugano Regime, the shipowner is not bound to commence its limitation proceedings where proceedings on the merits have been commenced first.[232]

Although art 9 has been deemed critically important for the shipping sector because it preserves the integrity of the liability regime, it seems to have had limited relevance, at least in continental courts, so far,[233] and there is almost no practice or discussion in the literature regarding this article.[234] This could be attributable to the extremely limited scope of application of art 9. Indeed, it has been suggested, relying on Schlosser Report,[235] that art 9 only applies to an independent limitation action, which does not result in setting up a fund[236] or effectively limiting the liability.[237] In the Netherlands, it has been held that since such independent action is not available under the law of the Netherlands, the Dutch courts may not have jurisdiction over limitation actions on the basis of art 9.[238] Referring to the same Report, albeit to a different paragraph, it has been commented that art 9 applies to an application to set up a limitation fund as well.[239]

More importantly, the uniformity of the laws of European countries on limitation of liability has made conflict of laws rules redundant. According to the directive 2009/20/EC on the Insurance of Shipowners for Maritime Claims, ships that fly the flag of a member state or call at a member state's port are required to have liability insurance covering maritime claims up to their maximum liability under the LLMC 1996.[240] Member states have unanimously

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[232] Barnabas WB Reynolds and Michael N Tsimplis, *Shipowners' Limitation of Liability* (Kluwer Law International 2012) 182.

[233] Marta Requejo Isidro, 'Article 9' in Marta Requejo Isidro (ed), *Brussels I Bis: A Commentary on Regulation (EU) No 1215/2012* (Elgar Commentaries in Private International Law series 2022) [9.03].

[234] Lazić and Mankowski (n 191) [2.468].

[235] Schlosser Report (n 191) [127].

[236] A limitation decree or judgment in Europe could provide shipowners with the benefits of setting up a limitation fund without establishing one since, under the Brussels-Lugano Regime, the courts of member states are bound to recognize and enforce such a decree or judgment: Reynolds and Tsimplis (n 232) 182.

[237] Meeson and Kimbell (n 191) [8.114].

[238] *A Line Corp v Stolt Tankers BV* (n 163), [3.2.1].

[239] Requejo Isidro (n 233) [9.03].

[240] Directive on the Insurance of Shipowners for Maritime Claims, art 4. See Michael Pimm, 'Commentary on Directive 2009/20/EC on the Insurance of Shipowners for Maritime Claims' in Henning Jessen and Michael Jürgen Warner (eds), *EU Maritime Transport Law* (CH Beck, Nomos, Hart 2016) 1015-1022.

recognized the importance of the application of the LLMC 1996 by all member states,[241] and currently, 23 member states are parties to the LLMC 1996.[242]

Article 9 is not compatible with the European interpretation of art 11(1) of the LLMC 1976/1996,[243] to which most European countries are parties. This is likely because the predecessor of art 9, art 6a of the 1968 Brussels Convention, was introduced into the Brussels-Lugano Regime by art 6 of the 1978 Accession Convention before the LLMC 1976 entered into force on 1 December 1986. According to art 71 of the Brussels Regulation, art 11(1) of the LLMC 1976/1996 prevails over art 9 of the regulation.

As mentioned above art 9 provides an additional ground for jurisdiction, and therefore, a claim for a declaration of limited liability could also be brought where the defendant to the declaration of limited liability action (claimant on the merits) is domiciled.[244]

An insurer could be sued by third parties in the same jurisdiction where it could be sued by the insured, provided that such action is permitted[245] under the lex causae.[246] The question of what law is applicable to a direct claim might be answered differently by European courts.[247] It is not clear whether it is sufficient that direct actions are generally permitted or whether they must be permitted in a specific case for the European courts to have jurisdiction over direct action.[248]

Most insurance contracts contain forum selection clauses, and the Brussels-Lugano Regime allows the parties to a marine insurance contract to agree on jurisdiction except for liability for bodily injury to passenger or loss of or damage to their baggage.[249] A jurisdiction

[241] Directive on the Insurance of Shipowners for Maritime Claims, Recital 3.

[242] Including Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Spain, and Sweden. See the latest status of IMO conventions at <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx> accessed 11 February 2025.

[243] Meeson and Kimbell (n 191) [8.121].

[244] Ibid, [8.116].

[245] Brussels Regulation 2012, art 13.2; Lugano Convention 2007, art 13.

[246] Vibe Ulfbeck, 'Direct Actions against the Insurer in a Maritime Setting: The European Perspective' [2011] LMCLQ 293, 299; *Marship MPP GmbH CO KG v Assuranceforeningen Gard Gjensidig,* HR-2020-1328-A (case no. 19-151103SIV-HRET) and (case no. 151228SIV-HRET) [33].

[247] Ulfbeck, ibid, 299–303.

[248] Ibid, 303; *Marship* (n 246), [83].

[249] Brussels Regulation 2012, art 15; Lugano Convention 2007, art 11.2.

agreement cannot be invoked against third parties,[250] even if it is an arbitration agreement,[251] which is not covered by the Brussels-Lugano Regime.[252]

Therefore, a direct action could be brought against the insurer in the domicile of the insurer or the injured party, where an action is brought against the leading insurer, or, in respect of liability insurance, where the harmful event occurred. Additionally, in disputes arising out of the operation of an insurer's branch, agency or establishment, an insurer is deemed to be domiciled in countries where it has a branch, agency or other establishment.[253]

3.2.3 *Mechanisms to Avoid Parallel Proceedings*

As detailed above, a claimant under the Brussels-Lugano Regime has numerous options as to where to initiate a collision action. A collision claim may be brought against a defendant in the state where the defendant is domiciled, which, in the case of a legal person, includes a statutory seat, central administration, and principal place of business. Additionally, a claimant may bring the claim in tort where the collision occurred or at the place of delivery of the vessel, and in case of a claim in contract, a collision claim might be brought in the courts of the place where the services were or should have been provided. The defendant of a collision claim might prefer another jurisdiction to hear the dispute, which would lead to concurrent proceedings.

Under the Brussels-Lugano Regime, the jurisdictional rules of the 1952 Collision Convention and the 1952 Arrest Convention prevail over the general and special rules. This does not eliminate the possibility of concurrent proceedings for three main reasons: first, the scope of application of these maritime conventions does not include all collision claims; second, the provisions of these maritime conventions also empower the courts of more than one state to hear the dispute without providing them with an effective mechanism to preclude parallel proceedings; and third, some of the European countries did not ratify these maritime conventions, and they will apply the provision of Brussels-Lugano Regime.

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[250] Ulfbeck (n 246) 297; C-368/16 *Assens Havn v Navigators Management (UK) Limited* [2017], [40].

[251] C-700/20 *London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain* [2022], [62].

[252] *Through Transport Mutual Insurance Association (Eurasia) Ltd v New India Assurance Co Ltd (The Hari Bhum) (No 1)* [2004] EWCA Civ 1598, [2005] 1 Lloyd's Rep 67, 89.

[253] Brussels Regulation 2012, arts 10-12; Lugano Convention 2007, arts 8-10.

To minimise the possibility of concurrent proceedings and preclude irreconcilable judgments, the Brussels-Lugano Regime adopted the lis pendens doctrine.[254] This doctrine provides a simple and objective solution to the problem of concurrent proceedings by prioritising the court first seized of the matter. A court of a member state must, of its own motion, stay the proceedings until the jurisdiction of the court seized first is established. When the court first seized finds that it has jurisdiction over a cause of action, all other courts must decline to hear another action under the same cause of action, between the same parties, and with the same subject matter.[255] However, lis pendens seems to provide no solution where the actions are commenced on the same day.

The High Court of England and Wales held that an action in rem and an action in personam are not against the same party unless the person liable in personam appears and defends the in rem action.[256] However, the terms 'same cause of action' and 'between the same parties' under the Brussels-Lugano Regime have independent meanings,[257] and the distinction drawn by national law of contracting states between an action in rem and an action in personam is not material for the application of the lis pendens rule.[258]

The Court of Justice of the European Union, in *Tatry (owners of the cargo) v Maciej Rataj (the owners of the ship)*,[259] an action seeking to have the defendant held liable for causing loss and ordered to pay damages has the same cause of action and the same object as proceedings brought by the defendant seeking a declaration that it is not liable for the loss.[260] The same court, in *Maersk Olie & Gas A/S v Firma M de Haan en W de Boer,*[261] held that an application to establish a limitation fund and an action for damage arising out of a collision do not create

[254] Most civil law countries do not have a forum non conveniens doctrine, and their courts do not issue anti-suit injunctions, but apply lis pendens to avoid parallel litigation: Martine Stuckelberg, '*Lis Pendens* and *Forum Non Conveniens* at the Hague Conference' [2001] 26 Brook J Int'l L 958.

[255] Brussels Regulation 2012, art 29; Lugano Convention 2007, art 27; Stephanie Law, 'Article 29' in Marta Requejo Isidro (ed), *Brussels I Bis: A Commentary on Regulation (EU) No 1215/2012* (Elgar Commentaries in Private International Law series 2022) [29.27]- [29.38].

[256] *The Nordglimt* (n 82), 482.

[257] Stephanie Law, 'Article 30' in Marta Requejo Isidro (ed), *Brussels I Bis: A Commentary on Regulation (EU) No 1215/2012* (Elgar Commentaries in Private International Law series 2022) [29.30]; [29.32].

[258] *Tatry v Maciej Rataj* (n 152), [47]; Meeson and Kimbell (n 191) [3.4].

[259] Ibid.

[260] Ibid, [36].

[261] C-39/02 *Maersk Olie & Gas A/S v Firma M de Haan en W de Boer* [2004] ECR I-9657.

a lis pendens situation because neither their subject matters nor their causes of action are the same.[262]

In addition to *lis pendens*, the Brussels-Lugano Regime provides the courts of member states with the discretion to stay the proceedings where a related action is pending in the courts of different member states.[263] Subsequently, on the application of one of the parties, a court has the power to decline jurisdiction if the jurisdiction of the court seized first over the related action is established, and its law permits the consolidation of the related actions. The related actions must be so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgements resulting from separate proceedings.[264]

Limitation proceedings brought by a shipowner and an action for damages brought against that shipowner are related actions, and thus, the court second seized may stay proceedings and decline jurisdiction.[265] It has been suggested that the Brussels-Lugano Regime aims to ensure that the same court deals with liability and limitation. Where there is a risk of conflicting judgments on what is actually due as damages in the light of a limitation defence succeeding, the second seized court, whether on limitation or liability, should stay the action and leave the first seized court to decide on both issues.[266]

The Brussels Regulation 2012 also empowers courts to grant a stay and decline jurisdiction over the same or related claims to avoid parallel proceedings and irreconcilable decisions if the first court seized is not located in one of the member states. [267] This discretion is subject to some restrictions. The jurisdiction must be based on specific grounds.[268] The judgment of the court first seized must be expected to be recognized and enforced in that member state, and the court must be satisfied that granting a stay is necessary for the proper administration

[262] Ibid, [35]-[37].
[263] Law, Article 30 (n 257) [30.07].
[264] Brussels Regulation 2012, art 30 (3); Lugano Convention 2007, art 28(3).
[265] *Maersk Olie & Gas A/S v Firma M de Haan en W de Boer* (n 261), [40]; Schlosser Report (n 191) 110.
[266] Elizabeth Blackburn, 'Lis Alibi Pendens and Forum Non Conveniens in Collision Actions after the Civil Jurisdiction and Judgements Act 1982' [1988] LMCLQ 91, 100-101.
[267] Brussels Regulation 2012, Art 33-34.
[268] Articles 4 (domicile of the defendant), 7 (jurisdiction over specific claims), 8 (multiple parties and multiple claims), and 9 (limitation of liability regarding ships).

of justice.[269] A review of the existing case law shows a strong presumption against a stay in favour of proceedings in the courts of the third states.[270]

These discretionary mechanisms function similarly to forum non conveniens. However, they are less effective than the common law mechanism because they apply only when the court of another state has already been seized.[271]

Another mechanism designed to preclude parallel proceedings is consolidation of proceedings. In the case of multiple defendants, the court must exercise jurisdiction over an action against a co-defendant provided that the actions are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.[272]

3.3 Domestic rules: common law

The Brussels-Lugano Regime was not entirely compatible with the common law. However, the effect of the withdrawal of the UK from the Brussels-Lugano Regime, as of 1 January 2021, was 'almost as though a house in the middle of a terrace had just blown up, leaving chaos and collateral damage all around.'[273] The English jurisdictional rules are complex and in need of reform.[274]

There is no spatial limit to the civil jurisdiction of the English courts. In principle, the English Admiralty Court may hear claims out of any collision, irrespective of the domicile of the parties and the place where the collision or the loss or damage arising out of it occurred.[275] Common law courts consider acceptance of jurisdiction as granting aid to foreign suitors and seem to justify their broad exercise of jurisdiction on the ground that collision actions are communis juris and, therefore, subject to the general maritime law as administered in England.[276] The

[269] Brussels Regulation 2012, arts 33-34.
[270] Geert van Calster, 'Lis Pendens and Third States: The Origin, DNA and Early Case-law on Articles 33 and 34 of the Brussels la Regulation and Its 'Forum Non Conveniens-Light' Rules' (2022) J Priv Int Law 363, 398.
[271] Hartley (n 121) 374.
[272] Brussels Regulation 2012, art 8.1; Lugano Convention 2007, art 6.1.
[273] Briggs (n 121) 131.
[274] Ibid, 268.
[275] Tettenborn and Rose (n 19) [11-003].
[276] Berlingieri (n 9) 866-867; Schoenbaum (n 4) §14.10.

jurisdiction of the English Admiralty courts is exercised under two different sets of rules for in personam and in rem collision action, which will be examined separately.

3.3.1 *In personam actions*

The jurisdiction of the English courts over in personam collision claims is restricted by s 22 of the Senior Courts Act 1981 and is based on the Collision Convention 1952.[277] England and Singapore have not incorporated art 1(1)(b) of the Convention (place of arrest) into their domestic laws,[278] limiting its scope further to in personam actions.[279] It was held art 1(1)(b), except for the part allowing sister-ship arrests, was not required to be incorporated into English legislation because it was already a part of English law.[280] The effect of that exclusion is that a claimant, technically, may arrest a vessel in England for a collision claim without discontinuing its in rem or in personam action previously brought in a foreign court in respect of the same collision, or may bring an in personam action in England without discontinuing its in rem proceedings in a foreign court. This argument has more force in Singapore since it has adopted the provisions of the Collision Convention 1952 without ratifying it. Nonetheless, proceedings in rem and in personam seem to be against the same parties.[281] The issue could become more complicated if the defendant in the in rem action would not be liable in personam, for example, where the owner of the vessel arrested in respect of a maritime lien has purchased the vessel after the cause of action arose.

England has also departed from art 2 of the Collision Convention 1952. As explained above the Convention requires the courts of the member states to prioritize the parties' agreement over other jurisdictional bases. Under the law of England, the parties' agreement has priority only if they have agreed on the jurisdiction of English courts.[282]

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[277] Section 22 of the Senior Courts Act 1981. The same restriction exists under the law of Singapore: The High Court (Admiralty Jurisdiction) Act 1961 (2020 rev ed), s 5.

[278] For English law, see the Senior Courts Act 1981, s 22(2); for Singapore law, see the High Court (Admiralty Jurisdiction) Act 1961 (2020 rev ed), s 5(1).

[279] Kimbell (n 94) [7.4].

[280] *The Po* [1991] 2 Lloyd's Rep 206 (CA), 211; 214.

[281] Tettenborn and Rose (n 19) [3-011]; *The Deichland* [1990] 1 QB 361 (CA), 388-389; Paul Myburgh, 'Richard Cooper Memorial Lecture: Admiralty Law – What is it Good for?' (2009) 28 University of Queensland Law Journal 19, 36.

[282] The Senior Courts Act 1981, s 22(5). A similar provision is incorporated into the law of Singapore; see the High Court (Admiralty Jurisdiction) Act 1961 (2020 rev ed), s 5(4).

The only criterion for the jurisdiction of English courts in personam actions is the validity of the service of process on the defendant.[283] There are different rules on the validity of the service of process within and outside the jurisdiction. The concept of 'within the jurisdiction' includes the territorial sea of England, but does not include the EEZ, excluding oil and gas exploration activities.[284] It should be noted that service of a claim form does not, of itself, confer jurisdiction on English courts. Jurisdiction is governed by principles of private international law, and the rules on service of process merely reflect jurisdictional rules.[285]

The plaintiff can serve the proceedings as of right if the defendant is actually present in England, whether or not resident or domiciled there. A company registered in England would be considered present in England, as is a foreign company that conducts business, even temporarily, at some fixed place within the jurisdiction.[286] Whether service is effected within jurisdiction or outside jurisdiction is determined by the location of the act of service and not the location of the defendant.[287] Thus, for example, a foreign-based defendant could be served within the jurisdiction through service on its solicitor.[288]

Contrary to civil law jurisdictions, service of process outside the jurisdiction is restricted in common law jurisdictions.[289] A claim form cannot be served outside of the jurisdiction without the court's permission unless the defendant has agreed to submit to the jurisdiction of the English courts.[290] A defendant will be taken to have submitted to the jurisdiction of the English court if it takes any substantial part in the proceedings, files a caution against arrest, acknowledges the issue of a claim form before it is served, or acknowledges service of it unless the defendant disputes the jurisdiction of the court or argues that the court should not exercise its jurisdiction or withdraw the acknowledgement with the court's permission.[291]

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[283] The jurisdiction of the Singapore courts is subject to the same criterion: Adeline Chong and Yip Man, *Singapore Private International Law: Commercial Issues and Practice* (OUP 2023) [3.09].

[284] Marsden (n 1) [14-014]-[14-016].

[285] Zuckerman (n 127) [5.174].

[286] The business of a foreign company could be carried on through an office or agency provided that the agency conducts the business of the foreign company rather than merely its own: Tettenborn and Rose (n 19) [11-007].

[287] Toh Kian Sing SC and Vellayappan Balasubramaniyam, 'Order 33' in Cavinder Bull (ed), *Singapore Civil Procedure 2025* vol 1 (Sweet & Maxwell 2025) [33/3/1]; Dicey, Morris & Collins (n 12) [11-065].

[288] *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2023] SGHC 149 [36]-[40].

[289] Berlingieri (n 9) 867.

[290] Civil Procedure Rules (CPR), r 6.33.

[291] Tettenborn and Rose (n 19) [11-008].

If there is a minimum connection[292] between the claim and England and Wales, the courts have the discretion to allow service of the process outside the jurisdiction. The minimum connection for a contractual collision claim is satisfied if the contract a) was made or offered within the jurisdiction; b) is subject to the law of England and Wales; c) was made by or through an agent trading or residing within the jurisdiction; d) was breached or likely to be breached within the jurisdiction.[293]

The minimum connection for a non-contractual collision claim is satisfied if a) the damage, including consequential damage, was suffered within the jurisdiction; b) the damage results from an act committed, or likely to be committed, within the jurisdiction; c) the claim is governed by the law of England and Wales.[294]

The existence of the defendant's property, such as a sum of money, within the jurisdiction also constitutes the minimum connection required for the English court's jurisdiction over the collision action.[295]

Contrary to the Brussels-Lugano Regime, the defendant's domicile does not play a pivotal role in the jurisdiction of English courts. If the defendant is not present within the jurisdiction, its domicile is just a gateway empowering the courts to allow the service out of a collision claim.[296] An individual residing in the UK is domiciled there if the nature and circumstances of his or her residence indicate that he or she has a substantial connection with the UK. A person who has been resident for three months is presumed to have a substantial connection unless the contrary is proved.[297] A corporation or association is domiciled in the UK if a) it is

[292] These minimum connections, known as 'jurisdictional gateways', are currently listed in Practice Direction 6B of Civil Procedure (Amendment No 3) Rules 2023 (CPR PD6B 2023). The regime for service out of jurisdiction in Singapore is outlined in Order 8 of the Rules of Court 2021 and Part 8 of the Supreme Court Practice Directions 2021 (SCPD 2021). The Rules of Court 2021 updated the former regime under the Rules of Court 2014, with the goal of broadening the extraterritorial jurisdiction of Singapore's courts: see Chong and Man (n 283) [3.71]. In practice, the new regime does not alter the Singapore court's jurisdiction to serve proceedings outside jurisdiction: Ardavan Arzandeh, 'The New Rules of Court and the Service-Out Jurisdiction in Singapore' (2022) Singapore Journal of Legal Studies 191, 201.

[293] CPR PD6B 2023, paras 3.1 (6)–(8).

[294] Ibid, para 3.1(9).

[295] Ibid, para 3.1(11).

[296] Ibid, para 3.1(1).

[297] Civil Jurisdiction and Judgments Act 1982, s 41.

incorporated or formed under the law of a part of the UK and has an official address in the UK, or b) its central management and control is exercised in the UK.[298]

A person who could not be served independently under any of the heads of service out of jurisdiction may be joined in the proceedings if he is a necessary or proper party to the claim and there is a real issue between him and the claimant, which is reasonable for the court to try.[299] Although it is desirable and efficient for claims arising from the same events to be heard together, this should not be used as a device to force a foreign person to litigate in England for a cause of action that has no connection with England and permission to service out may only be granted if the English court is at least minimally the appropriate forum.[300]

English courts may also grant permission to serve a claim outside the jurisdiction against a defendant who is already served under any of the heads of service out of jurisdiction, provided that the claims arise out of the same or closely connected facts.[301] This head of service widens the jurisdiction of English courts to the related actions to a collision action.

For the English courts to permit service out of the jurisdiction, the plaintiff should, in addition to proving that the minimum connection exists, show that the English court is clearly the appropriate forum to try the matter. In other words, the burden is the obverse of that applicable where a stay is sought of proceedings started as of right.[302] The question of whether a foreigner ought to be subjected to the inconvenience of coming to England to defend its rights is grave. The English courts, therefore, are exceedingly careful before allowing a writ to be served out of the jurisdiction.[303] In practice, English courts will not allow service unless there is clear evidence that justice might not be available in the foreign court.[304]

Permission to serve out of jurisdiction could be sought for certain admiralty claims, including a salvage claim, provided that any part of the services took place within the jurisdiction,[305]

[298] Ibid, s 42.
[299] CPR RD6B 2023, para 3.1(3).
[300] Marsden (n 1) [14-023]; Dicey, Morris & Collins (n 12), [11-122].
[301] CPR RD6B 2023, para 3.1(4A).
[302] *The Volvox Hollandia* (n 92), 372 (CA); *Spiliada* (n 14), 481.
[303] *GAF Corporation v Amchem Products Inc* [1975] 2 Lloyd's Rep 601 (CA), 604.
[304] Marsden (n 1) [14-045].
[305] CPR RD6B 2023, para 3.1(19)(a).

and to enforce claims for oil pollution under ss 153, 154, 175 or 176A of the Merchant Shipping Act 1995.[306]

There are also some restrictions concerning the service of certain claim forms outside the jurisdiction. Rule 61.4(7) reflects the jurisdictional restrictions of the Collision Convention 1952 as enacted in s 22(2) of the Senior Courts Act 1981. Rule 61.11(5) of the CPR restricts the power to service of limitation claim form out of the jurisdiction to three occasions:(1) the claim is a collision claim within the scope of the Collision Convention 1952 as incorporated into English law in s 22(2) of the Senior Courts Acts 1981, (2) the defendant has submitted to or agreed to submit to the jurisdiction of the court, or (3) the English court has jurisdiction under any applicable convention. 'Any applicable convention' in this rule includes the LLMC 1976/1996.[307] This Convention, at least in the English courts' view,[308] does not contain any jurisdictional rule, and the limiting party is required to establish jurisdiction in its chosen court.[309] This circularity leaves a lacuna in English law.

It was held that once a limitation fund is established in England, the court has jurisdiction to grant permission to serve the claim form out of the jurisdiction.[310] According to Art 11 of the LLMC 1996, the entitlement of a shipowner to establish a fund is conditional upon prior legal proceedings in England.[311] However, since a limitation decree could be granted without any prior legal proceedings,[312] this requirement could be circumvented by Rule 61.11(13)(a)(ii) of the CPR, which empowers the court to order the claimant to establish a limitation fund once a limitation decree is granted. This makes an unrestricted jurisdiction over limitation claims, which is suggested to be consistent with the English court's traditional view of giving shipowners a free hand in deciding where to limit their liability[313] and their historical role as

[306] Ibid, para 3.1(19)(b).
[307] *ICL Shipping Ltd v Chin Tai Steel Enterprise Co Ltd* (n 168), [64]; *Seismic Shipping Inc v Total E&P UK Plc* (n 178), [27]; Tettenborn and Rose (n 19) [11-032].
[308] *Seismic Shipping Inc v Total E&P UK Plc*, Ibid, [15]-[16]; Kimbell (n 94) [8.115].
[309] Baughen (n 58) 411.
[310] *ICL Shipping Ltd v Chin Tai Steel Enterprise Co Ltd* (n 168), [64].
[311] Ibid, [46]; *Seismic Shipping Inc v Total E&P UK Plc* (n 178), [27].
[312] *Seismic Shipping Inc v Total E&P UK Plc*, ibid; *The Denise* [2004] EWHC 3305 (Admlty).
[313] Tettenborn and Rose (n 19) [11-032]

a centre for international dispute resolution, whether or not the dispute has any connection with England.[314]

Under Singapore law, permission to service out of an originating claim for a collision action is restricted in line with the provisions of s 5 of the High Court (Admiralty Jurisdiction) Act 1961 (2020 rev ed). The same restrictions are imposed on service out of an originating claim for a limitation action.[315] There are two fundamental differences between Singaporean and English procedural rules. First, no reference to jurisdiction under any international convention for limitation claims exists. Second, both limitation and collision actions are subject to general requirements for service out of Singapore in Order 8 (except for Rule 4) of the Rule of Court 2021. Under these requirements, the claimant who wishes to serve a defendant outside Singapore must show that its claim has sufficient nexus to Singapore[316] and Singapore is the appropriate forum to hear its claim.[317]

3.3.2 *In rem actions*

The action in rem is a vehicle that provides the court with jurisdiction over the vessel or property upon arrest and over the liable person once it defends the action in rem.[318] The in rem jurisdiction of common law courts is restricted to certain claims.[319] The claimant must prove that its claim is one of the claims for which a ship or property could be arrested.

In rem claims are categorized into two types: truly in rem claims and quasi in rem claims. The former is directed against a ship as a res and not against any person who has an interest in the ship. On the contrary, a quasi in rem claim depends upon establishing a link of ownership or control between a ship and the liable person in two stages: when the cause of action arose and when the action is brought (the in personam link).[320] This in personam link requirement justifies and determines the legitimate ambit of actions in rem by matching up the right in

[314] Kimbell (n 94) [8.119].
[315] Rules of Court 2021, o 33, r 3.
[316] SCPD 2021, para 63.
[317] Arzandeh (n 292) 201.
[318] Tettenborn and Rose (n 19) [11-034].
[319] For English law, see the Senior Courts Act 1981, s 21; for Singapore law, see the High Court (Admiralty Jurisdiction) Act 1961 (2020 rev ed), s 4.
[320] For English law, see the Senior Courts Act 1981, s 21 (4); for Singapore law, see the High Court (Admiralty Jurisdiction) Act 1961 (2020 rev ed), s 4 (4); Kimbell (n 94) [3.4]; Tettenborn and Rose (n 19) [4-087]-[4-097].

personam defendant with the right ship or ships against which proceedings in rem might be brought.[321]

Truly in rem claims include claims to enforce maritime liens, and a collision claim gives rise to a maritime lien.[322] Therefore, a claimant may bring a collision action directly against the delinquent ship or relinquish its maritime lien and bring an action against a sister ship or, in South Africa, against an associated ship.[323]

The jurisdiction of English courts over in rem actions also depends on the proper service of the process on the res. The main difference is that the arrest of a vessel or cargo is only possible if they are located inside the jurisdiction. Therefore, service out of jurisdiction is not permissible.[324]

In an in rem collision action where the defendant's vessel is arrested, or security is provided for its release, the court, at the defendant's request, has the power to stay the proceedings until sufficient security is provided to satisfy any judgment in favour of the defendant.[325]

3.3.3 *Mechanisms to avoid parallel proceedings and inconsistent decisions*

It is not easy to deprive a claimant of his right to have his claim heard by an English court. A defendant may always argue that the collision action may be tried more suitably for the interests of the parties and the ends of justice in some other forum. However, the burden of making this plea is considerable.[326] This explains why the multiplicity of proceedings and any

[321] Paul Myburgh, 'Arresting the Right Ship: Procedural Theory, The In Personam Link and Conflict of Laws' in Martin Davies (ed), *Jurisdiction and Forum Selection in International Maritime Law: Essays in Honor of Robert Force* (Kluwer Law International 2005) 287-288.

[322] *Harmer v Bell (The Bold Buccleugh)* (1851) 7 Moo 267.

[323] For South African law, see Admiralty Jurisdiction Regulation Act No 105 of 1983, s 3(6).

[324] Dicey, Morris & Collins (n 12) [13-008]; *Stolt Kestrel BV v Sener Petrol Denizcilik Ticaret AS* [2015] EWCA Civ 1035, 2016] 1 Lloyd's Rep 125, [20].

[325] CPR, r 61.4 (9); Kimbell (n 94) [7.4]. A similar rule applies under the law of Singapore, see o 33, r 28 of the Rules of Court 2021.

[326] Marsden (n 1) [14-042].

consequent risk of inconsistent decisions on the same facts is not per se a ground to stay proceedings or decline jurisdiction.[327] It is only a factor, albeit an important one.[328]

The common law has two main solutions to the problem of parallel proceedings: stay on the grounds of forum non conveniens and an anti-suit injunction. The former allows a court to decline jurisdiction in favour of a foreign court; the latter enables the court to insist on hearing the case itself. The EU system did not adopt these solutions because they are condemned as being against the equality of legal systems, allowing the common law courts to control which cases will be heard by foreign courts.[329]

In several common law jurisdictions, an action may be stayed on the ground of forum non conveniens if the two-stage test enunciated in *The Spiliada*[330] is satisfied.

At stage one, the applicant must prove that the court is not the natural or appropriate forum for the trial of the action and that another available forum is clearly or distinctly more appropriate. The foreign court would be considered available if it has jurisdiction to determine the claimant's claim by the time of the application for a stay.[331] If the courts find that there is a prima facie more appropriate alternative forum, the analysis moves to stage two. At stage two, the court will ordinarily grant a stay unless the party resisting the stay proves that some special circumstances require that the trial should take place in that jurisdiction.[332]

Some common law jurisdictions, such as Australia and Canada, have not wholly followed *The Spiliada* test. Nevertheless, their test for forum non conveniens is heavily influenced by it.[333] A party applying for a stay in Australia must prove that the Australian court is clearly an

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[327] *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2006] SGCA 39, [2007] 1 SLR(R) 377, [90]; *The Owners of the Ship 'Al Khattiya' v The Owners and/or Demise Charterers of the Ship 'Jag Laadki' (The 'Jag Pooja')* [2018] EWHC 389, [2018] 2 Lloyd's Rep 243, [87]-[88].

[328] *Bouygues Offshore SA* (n 97), [18]; *Saipem SpA v Dredging VO2 BV (The Volvox Hollandia)* [1987] 2 Lloyd's Rep 520, 528; *GAF Corp v Amchem Products Inc* (n 303), 608 (CA).

[329] Hartley, (n 121) 368.

[330] *Spiliada* (n 14). For an examination of the collision cases involving stay application on forum non conveniens grounds, see Kimbell (n 94) [7.6]-[7.21].

[331] *Unwired Planet International Ltd v Huawei Technologies (UK) Ltd* [2020] UKSC 37, [2020] Bus LR 2422, [96]–[98].

[332] *Caltex Singapore* (n 117), 289; *The Sea Justice* [2023] SGHCR 24 [2024] 2 Lloyd's Rep 383, [36].

[333] Ardavan Arzandeh, *Forum (Non) Conveniens in England: Past, Present, and Future* (Hart Publishing 2021) 92.

inappropriate forum, which will be the case if the continuation of the proceedings in Australia would be oppressive, in the sense of seriously and unfairly burdensome, prejudicial or damaging, or vexatious, and productive of serious and unjustified trouble and harassment.[334] It is suggested that the Australian test is more restricted. [335] Some have argued that the difference is not substantive since both English and Australian courts consider and analyse the same factor and ascribe to them the same weight.[336]

The court will examine various factors to exercise its discretion to grant a stay. There is no line dividing these factors between the first and second stages of the test.[337] These factors could be categorized into two main types: factors affecting the convenience or expense of a trial and geographical factors. The former includes the availability of witnesses, the existence of related proceedings, time bars, the possibility of savings of time and money,[338] the applicable law and the availability of a defence or remedy. [339] The latter includes the place of the tort and where the parties reside or carry on business. None of these factors is decisive in itself,[340] and the court has a broad discretion in deciding whether or not to stay an action based on forum non conveniens. In *The Spiliada*, for instance, the House of Lords upheld service out where the contract was governed by English law, numerous witnesses were in England, and related actions were on foot in England.[341]

The place where the collision occurred is prima facie the natural forum.[342] However, it is arguable that in the context of a collision action, it is overly simplistic to view the place of commission in isolation or by itself when considering the appropriate forum for the resolution of any dispute. Indeed, it is perfectly possible other countervailing factors may dwarf the significance attaching to the place of commission.[343] In *The CF Crystal and Sanchi*,[344] it was

[334] *Henry v Henry* [1996] HCA 51, (1996) 185 CLR 571, [25].
[335] Dicey, Morris & Collins (n 12) [12-024].
[336] Ardavan Arzandeh, 'Reconsidering the Australian Forum (Non) Conveniens Doctrine' (2016) 65 ICLQ 475, 491.
[337] Dicey, Morris & Collins (n 12) [12-032].
[338] *Spiliada* (n 14), 465; *The Cidi Bishr* [1987] 1 Lloyd's Rep 42, 46.
[339] Marsden (n 1) [14-046].
[340] Arzandeh (n 333) 75.
[341] *Spiliada* (n 14), 484-485.
[342] *Cordoba Shipping Co Ltd v National State Bank (The Albaforth)* [1984] 2 Lloyd's Rep 91 (CA), 94; *The Sea Justice* (n 332), [39].
[343] *Al Khattiya* (n 327), [38].
[344] *Bright Shipping Ltd v Changhong Group (HK) Ltd (The CF Crystal and Sanchi)* [2020] HKCFA 24, [2020] HKEC 1914, [16].

held that it is well established that the place of a collision at sea may be entirely fortuitous, and there may be no obvious or natural forum for the resolution of disputes.

As mentioned above, parallel or similar proceedings are no more than a factor relevant to determining the appropriate forum, which must be weighed against other factors.[345] Even submission to the jurisdiction of a foreign court is not determinative of whether a stay should be immediately ordered.[346] The common law courts recognize that irreconcilable judgments arising from parallel or related proceedings are unavoidable in some cases.[347]

The location of the evidence and the witness are also factors considered by courts. Evidence are invariably pivotal in assessing the liability of the vessels involved in collision cases.[348] In *The Sea Justice*,[349] the Assistant Registrar stated that the evidence of the various personnel who were involved in the rescue and clean-up operations, together with those who had investigated the collision, would be vital at trial. He was concerned whether various Chinese authorities and ministries, whose personnel had investigated the collision, would allow their personnel to travel to a foreign court to testify and give evidence. The Assistant Registrar added that investigation reports are likely to be in Mandarin, and while they could be translated, there will be the risk of errors.[350] Nevertheless, the Assistant Registrar did not mention the location of the evidence and witness when concluding that the Chinese court was the appropriate forum for the action.[351]

There is no consensus among common law countries as to whether the difference in limitation regimes is a factor to consider in granting a stay on the basis of forum non conveniens.

In *Caltex Singapore Pte Ltd v BP Shipping Ltd*,[352] it was held that the ends of justice would best be served if the plaintiffs were permitted to proceed in a country that applies the LLMC 1976

[345] *The Sea Justice* (n 332), [40].
[346] Ibid, [80].
[347] *Vedanta Resources v Lungowe* [2019] UKSC 20, [2020] AC 1045, [70]; *The CF Crystal and Sanchi* (n 344), [11]-[12] (CFA).
[348] Stephen Girvin, 'Collisions at Sea: All in the Evidence?' [2018] LMCLQ 28, 35.
[349] *The Sea Justice* (n 332).
[350] Ibid, [54]-[57].
[351] Ibid, [106]; [160].
[352] (n 117).

because it represents a widely accepted development from the regime which existed under the LLMC 1957.[353] A plaintiff deprived of a larger limit would be deprived of a legitimate juridical advantage.[354] It was held in *The Sea Justice* that the English Court of Appeal overruled this decision in *The Herceg Novi,*[355] where it was held it was impossible to say that substantial justice would not be done in Singapore where the LLMC 1957 (then)[356] applied and that, in terms of abstract justice, neither of limitation conventions could be considered objectively more just than the other.[357] However, as detailed above, forum non conveniens is a completely discretionary doctrine, and thus, it is not possible to argue that the discretion of the court in one case was overridden by the discretion of another court in another case.

It was held that the English court in *The Herceg Novi*[358] did not treat the higher limit as a juridical advantage on the grounds of international comity.[359] However, the word 'comity' is not used by English courts, and they did not altogether reject the possibility of considering differences in limitation regimes as a factor in determining the appropriate forum.[360] In another case, the High Court of England and Wales found force in the argument that substantial justice would not be available where a sui generis limitation regime with low limits applies.[361] In *The Big Kahuna,*[362] the limit of the shipowner's liability in England and Wales was three times lower than in Greece because England incorporated a lower limit for small crafts under art 15(2) of the LLMC 1996. Greece incorporated the same limit after the incident. It was held that despite the significant difference in the limitation regimes of England and Greece, it could not be said that the Greek limitation regime was objectively more just than England's, especially considering that the two regimes have then equalised.[363] The Greek higher limit, therefore, was not a basis upon which the English court would grant a stay.

[353] Ibid*,* 298*.*
[354] Ibid, 299.
[355] (n 110), [83].
[356] Today, 66 countries, including Singapore and the UK, are parties to the LLMC 1996. See the latest status of the IMO Conventions at <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx> accessed 3 January 2025.
[357] (n 110), 460.
[358] Ibid.
[359] *The Sea Justice* [2024] (n 102), [86].
[360] Tsimplis (n 158) 315.
[361] *Domansa v Derin Shipping and Trading Co Inc* [2001] 1 Lloyd's Rep 362 (Comm), [32].
[362] Above, n 105.
[363] Ibid, [16].

Therefore, the English courts examine the foreign limitation regime on a case-by-case basis to determine whether substantial justice is available in the foreign jurisdiction.

The Singaporean courts have strictly rejected the possibility of reliance on different limitation regimes as an advantage, whether or not the foreign limitation regime is based on a limitation convention, as it would contravene the overriding principle that the right to choose the forum for limitation belongs to the shipowner alone.[364] However, this may be contrasted with Hong Kong[365] and Australia,[366] where the local higher limit is a legitimate advantage.

There is another significant disharmony among the common law jurisdictions in the stage of initiating an action in rem against a vessel. While in England and Wales[367], a claimant may apply for the issue of an arrest warrant as of right,[368] the power to order an arrest is discretionary in other jurisdictions. The arresting party in Singapore[369] and Hong Kong[370] is required to make full and frank disclosure of all material facts in its arrest application, and in Australia,[371] is obliged to disclose specified matters fully and frankly. The question is whether a claimant, when applying for an arrest warrant, is required to disclose the existence of concurrent or similar proceedings, including the registration of a claim against a limitation fund, in another jurisdiction and whether the registrar would refuse the application in case a similar or parallel action is pending elsewhere.

In *Atlasnavios Navegacao LDA,*[372] the bulk carrier *B Oceania* sank following a collision with the ship *Xin Tai Hai* in the Straits of Malacca. On 24 August 2011, the owner of *Xin Tai Hai* began limitation proceedings in China. On 4 November 2011, the owner of *B Oceania*

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364 *The Sea Justice* [2024] SGCA 32, [2024] 2 Lloyd's Rep 429, [14]. The Singaporean courts' approach to the issue of limitation as a legitimate juridical advantage is contrary to the discretionary nature of the forum non conveniens doctrine and neglects its objective: see Navid Hatamipour, 'Limitation as a Legitimate Juridical Advantage' (2024) 30 JIML 157.

365 *Bright Shipping Ltd v Changhong Group (The CF Crystal and Sanchi)* [2019] HKCA 1062, [2020] 2 Lloyd's Rep 1, [72]; *Pusan Newport Co Ltd v The Owners and/or Demise Charterers of the Ships or Vessels 'Milano Bridge' and 'CMA CGM Musca' and 'CMA CGM Hydra'* [2022] HKCA 157, [2022] 1 Lloyd's Rep 441, [34].

366 *Chou Shan* (n 5), [83] (FCAFC); *Atlasnavios Navegacao LDA v The Ship 'Xin Tai Hai' (No 2)* [2012] FCA 1497, (2012) 215 FCR 265, [143].

367 *The Varna* [1993] 2 Lloyd's Rep 253 (CA), 257.

368 CPR, r 61(5).

369 *The Vasiliy Golovnin* [2008] SGCA 39, [2008] 4 SLR 994, [83].

370 *Sin Hua Enterprise Co Ltd v Owners of Motor Ship Harima* [1987] HKLR 770, 772D-773B (HKCA).

371 *Atlasnavios Navegacao LDA* (n 366), [92].

372 Ibid.

commenced two proceedings for the loss of *B Oceania* by filing a writ in rem in Australia and registering its claim against the limitation fund in China. On 2 May 2012, *Xin Tai Hai* was arrested in Australia, and its owner applied to set aside the arrest warrant on the ground, inter alia, that the arresting party did not disclose to the Registrar the existence of the Chinese proceedings and its participation in them.

The Federal Court of Australia held that the arresting party was not obligated to disclose the existence of the proceedings in China and that information could not have affected the Registrar's decision whether or not to issue the arrest warrant. One of the court's reasons for reaching this conclusion was that *Xin Tai Hai* could have been arrested in Australia as security for enforcement of the outcome of the Chinese proceedings.[373]

Under the law of Singapore, on the contrary, the existence of foreign proceedings in respect of the same claim has been held to be a material fact that should be disclosed as it would otherwise obscure the inevitable consequence that proceedings in Singapore would be stayed or that jurisdiction would be declined.[374] The existence of foreign proceedings is a material fact not because they would affect the jurisdiction of the Singaporean court but rather because they have a bearing on whether the application for arrest was an abuse of process, such as the arrest being sought for the purpose of securing a foreign judgment.[375] In case of material non-disclosure, the court has the discretion to set aside the warrant of arrest.[376]

The effect of jurisdictional rules of international conventions on forum non conveniens is not clear. Some[377] argue that a plea of forum non conveniens is not available where a liability regime gives the claimant an unqualified right to sue in a given jurisdiction, including, art 17 of the Athens Convention 1976, under which a claimant has the right to choose among one of the four competent jurisdiction where to bring its action, or art 10 of the LLMC 1976, which gives a shipowner an unfettered right to claim limitation without setting up a limitation

[373] Ibid, [99]-[104].
[374] *The Vasiliy Golovnin* (n 369), [98].
[375] *The Sea Justice* (n 102), [140].
[376] *The Vasiliy Golovnin* (n 369), [84].
[377] Tettenborn and Rose (n 19) [11-049].

fund.[378] Others[379] suggest that whether an English court may stay proceedings on the ground of forum non conveniens depends upon whether the operation of the common law doctrine is expressly or impliedly permitted by the particular convention; for instance, art 5(2) of the 2005 Convention on Choice of Court Agreements prohibits the operation of the forum non conveniens doctrine by providing that a court that has jurisdiction under this convention 'shall not decline to exercise jurisdiction on the ground that the dispute should be decided in a court of another State'.

The anti-suit injunction allows the common law courts to exercise jurisdiction to restrain a party over whom it has personal jurisdiction from instituting or prosecuting proceedings in a foreign court.[380] The anti-suit injunction in common law countries aims to minimise litigation and address jurisdictional disputes. Its justification is that the commencement or continuation of proceedings in the foreign jurisdiction would be unconscionable, vexatious or oppressive.[381]

Under English law, anti-suit relief is a discretionary remedy, and there are no absolute or inflexible rules governing its exercise.[382] The underlying principle is that the jurisdiction is exercised 'where it is appropriate to avoid injustice' or where the foreign proceedings are 'contrary to equity and good conscience'.[383] The English courts are cautious in granting anti-suit injunctions because they are potentially exercising control over what foreigners do abroad.[384] Nonetheless, the scope of the anti-suit injunction has been significantly expanded, which is suggested to be necessary to meet the needs of international commercial litigation and arbitration, especially in the context of complex and international maritime disputes involving increasingly sophisticated and well-advised parties.[385]

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[378] In *The Big Kahuna* (n 105), the issue of admissibility of the plea of forum non conveniens against a limitation action under the LLMC 1976 was not raised.

[379] Dicey, Morris & Collins (n 12) [12-019].

[380] *Masri v Consolidated Contractors International Company Sal* [2008] EWCA Civ 625, [2008] QB 503, [27].

[381] Alexandr Svetlicinii and Fali Xie, 'The Anti-suit Injunctions in Patent Litigation in China: What Role for Judicial Self-restraint?' (2024) 19 (9) JIPLP 734, 736.

[382] *Ecobank Transnational Inc v Tanoh* [2015] EWCA Civ 1309, [2016] 1 WLR 2231, [123]– [127].

[383] Dicey, Morris & Collins (n 12) [12-128].

[384] Marsden (n 1) [14-049].

[385] Justice Belinda Ang Saw Ean, 'Anti-Suit Injunctions in Maritime Disputes: A Trend that Threatens to be out of Control' CML Working Paper Series, No 21/03, December 2021 <https://law.nus.edu.sg/cml/publications/> 54.

In *The Western Regent,*[386] the English Court of Appeal, granting a limitation decree, refused to issue an anti-suit injunction restraining collision proceedings in Texas, United States. It was held that the purpose of an anti-suit injunction was not to ensure that a friendly state recognises an English judgment but to prevent unconscionable conduct.[387] The English court should leave the court in Texas to decide what effect to give to the decree granted in this action.[388] This conclusion was partly based on the nature of a limitation decree. Clarke LJ, referring to *The Herceg Novi,*[389] stated that limitation regimes are entitled to equivalent international recognition. In these circumstances, it was impossible to say that liability proceedings in the US or an LLMC 1957 state were unconscionable.[390]

It is also possible to claim damages for breach of forum agreements[391] or equitable compensation for breach of equitable obligations.[392] Such damages may include the costs of defending the foreign proceedings brought in breach of a forum agreement and the substantive liability imposed by the foreign court.[393] This remedy could indirectly preclude parallel proceedings by discouraging forum shopping.[394] Furthermore, in cases where the ends of justice require the case to be heard in a non-agreed forum, damages could be awarded should the innocent party incur additional costs or greater liability.[395]

3.4 Domestic rules: China

The Civil Procedure Law of the PRC, adopted in 1991, as amended in 2023 (CPL 2023), contains the main framework of China's law on international jurisdiction for collision actions. This framework is supplemented by two sets of jurisdictional rules included in the Maritime Procedure Law 1999 (MPL 1999) and a few international maritime conventions which China is a party to. The special jurisdictional rule of the MPL 1999 and international maritime

386 Above (n 170).
387 Ibid, [48].
388 Ibid, [50].
389 *The Herceg Novi* (n 110).
390 *Seismic Shipping Inc v Total E&P UK Plc* (n 178), [51].
391 *Union Discount Co Ltd v Zoller* [2001] EWCA Civ 1755, [2002] 1 All ER 693.
392 *Argos Pereira España SL v Athenian Marine Ltd* [2021] EWHC 554 (Comm), [2021] 2 Lloyd's Rep 387.
393 Justice Belinda Ang Saw Ean (n 385) 26; *SD Rebel BV v Elise Tankschiffahrt KG* [2025] EWHC 376, [56].
394 Justice Belinda Ang Saw Ean, ibid, 34.
395 Ibid, 35.

conventions prevail over the general rules of CPL 2023.[396] China is not a party to the Collision Convention 1952 or any of the limitation conventions.

The interpretations, practice directions and guidance issued by the Supreme People's Court of the People's Republic of China, including the Supreme People's Court Interpretations on the Application of the Special Maritime Procedural Law of the People's Republic of China 2003 (MPLI 2003), clarify the jurisdictional rules of China for collision actions.

3.4.1 *General rule*

The general rule under Chinese law is that defendants should be sued in their place of residence, except for personal status or relationships.[397] This general rule is departed from for several actions. The rules applicable to collision actions and their related actions are examined below.

3.4.2 *Special rules*

Some actions are subject to the exclusive jurisdiction of China.[398] For instance, an action brought over a dispute regarding pollution damage from a ship's discharge, omission or dumping of oil or other harmful substances, or maritime production, operations, ship scrapping, or repairing operations will be under the exclusive jurisdiction of the court of the place where the oil pollution occurred, where the result of the injury occurred, or where preventive measures were taken.[399]

Excluding cases where the Chinese court has exclusive jurisdiction over the disputes, the parties may agree on the forum for settling their disputes. If neither of the parties to a dispute is Chinese, the parties may submit their dispute to the court of China even if there is no practical connection between the dispute and the People's Republic of China.[400] On the

[396] MPL 1999, arts 2-3; RPC 1991, art 271.
[397] Jianping Shi and Zijun Zhai, 'Jurisdiction in Personam' in Xiaohong Liu and Zhengyi Zheng (eds), *Chinese Private International Law* (Hart Publishing 2021) 46.
[398] MPL 1999, art 7.
[399] Ibid, art 7.2.
[400] Ibid, art 8.

contrary, if one of the parties is a Chinese national, the validity of the jurisdiction agreement is subject to a real connection between the dispute and the selected forum.[401]

Chinese courts have jurisdiction over claims arising out of collisions if the place of occurrence of the collision, the place where the colliding vessel first arrived, the place of the detention of the vessel at fault, the defendant's domicile,[402]or the place of the vessel's port of registry is in China.[403]

According to Interpretation No 16 of the Supreme People's Court of China,[404] the offshore extent of the jurisdiction of Chinese courts includes internal waters, territorial waters, contiguous zones, and exclusive economic zones. Chinese courts, therefore, have jurisdiction over actions arising out of collisions occurring in the China EEZ.

Actions for salvage are under the jurisdiction of the Chinese court if the vessel is salved in China or if the port where the salvaged vessel first arrived is in China.[405] Actions arising from general average are under the jurisdiction of the Chinese court when the place where the vessel first arrives, where general average is settled, or where the voyage terminates is in China.[406]

A limitation fund could only be established in China if China is where the collision occurred, the contract was performed, the vessel was arrested,[407] or where the vessel arrived after the collision,[408] whether or not a Chinese port is its first port of call after the collision.[409] The existence of a forum selection clause in a contract would not restrict the Chinese court's jurisdiction over limitation actions.[410]

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401 CPL 2023, art 35.
402 Ibid, art 31.
403 MPL 1999, art 6.1.
404 Provisions of the Supreme People's Court on Several Issues Relating to the Trial of the Relevant Cases which have Occurred at Sea Areas within the Jurisdiction of China, issued on August 01, 2016, art 1.
405 CPL 2023, art 32.
406 Ibid, art 33.
407 MPL 1999, art 102.
408 MPLI 2003, art 80.
409 *Atlasnavios Navegacao LDA* (n 366), [34]; *The Sea Justice* (n 332), [39].
410 MPL 1999, art 103.

Under the law of China, where the defendant raises no objection to the jurisdiction of the court of China and responds to the action by submitting a written statement of defence or brings a counterclaim, the court of China accepting the action will be deemed to have jurisdiction.[411] It is not clear if registering a claim against a limitation fund established in China amounts to submission to the jurisdiction of the Chinese courts.[412] The legal effect of a reservation of the right to challenge jurisdiction when registering a claim against a limitation fund established in China is also unclear.[413] There is a time limit for registering claims against any limitation fund, which puts creditors in a tight situation. If they believe that China is not the appropriate forum for their claim, they have to risk not registering their claim against the Chinese fund.

Actions arising out of carriage of goods by sea contracts fall within the jurisdiction of Chinese courts provided that China is the place of departure, or destination, or defendant's domicile,[414] or re-transportation.[415] Actions arising out of charterparties are subject to the jurisdiction of the courts of China if the place of delivery, redelivery, ship registry, or defendant's domicile is in China.[416]

CPL 2023's latest amendment, which came into force on 1 January 2024, introduced a new provision to art 276. This allows the Chinese judge to exercise jurisdiction if an 'appropriate connection' exists between the action and China. In other words, the Chinese courts are not restricted to a closed list of jurisdictional gateways that allow them to hear disputes. What the Chinese court would make of the vague concept of 'proper connection' remains to be seen.

3.4.3 *Mechanisms to avoid parallel proceedings and inconsistent decisions*

The latest amendment of CPL 2023 also introduced new provisions (arts 280-282) on how the Chinese court would deal with the issue of parallel proceedings and inconsistent decisions, which indicate a unilateral approach. Article 280 expressly provides, as a general rule, that in

[411] CPL 2023, art 278.
[412] *Atlasnavios Navegacao LDA* (n 366), [34]; *The Sea Justice* (n 332), [102].
[413] *The Sea Justice* (n 332), [136].
[414] CPL 2023, art 28.
[415] MPL 1999, art 6.2.
[416] Ibid, art 6.3.

the case of parallel proceedings, the Chinese court having jurisdiction under this law may exercise jurisdiction. This general rule could be departed from in exceptional cases by application of a variation of the forum non conveniens doctrine and the lis pendens rule.

These new provisions make a distinction between two stages, before and after accepting the case. Suppose a Chinese court has jurisdiction to hear a case under the law of China. In that case, the court may refuse to accept the case only if the parties have agreed on a foreign court to exercise jurisdiction exclusively. That agreement does not violate the provisions of Chinese law on exclusive jurisdiction or involve the sovereignty, security or social public interests of China.[417]

After accepting a case, a party may apply to the court to suspend the action on the ground that a foreign court has accepted the case before the Chinese court unless there is a forum selection agreement granting jurisdiction to the Chinese court or the dispute falls under the exclusive jurisdiction of a Chinese court, or it is obviously more convenient for the Chinese court to hear the case. [418] Where the foreign court fails to take necessary measures to hear the case or is unable to conclude within due time, the Chinese court may remove the suspension with the party's written application.[419]

Prioritizing the court first seized is a new rule in Chinese law adopted by the latest amendment of CPL 2023. It is fundamentally different from the strict lis pendens rule in the Brussels-Lugano Regime, especially considering that it allows the Chinese court to disregard the rule if it considers itself an obviously more convenient forum.

Contrary to the lis pendens rule, forum non conveniens is not a new phenomenon in the Chinese legal system. The principle of forum non conveniens in China refers to cases where a court has jurisdiction to hear a dispute but declines to exercise such jurisdiction because it would be inconvenient or unfair to do so and it would be more convenient and appropriate for the parties to litigate their dispute before a court in another country.[420]

[417] CPL 2023, art 280.
[418] Ibid, art 281.
[419] Ibid, art 281.
[420] Shi and Zhai (n 397) 50-51.

Chinese courts are allowed to dismiss a foreign-related civil case and instruct the plaintiff to file the lawsuit with a foreign court which is more convenient to hear the case, provided that:

- the defendant raises an objection to jurisdiction;
- the basic facts of the dispute in the case did not occur within the territory of the People's Republic of China, and it is obviously inconvenient for the People's court to hear the case and for the parties to participate in the proceedings thereof;
- there is no agreement between the parties referring the dispute to the Chinese courts;
- the dispute does not fall under the exclusive jurisdiction of a Chinese court;
- the case does not involve the sovereignty, national security or public interest of China;
- it is more convenient for a foreign court to hear the case.

This dismissal is temporary, and the plaintiff may again bring the same action before the Chinese court if the foreign court refuses to exercise jurisdiction over the dispute, fails to take necessary measures to hear the case, or fails to conclude the case within a reasonable period.[421]

The Chinese courts are also empowered to issue a maritime injunction ordering an act or omission by the party opposing the claim,[422] similar to a freezing injunction. Two main differences exist between an English freezing injunction and a maritime injunction. Contrary to the freezing injunction, the maritime injunction does not include orders restricting parties from disposing of or dealing with their assets, and it cannot be obtained after judgment.[423]

A Chinese court has a discretion to issue a maritime injunction if three conditions are fulfilled: the applicant has a maritime claim, an obligation has been breached, and an imminent risk of losses will be caused or enlarged if a maritime injunction is not granted forthwith.[424] The Maritime Court must make an order on any application for a maritime injunction that it has

[421] CPL 2023, art 28; Interpretation of the Supreme People's Court concerning the Civil Procedure Law of the People's Republic of China 2015, art 532.
[422] SMPL 1999, art 51.
[423] Zhao and Lianjun (n 93) 268.
[424] MPL 1999, art 56; Zhao & Lianjun, ibid, 265-266.

allowed to be made within 48 hours. When granted, such an injunction must be executed forthwith.[425]

A maritime injunction ordinarily would be heard ex parte without notice to the defendant.[426] A party who is dissatisfied with such an order may apply for a review by the Maritime Court within five days after the order is served, but while the application for review is pending, the maritime injunction remains in force. The Maritime Court must examine the basis of the objection and determine whether or not the objector has justified the discharge or cancellation of the injunction.[427]

Initially, the maritime injunction was not intended to prevent parallel proceedings, and its anti-suit injunction function was developed in the subsequent maritime judicial practice.[428] The content of a maritime injunction could be an order to lift the property preservation measures in foreign proceedings[429] or even an order to withdraw an anti-suit injunction lodged before a foreign court.[430]

In *Atlasnavios Navegacao LDA*,[431] two maritime injunctions were issued. The first one ordered the defendant to release the ship from arrest immediately and not to adopt detention or other impeding measures on any property of the applicant. The second one was an order to immediately return a letter of undertaking given for the release of the vessel.[432]

The function of anti-suit injunctions could also be achieved through an 'act preservation measure' under art 103 of the CPL 2023. Under this provision, a Chinese court may, upon a party's application or ex officio, order another party to refrain from certain conduct if it would inhibit the eventual enforcement of the judgment or would cause any other irreparable damage to the applicant.[433]

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425 MPL 1999, art 57.
426 *Atlasnavios Navegacao LDA* (n 366), [26].
427 MPL 1999, art 58.
428 Svetlicinii & Xie (n 381) 736.
429 *Pingxiang v Nanyuan* (2008) Wu Hai Fa Qiang Zi No 5, cited in Svetlicinii & Xie, ibid.
430 *Huatai P&C Insurance Co Ltd Shenzhen Branch v Clipper Chartering SA* (2017) E 72 Xing Bao No 3, cited in Svetlicinii & Xie, ibid.
431 Above (n 366).
432 Ibid, [26].
433 Svetlicinii & Xie (n 381) 735-736.

The act preservation measure was also not intended to address the problem of parallel litigation. Its primary purpose was to protect the applicant's enforceable rights.[434]

In *The Sea Justice*,[435] a party applied for a 'worldwide behaviour preservation order' which contained an application that the other party be prohibited from initiating any form of legal proceedings against the applicant in the courts of China or other countries and that the other party withdraw, terminate, or not proceed with the claims filed against the applicant in the Marshall Islands. The Chinese court dismissed the application and held that filing a lawsuit in the Marshall Islands did not violate the laws and regulations of China. There was no evidence that the behaviour of the other party had made it difficult to enforce the judgement of the Chinese court or to cause the legal rights and interests of the defendant to be violated.[436]

4 Evaluation of the jurisdictional rules applicable to collision claims

4.1 Legal certainty

Certainty and uniformity of outcome are the main goals of both maritime law and private international law.[437] Given that the role of law in the shipping industry is limited to defining the playing field on which the parties operate, it is often said that it is more important for maritime law to be certain than to be right.[438] Rules of jurisdiction should be highly predictable,[439] and a close connection between the court and the action should ensure legal certainty and avoid the possibility of the defendant being sued in a court of a country which it could not reasonably have foreseen.[440]

Nevertheless, the employment of classic connecting factors in admiralty actions would not entail certainty. There is usually no real connection between collision actions and the place of registration of the vessels, the domicile of the shipowners, or even the place of collision.

[434] Ibid.
[435] *The Sea Justice* (n 332), [24].
[436] Ibid, [22]- [23].
[437] Myburgh, 'Conflict of Laws and the Arrest Conventions' in Myburgh (n 81) 163.
[438] Paul Todd, *Advanced Introduction to Maritime Law* (Edward Elgar Publishing 2021) [1.1].
[439] Recast Brussels I Regulation 2012, Recital 15.
[440] Ibid, Recital 16.

Many ships fly 'flags of convenience', with little to no relationship to their flag state.[441] Practices such as 'flagging out' and 'parallel registries', which permit vessels registered in one state to temporarily fly the flag of another, could lead to overlapping jurisdiction between two states.[442] Ships are owned and controlled through complex corporate structures, including single-ship companies, which creates a distance between them and their real owners.[443] Many shipowners decouple control and management, with management of the fleet in a separate jurisdiction.[444] Ships engaged in international trade and commerce are elusive; they are literally here today and gone tomorrow.[445]

In a collision case, several foreign elements are involved that point in different directions. There are likely two vessels with two different flags involved in a collision. Each vessel might be carrying the cargo of multiple owners residing with different domiciles. The place of the conclusion and performance of carriage of goods by sea contracts are nearly always different. Ships, their owners and charterers are also nearly always different.[446] Most maritime actions have no natural forum due to their international character.[447]

It has been commented that, in these circumstances, the place of arrest might be the closest connection that a ship and its owner will ever have with any forum, and practical considerations justify the jurisdiction of forum arresti over certain causes of actions.[448] However, the place of arrest, such as the place of collision, is fortuitous and does not provide any certainty. Furthermore, the right to proceed in rem is characterised as a procedural matter in most common law jurisdictions, and thus, the fulfilment of the in personam link is subject to the law of the forum arresti. The in personam link must be examined under the law

[441] Jessica H Ford and Chris Wilcox, 'Shedding Light on the Dark Side of Maritime Trade - A New Approach for Identifying Countries as Flags of Convenience' (2019) 99 Marine Policy 298, 298.

[442] Stephen Girvin, 'Nationality Requirements: Implications for Shipping Enterprises' in Stephen Girvin and Vibe Ulfbeck (eds), *Maritime Organisation, Management and Liability: A Legal Analysis of New Challenges in the Maritime Industry* (Hart 2021) 36.

[443] Aleka Mandaraka-Sheppard, *Modern Maritime Law* vol 2 (3rd edn, Informa Law from Routledge 2013) [2.2.1].

[444] Girvin (n 442) 38.

[445] *Atlasnavios Navegacao LDA* (n 366), [98].

[446] Zhao and Lianjun (n 93) 314.

[447] Rhona Schuz, 'Controlling Forum-Shopping: The Impact of *MacShannon v Rockware Glass Ltd*' (1986) 35 ICLQ 374, 401; Kimbell (n 94) [7.7].

[448] Ruiz Abou-Nigm (n 89) [7.22]; [9.22].

of the appropriate *lex causae* to promote certainty and strengthen the international ship registration framework.[449]

The Brussels-Lugano Regime contains a set of strict written rules that are more predictable than the Chinese and the common law rules. The jurisdiction claimed by the English and Chinese courts is more far-reaching than that permitted in the Brussels-Lugano Regime.[450] A tenuous connection would suffice for the Chinese and English courts to exercise jurisdiction, which makes it difficult for cargo owners to predict the jurisdiction where their cases would be heard.

Furthermore, the principle of forum non conveniens leads to uncertainty and lengthy litigation since it introduces 'an element of subjectivity'[451] and provides the seized court with a 'wide discretion' to rule on the appropriateness of a foreign court.[452]

The Chinese rules with regard to collisions that occur in EEZ provide more certainty than the common law and European rules. As argued by the claimant in *Virgin Media Ltd v Joseph Whelan T/A M & J Fish*,[453] granting the coastal court jurisdiction over a claim for maritime torts within the EEZ would increase legal certainty and reasonable foreseeability.

4.2 Fairness and justice

Limitation of liability is the most significant factor in deciding where to pursue a collision claim and is often the main reason behind all parallel and related proceedings.[454] In *The Bramley Moore*,[455] Lord Denning MR pointed out that limitation of liability is not a matter of justice and has its 'justification in convenience'. Nevertheless, the difference among national limitation regimes raises serious questions as to the fairness of decisions. None of the

[449] Myburgh (n 321) 319.
[450] Trevor C Hartley, 'Basic Principles of Jurisdiction in Private International Law: The European Union, The United States and England' (2021) 71 ICLQ 221, 226.
[451] Hartley (n 121) 369.
[452] Case C-281/02 *Andrew Owusu v NB Jackson, trading as 'Villa Holidays Bal-Inn Villas' and Others* [2005] ECR I-553, [41].
[453] *Virgin Media Ltd v Joseph Whelan T/A M & J Fish* (n 219), [7].
[454] *The Big Kahuna* (n 105), [16]; *Atlasnavios Navegacao LDA* (n 366), [104]; *Marship* (n 246), [103].
[455] [1964] P 200 (CA), 220. See also *Smit International (Deutschland) GmbH v Josef Mobius Bau-gesellschaft mbH & Co* [2001] CLC 1545, [15].

jurisdictional rules examined in this paper provide a solution. Although some common law courts consider a higher limit of liability as a legitimate juridical advantage and thus relevant to determining the appropriate forum, they do not explain why a claimant should be entitled to such an advantage. Since limitation of liability is considered a procedural matter, there is no reason to prefer one liability regime to the other from a private law perspective.

Vessels are the main assets of shipping companies and, thus, the primary source for satisfying maritime claims. The vessels involved in a collision might be the only asset of the paying party owing to the 'one-ship company' structure. Vessels involved in a collision, their sister ships, or associated ships could be arrested in several jurisdictions to obtain security even if the court ordering the arrest does not have jurisdiction over the collision actions. A vessel arrested for security would only provide security for the arresting party. This could deprive other claimants of recovering damages. Even if they could arrest a sister or associated vessel, they might face the shipowner's limitation defence.

An action in rem arising out of the collision should be considered as a parallel action to an in personam action arising from the same collision. This is because if the shipowner enters an appearance, the action will continue as an action in rem against the ship and an action in personam against the shipowner. Even if the shipowner does not enter an appearance, it has been commented that the claimant to an undefended in rem action is probably entitled to enforce the full amount of the judgment against the person who would be liable in an action in personam.[456] In any case, the judgment is enforceable against the vessel, which is typically the main asset of the debtors in admiralty claims, depriving other creditors of their right to compensation.

Founding jurisdiction for a quasi in rem claim does not meet the requirements of justice and fairness unless the court applies the in personam link properly. The common law courts' approach to the in personam link does not match up the right in personam defendant and the right ship.[457]

[456] Baughen (n 58) 396.
[457] Myburgh (n 321) 318-320.

The location of the witnesses and evidence seems less important in this age as digital or electronic recordings of the track of the vessels enable the parties to agree on the navigation of the vessels involved in collisions.[458] The most important evidence is in documentary form and available anywhere in the world. It is doubtful if any valuable evidence could be obtained from the crew, and in any case, evidence may be given via video link.[459]

4.3 International comity and the rights of other nations

The current practice of nations and their courts does not indicate that public international law places any limits on jurisdiction.[460] The provisions of UNCLOS generally do not restrict the jurisdiction of national courts. It is particularly stipulated that nothing in the conventions affects the institution of civil proceedings in respect of any claim for loss or damage resulting from pollution of the marine environment.[461] UNCLOS, nevertheless, imposes some restrictions on the coastal states to levy execution against or arrest foreign vessels in their territorial waters.[462]

Although it is difficult to argue that there is any direct restriction under international law on the jurisdiction of national courts, the national courts are indirectly restricted from exercising jurisdiction in collision action when it would encroach on the legislative jurisdiction of other states. This is because exercising jurisdiction over collision actions would necessarily mean the application of the forum's limitation regime, which would indirectly deprive the coastal state of regulating shipping operations in its territory.

A collision could cause significant pollution damage to the marine environment of the coastal state. Any wreck could hinder coastal navigation and pose a danger to other vessels navigating the coastal state's territory.

The coastal state has the right and obligation to regulate shipping activities in its territory[463] and can exercise complete legislative and enforcement jurisdiction over all matters and all

[458] *The 'Nordlake' and the 'Seaeagle'* (n 8), [7].
[459] *The CF Crystal and Sanchi* (n 365), [59]-[61] (CA); *Al Khattiya* (n 327), [90].
[460] Donald Earl Childress III, 'Jurisdiction, Limits under International Law', in Jürgen Basedow et al, *Encyclopedia of Private International Law* (Edward Elgar Publishing 2017)
[461] UNCLOS, art 229.
[462] Ibid, art 28.
[463] Ibid, arts 2 and 24.

people in an exclusive manner.[464] This sovereignty is restricted by the right of innocent passage for foreign vessels,[465] which could not restrict the rights of the coastal state to set out a liability regime for collisions.

Therefore, regarding claims arising out of a collision in its territory, a coastal state has a legitimate interest in determining issues such as limitable claims, the amount of limitation, and conduct barring limitation. The fulfilment of this legitimate interest and the procedural characterization of limitation of liability are mutually exclusive.

In *Atlasnavios Navegacao LDA,*[466] the owner of a sunken vessel wished the Australian courts, and not the Chinese court, to hear its limitation claim because the wreck removal costs might have been subject to limitation under the limitation regime of Australia. As the vessel sunk in the Straits of Malacca, Malaysia was the only state authorised to determine the liability regime for the wreck removal claim. However, both Chinese and Australian courts apply their own limitation regime to the wreck removal claims. Allowing shipowners to limit their liability for certain claims in any jurisdiction other than where the collision occurred would deprive that jurisdiction of its right to impose unlimited liability for such claims. The same jurisdiction should be able to assess the conduct of the shipowner and subsequently determine its entitlement to limitation.

The same argument applies to collisions in the EEZ. A coastal state has sovereign rights over living and non-living resources in its EEZ.[467] In the exercise of its sovereign rights, the coastal state is entitled to adopt laws and regulations and take measures to ensure compliance with these laws.[468] In the exercise of its enforcement jurisdiction, coastal states have the right to arrest and detain vessels and crew.[469] The coastal state's sovereign rights in EEZ are exclusive[470] and encompass all rights 'necessary for and connected with' the exploration, exploitation, conservation and management of the natural resources. The terms 'conserving'

[464] Yoshifumi Tanaka, *The International Law of the Sea* (4th edn, CUP 2023) 112.
[465] Ibid.
[466] *Atlasnavios Navegacao LDA* (n 366).
[467] UNCLOS, art 56(1).
[468] Ibid, arts 73(1) and 211(5).
[469] Ibid, art 73(2) and 220(6).
[470] Lan Ngoc Nguyen, *The Development of the Law of the Sea by UNCLOS Dispute Settlement Bodies* (CUP 2023) 17.

and ‘managing’ in art 56 of the UNCLOS indicate that the rights of coastal states go beyond conservation in its strict sense. For instance, the coastal state’s sovereign rights encompass the competence to regulate the bunkering of foreign vessels fishing in the exclusive economic zone.[471] It has been commented that coastal states' EEZ laws must conform to and give effect to internationally agreed-upon rules and standards.[472]

It has been argued that the coastal state has the right to regulate specific activities in its EEZ. The coastal state may make laws relating to pollution within the EEZ, but the conduct and navigation of vessels is not an activity within the regulatory power of the coastal state.[473] It is submitted that the provisions of the UNCLOS should not be interpreted strictly. A coastal state could not possibly conserve and manage natural resources if it could not determine the limit of liability arising out of shipping activities. A liability regime is at least connected with the management of natural resources and thus falls within the exclusive rights of the coastal states.

Furthermore, one of the functions of a liability regime is to encourage shipowners to exercise more caution and adopt higher standards. By imposing a higher limit or restricting the shipowner’s rights to limit liability, the coastal state increases the level of safety in its territory. Therefore, even a collision that only involves two foreign ships that have no connection with the coastal state and does not cause any pollution in the EEZ, it is still the coastal state that should determine the liability of these vessels.

As mentioned above, under the CLC 1992 and the Bunker Convention 2001, actions for pollution damage caused in the EEZ may only be brought in the court of the coastal state. In *The Erika*,[474] even though the claims did not fall under the oil pollution conventions,[475] the French Cour de Cassation found that it had jurisdiction over actions for pollution damage in the EEZ of France. The French Court, relying on arts 220(6), 211(5) and 228 of UNCLOS, held

[471] M/V ‘Virgina G’ (Panama/Guinea-Bissau) (Judgment) ITLOS Reports 2014, 4 [255].
[472] De la Rue (n 60) 1291-1292.
[473] *CMA CGM SA v Ship Chou Shan* [2014] FCA 74, [140].
[474] *RINA SpA v French Office of the Foundation for Environmental Education in Europe (The Erika)*, Cour de cassation, criminelle, Chambre criminelle, 25 septembre 2012, N° de pourvoi: 10-82.938, Bulletin criminel 2012, n° 198. For an English summary, see the CML CMI Database at <https://cmlcmidatabase.org/rina-spa-v-french-office-foundation-environmental-education-europe-erika> accessed 2 April 2025.
[475] De la Rue (n 60) 146; 1290.

that when the coastal state has instituted proceedings with a view to repressing an infringement of the applicable laws and regulations or of international rules and standards aimed at preventing, reducing and controlling pollution by ships committed beyond its territorial sea by a foreign ship, the jurisdiction of this State is acquired when it relates to a case of serious damage.[476]

The European approach, which distinguishes between 'artificial islands, installation and structures' and other matters in the EEZ, would lead to irrational outcomes. Under this approach, a collision with a jack-up rig while navigating in the EEZ, for instance, would not be within the jurisdiction of the coast state. However, the same rig, when fixed in the EEZ, would be considered an 'artificial island, or installation or structure' in the sense of art 60(2) of UNCLOS and thus within the jurisdiction of the coastal state.

It has been suggested that matters arising with respect to submarine cable and other internationally lawful uses of the sea related to these freedoms should be reserved to the jurisdiction of the court of the vessel or of its port of registry.[477] This solution would substantially restrict the jurisdiction of coastal state courts. It is not even consistent with the rules of the Brussels-Lugano Regime, which empower the courts to hear collision claims between two foreign vessels provided that the defendant is domiciled in that country.

The phrase 'exclusive jurisdiction' in art 60 (2) of the UNCLOS includes both legislative and enforcement jurisdiction, and it is exercisable in respect of both nationals and non-nationals of the coastal state on an artificial island, installation or structure in its EEZ.[478] It is not intended to restrict the civil jurisdiction of the coastal state in matters unrelated to artificial islands, installations or structures.

[476] *The Erika* (n 480). See Måns Jacobsson, 'The French Court of Cassation and the *Erika* case; some issues relating to civil liability' (2014) 20 JIML 18, 21.

[477] *Virgin Media Ltd v Joseph Whelan T/A M & J Fish* (n 219), [34].

[478] Robin Churchil, Vaughan Lowe and Amy Sander, *The Law of the Sea* (4th edn, Manchester University Press 2022) 268.

The Achilles heel in the attribution of exclusive jurisdiction for collision actions to the coastal state is the existence of disputes concerning the delimitation of the maritime boundaries. More than half of all boundaries at sea are still disputed.[479]

Although there is no direct restriction on the rights of states to empower their courts to hear collision disputes, legal systems have not been completely inattentive to the rights and interests of other states in adjudicating admiralty actions. Comity has been cited as one of the justifications for national courts' abstention from exercising jurisdiction in multi-jurisdictional disputes. The concept of comity could be traced back to the seventeenth century when the Treaties of Westphalia consolidated the doctrine of sovereignty. It was thought that clear-cut states could be created whose regulatory scope extended no further than their individual boundaries. The emergence of multi-jurisdictional disputes arising out of increasing international commerce demonstrated that this distribution of regulatory power does not match the realities of social and economic life. Comity was created to facilitate international commerce without destroying the idea of sovereignty.[480]

Comity is primarily a common law concept, and it is not recognised in civil law jurisdictions. The private international law of the European Union is based on the principle of mutual trust in the legal system and judicial institutions of each Member State.[481] It has been suggested that the principle of mutual trust is functionally equivalent to the principle of comity.[482]

Different legal systems appear free to adopt their own version of the principle of comity.[483] There is no consensus on the nature and status of 'comity'. Some[484] belittle it as a meaningless or misleading concept with no positive role in resolving disputes. Others[485] promote it as a rule of public international law. It was suggested that comity is not a doctrine; rather, it is a principle that informs many doctrines and refers broadly to the willingness of courts in one

[479] Andreas Østhagen, 'Maritime Boundary Disputes: What Are They and Why Do They Matter' (2020) 120 Marine Policy 104118.

[480] Thomas Schultz and Jason Mitchenson, 'Rediscovering the Principle of Comity in English Private International Law' (2018) 26 (3) ERPL 311, 312.

[481] Leon Theimer, 'Protection Against the Breach of Choice of Court Agreements: A Comparative Analysis of Remedies in English and German Courts' (2023) 19(2) JPIL 208, 230.

[482] Ibid.

[483] Filip Šaranović, *Freezing Injunctions in Private International Law* (CUP 2022) 123.

[484] *Cheshire, North & Fawcett* (n 12) 4; Albert Venn Dicey, *A Digest of the Law of England with Reference to the Conflict of Laws* (Stevens and Sons 1896) 10.

[485] *The Parlement Belge* (1880) 5 PD 197 (CA), 215.

country to recognise the laws, litigants, and sovereign interests of another country in the expectation that other countries will do the same.[486] Some scholars[487] have opined that courts and legislatures may shape the international comity doctrines as rules of domestic law. In any case, some common law decisions are expressly based on the principle of comity.[488]

The concept of comity is increasingly used in common law countries as a tool for applying or re-shaping the rules of the conflict of laws. In particular, it is used in a sense which owes much to the rules of public international law, namely respect for the territorial jurisdiction of other states.[489] Although common law courts and scholars have emphasised the importance of comity,[490] it is unclear what would amount to running counter to the concept of comity. It has, for example, been suggested that the Australian test for forum non conveniens may result in the court insisting on its own jurisdiction despite the existence of the natural forum elsewhere, which is a blatant breach of the notion of comity.[491] However, in the context of complex commercial disputes, the natural forum is not always easy to identify,[492] and as long as it is not clear what constitutes a natural forum, the concept of comity remains unclear.

In recent decades, more deference has been paid to the needs of commerce and global markets than to nations.[493] It is submitted that in line with why comity was created and the sole purpose of commercial law,[494] any formulation of comity should prioritise the promotion and facilitation of commerce to protect territorial sovereignty. Moreover, comity should not violate fundamental principles of justice.[495]

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[486] Maggie Gardner, 'Admiralty, Abstention, and the Allure of Old Cases' (2024) 99 Notre Dame L Rev 881, 892.

[487] William S Dodge, 'International Comity in American Law' (2015) 115 Columbia LR 2071, 2141.

[488] For instance, see *The Sea Justice* [2024] (n 102), [92]–[94]; *Euronav Shipping NV v Black Swan Petroleum DMCC* [2024] EWHC 896, [2024] 4 WLUK 414, [56]; *Seismic Shipping Inc v Total E&P UK Plc* (n 178), [67]; *Wikeley v Kea Investments Ltd* [2024] NZCA 609, [162]-[195].

[489] Dicey, Morris & Collins (n 12) [7-005].

[490] Adrian Briggs, 'The Principle of Comity in Private International Law' (2012) 354 Recueil des Cours 65 [3.138].

[491] Poomintr Sooksripaisarnkit, 'Forum Non Conveniens in Australia—How Much Weight Should Be Given to Comity?' in Poomintr Sooksripaisarnkit and Dharmita Prasad (eds), *Blurry Boundaries of Public and Private International Law: Towards Convergence or Divergent Still?* (Springer 2022) 66.

[492] Andrew Bell, 'The Natural Forum Revisited' in Andrew Dickinson and Edwin Peel (eds), *A Conflict of Laws Companion* (OUP 2021) 15.

[493] James Allsop, 'Comity and Commerce' (2015) Federal Judicial Scholarship 27 <https://www5.austlii.edu.au/au/journals/FedJSchol/2015/27.html> accessed 2 April 2025, [78].

[494] Sir Robert Goff, 'Commercial Contracts and the Commercial Court' [1984] LMCLQ 382, 391.

[495] James Edelman and Madeleine Salinger, 'Comity in Private International Law and Fundamental Principles of Justice' in Andrew Dickinson and Edwin Peel (eds), *A Conflict of Laws Companion* (OUP 2021) 355-356.

Singapore courts have adopted an inflexible and primitive formulation of comity: 'with judicial chauvinism firmly replaced by judicial comity',[496] 'the courts do not make comparisons between the laws of Singapore and that of another to do justice'.[497] To hold a local limitation regime superior to that of a foreign jurisdiction is against international comity under this formulation.[498] By logical extension, it would be against comity to allow the retention of any security which would avail the plaintiff from a higher limit.[499] This formulation of comity disregards the ends of justice and the needs of the shipping industry and frustrates international attempts to regulate shipping.[500] Additionally, the Singapore courts' power to issue anti-suit injunctions does not seem compatible with this formulation of comity. Granting an anti-suit injunction practically means giving supremacy to the law of Singapore over a foreign law when the ends of justice require it.[501] In *Evergreen*,[502] it was held that the effect of the Singapore limitation decree was not a question for the Belgian courts to decide. It was a matter for the Singapore court and Singapore law. In the circumstances, considerations of comity were subordinate to the applicant's rights to limit its liability in Singapore.[503]

Common law jurisdictions adopt a unilateral approach,[504] described by Dillon LJ in *The Volvox Hollandia* as follows: [505]

> The English Courts may decide that in the eyes of English law certain matters should for the interests of the parties and for the ends of justice, be litigated and decided in England, but it is left to the Dutch Court to decide, in the light of Dutch law and any Conventions binding on the Dutch Court, whether or how far the Dutch Court ought to give effect to the views of the English Courts.

This unilateral approach, together with the principle of unconditional jurisdiction and the wide discretion of courts in determining their jurisdiction, leads to parallel proceedings, and

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496 *The Reecon Wolf* [2012] SGHC 22, [2012] 2 SLR 289, [37].
497 *The Sea Justice* (n 373), [15] (CA).
498 *The Sea Justice* (n 102), [92].
499 Ibid, [93].
500 Hatamipour (n 364), 161-162.
501 *Lakshmi Anil Salgaocar v Jhaveri Darsan Jitendra* [2019] SGCA 42, [2019] 2 SLR 372 [134].
502 (n 95).
503 Ibid, [55].
504 Hartley (n 450) 226.
505 (n 92), 374-375 (CA).

such multiplicity of proceedings offends the principle of international comity.[506] The lis pendens rule of the Brussels-Lugano Regime does not solve the issue entirely because if the parallel action is pending in a non-European jurisdiction, the court has the discretion not to stay the proceedings. Additionally, the European courts' power to stay related actions is discretionary.

It is frequently suggested that courts should exercise caution in granting anti-suit injunctions, as this might offend comity.[507] The argument that they are directed to the parties and not to the foreign court[508] is not realistic.[509] Similarly, allowing a damages remedy raises concerns regarding judicial comity because it would effectively render the foreign judgment nugatory.[510] The ECJ characterised damages awards as 'quasi anti-suit injunctions' and held that they are contrary to the principle of mutual trust.[511]

4.4 Time and cost saving

It is in everybody's interest not to go to litigation except for lawyers. The parties to parallel collision proceedings incur unnecessary costs to defend the same issues in multiple forums.[512] Parallel proceedings and jurisdictional challenges also waste the courts' time and resources.

Most jurisdictional rules are capable of creating parallel proceedings. On the one hand, a tenuous connection between a collision action and the forum would suffice for the national courts to exercise jurisdiction. On the other hand, a multiplicity of proceedings is generally not a decisive factor in determining whether or not to stay the action.

There are far fewer jurisdictional challenges over collision disputes in European countries. This could be due to several reasons unrelated to the rules of private international law, including the uniformity in substantive law on limitation of liability, which diminishes any

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[506] *The Sea Justice* (n 332), [160]; *The Abidin Daver* [1984] AC 398, 412.
[507] Paul Myburgh, 'Non-Parties, Forum Agreements and Expanding anti-Suit Injunctions' [2020] LMCLQ 346, 352.
[508] Marsden (n 1) [14-048].
[509] Dicey, Morris & Collins (n 12) [7-013].
[510] Justice Belinda Ang Saw Ean (n 385) 35-36.
[511] Case C-590/21 *Charles Taylor Adjusting Ltd v Starlight Shipping Co* [2023] 1 Lloyd's Rep Plus 62 [38]. See Andreas Giannakopoulos and Adnan Khaliq, 'Damages for Breach of Dispute Resolution Agreements and EU Public Policy' LMCLQ 8.
[512] *Euronav Shipping NV v Black Swan Petroleum DMCC* (n 488), [28]; *The Sea Justice* (n 341), [59]; Özdel (n 212) 195.

incentives for forum shopping in Europe. However, it is indisputable that the existence of the lis pendens rule and a set of international procedural and substantive rules have practically diminished any incentive to challenge the jurisdiction of courts. This is while the common law forum non conveniens doctrine is an official invitation to lengthy and expensive proceedings.[513] For instance, the local limitation regime might constitute a legitimate juridical advantage factor justifying the refusal of a stay application on the grounds of forum non conveniens. This is subject to the court's discretion in each case, and there are no objective criteria allowing the parties to predict the outcome before taking proceedings, which results in years of jurisdictional disputes.

The concepts of jurisdiction and applicable law are strictly separated in civil law countries, but the forum non conveniens doctrine allows the common law courts to consider applicable law at the jurisdictional stage, which could add delay and cost to proceedings.[514]

It should be noted that the Brussels-Lugano Regime is not perfect. The jurisdictional rules applicable to direct actions against insurers are unclear and might lead to parallel proceedings and irreconcilable decisions.[515] Furthermore, limitation proceedings are the main reasons behind all jurisdictional challenges in collision actions, and they do not create a lis pendens situation. The discretionary power of European courts in related action has the same drawbacks as the doctrine of forum non conveniens.

It is more economical and efficient to simultaneously hear the liability and limitation claims in the same court.[516] However, most jurisdictional rules allow limitation and liability proceedings to be conducted by separate forums.

It has been opined that founding jurisdiction on the basis of arrest expedites the enforcement of the eventual judgment and facilitates the sound administration of justice.[517] Similarly, it was suggested that the jurisdiction of the place of arrest could be justified based on the original rationale for the admiralty jurisdiction, i.e. providing claimants with an effective

[513] Yeo Tiong Min, *Commercial Conflict of Laws* (Academy Publishing 2023) [4-056].
[514] Richard Garnett, 'Determining the Appropriate Forum by The Applicable Law' (2022) 71 ICLQ 589, 625.
[515] Ulfbeck (n 246) 306.
[516] *The Volvox Hollandia* (n 328), 527 (Staughton J).
[517] Ruiz Abou-Nigm (n 89) [9.21]-[9.26].

means to establish and enforce their claim against foreign defendants whose only connection to the forum is a highly mobile asset.[518] It has also been suggested that a widespread acceptance of the practice of security arrest could discourage forum shopping.[519] However, an arrest is a powerful weapon with drastic financial consequences. Arresting a vessel deprives its owner of its property's earnings and imposes the costs of providing security for releasing the vessel and necessary legal services. Furthermore, a ship under arrest emits greenhouse gases and atmospheric pollutants. Thus, it is in the interests of the global community to minimise the number and the duration of arrests.[520]

In many jurisdictions, the establishment of a limitation fund is subject to the institution of legal proceedings. This deprives shipowners of pre-empting arrest, which is undoubtedly problematic.[521]

Common law courts, particularly those in England, where arrest is allowed as of right, do not examine whether they should exercise their jurisdiction before ordering an arrest. Disputes over the in personam link are also heard pursuant to an arrest.[522] This is not an efficient approach. An efficient jurisdictional rule would restrict the possibility of arresting vessels to situations where the court has jurisdiction over the merits of the dispute.

The jurisdiction of the English court to order anti-suit injunctions is not grounded upon any protection to the exercise of judicial rights abroad but upon the fact that the party to whom the order is directed is or has been made subject to the in personam jurisdiction of the English court.[523] Indeed, the criteria employed by common law jurisdictions concentrate on the legitimacy of asserting exclusive jurisdiction.[524] In *Euronav Shipping NV v Black Swan Petroleum DMCC,*[525] the High Court adjourned an application for an anti-arbitration injunction

[518] Myburgh (n 281) 37.
[519] John Hare, 'Shopping for the Best Admiralty Bargain: Competing Jurisdictions in Admiralty Claims with Particular Emphasis on Forum Shopping Motivated by Domestic and International Differences in Regimes for the Limitation of Liability' in Martin Davies (ed), *Jurisdiction and Forum Selection in International Maritime Law: Essays in Honor of Robert Force* (Kluwer Law International 2005) 160-161.
[520] Michael Tsimplis and George Gerassimou, 'Ship Arrest and Global Economics: Changes in Ship Arrest as an Indicator of Global Financial Well-being and Environmental Consequences' [2024] LMCLQ 440, 457.
[521] Griggs, Williams and Farr (n 76) 68.
[522] Myburgh (n 321) 289-290.
[523] Dicey, Morris & Collins (n 12) [12-122].
[524] Svetlicinii & Xie (n 381), 735-736.
[525] Above, n 488.

because, among other things, it would result in an undesirable race to judgments, duplicate proceedings, and the obvious risk of inconsistent decisions.[526] In contrast, the Chinese anti-suit injunction emphasises the provisional protection of the applicant's legal rights. This focus might neglect broader considerations, such as preventing irreconcilable decisions and promoting consistency in cross-border legal procedures.[527]

A damages award can be a double-edged sword. On the one hand, it could deter the parties from initiating separate proceedings and result in the aggregation of claims in one forum, saving a lot of time and costs. On the other hand, it could be one additional action that undoes the effects of the foreign decision obtained after spending a lot of time and money.

5 Conclusions

Jurisdictional rules applicable to collision claims are neither fair nor cost-saving. These existing rules do not enable the parties to collision actions, including cargo owner, crew, shipowners and their insurers, to predict the forum where their collision claims would be heard and consequently the contingent liabilities. They result in concurrent jurisdiction, which might lead to irreconcilable judgements. The reason for this failure is that these jurisdictional rules are drafted in isolation from the jurisdictional rules applicable to related actions, without considering the interplay between jurisdictional rules and other substantive or procedural rules applicable to collision or related actions, and indifferent to the realities of shipping.

Although applicable law is one of the factors common law courts consider in determining the appropriate forum, it does not result in the jurisdiction of the appropriate forum for three main reasons. First, a foreign court should be clearly or distinctly more appropriate for the English courts to give up their jurisdictions, and it is not easy to persuade common law courts that another forum is clearly more appropriate. Second, the common law courts have unlimited discretion in determining their jurisdiction, which makes the rules unpredictable. Third, some of the most important aspects of the collision actions, including the limitation of liability and the in personam link, are characterised as procedural, which frustrates the relevance of the applicable law.

[526] Ibid, [57].
[527] Svetlicinii & Xie (n 381) 735-736.

The elephant in the room is the difference among the limitation regimes applicable in each forum. This encourages the parties to engage in expensive, time-consuming proceedings and wastes the court's resources. Neither jurisdiction has appropriately addressed the issue. While certain common law courts have held that a higher limit constitutes a legitimate juridical advantage, they do not explain on what basis a higher or lower limitation is legitimate.

Certainty as to the forum should not be a decisive factor in designing jurisdictional rules for collision proceedings for the following reasons. First, shipping is an aggressively transnational business, and most of the time, the domicile of shipping companies has nothing to do with the place of operation of the vessel. Second, a vessel, as the most important factor in collision actions, always traverses several countries' territories, subjecting them to various countries' laws and jurisdictions. Therefore, it would not be surprising to the actors in this industry to have proceedings outside of their domicile. What matters to the shipowner and other maritime industry actors is certainty about their rights and liabilities. Therefore, the limits of liability shall be the main factor in determining the appropriate forum for collision actions.

The quest to discover the appropriate forum for a collision action is futile. On the one hand, several causes of action might arise pursuant to a collision, and several parties might be involved in actions, each of which would have its own appropriate forum. On the other hand, actions arising from collisions are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgment resulting from separate proceedings.

Furthermore, choosing the appropriate forum for all actions arising from a collision is not at all easy. The principles of conflict of laws are not compatible with the shipping industry. Practices such as flags of convenience and one-ship companies frustrate the creation of any real connecting factor between shipping operations and any jurisdiction.

From an international law perspective, the coastal state is entitled to regulate the shipping operations in their territory and exclusive economic zones by establishing the liability regime. Designating the courts of the coastal states where the collision occurs as the appropriate forum would increase certainty. However, this does not solve the problem if the collision

occurs in the high seas. Additionally, there are disputes over maritime boundaries in some areas, such as the East China Sea, where the EEZs of China, South Korea and Japan overlap. It is also possible that neither of the parties involved in a collision action would prefer their claims to be heard by the courts of the coastal state.

In order to preclude lengthy and wasteful parallel proceedings and irreconcilable decisions, it is necessary to hear all the actions in one jurisdiction based on one apportionment of liability and under one liability (and limitation) regime. This would, however, entail the infringement of the rights of the claimants who ordinarily are entitled to have their claims heard elsewhere. It also undermines certainty. A cargo owner who legitimately expects to be able to sue the carrier in a forum designated under the carriage contract would have to bring its claim where the inter-ship action is pending.

The lis pendens rule is an effective tool in uprooting parallel collision proceedings. It effectively precludes further proceedings and thus diminishes the existence and cost of disputes over jurisdiction. Nevertheless, it simply removes the question of determining the appropriate forum and disregards the necessity of reaching a fair and just decision. It would also end in a deadlock where the concurrent proceedings commenced simultaneously on the same date, as occurred in *The CF Crystal and Sanchi*.[528] Anti-suit injunction and damages remedy have the potential to aggregate claims and streamline dispute settlement; nevertheless, they go beyond the interests of private parties and gravely infringe comity.

The revival of the forum non conveniens doctrine and anti-suit injunction, pursuant to Brexit, which has been praised as 'freedom from the shackles of the Brussels system of jurisdiction' and a 'serious and substantial gain' for the London shipping law business,[529] the latest amendment of CPL 2023 and Rules of Court 2021, the expansion of the scope of anti-suit injunctions, and the London Draft ending up on the scrap heap indicate that states are less and less interested in reducing the jurisdiction of their courts and adopting a multilateral approach to conflict of laws issues. The complexities arising from a collision jurisdictional contest could only be solved through private ordering.

[528] *The CF Crystal and Sanchi* (n 365), [17] (CA).
[529] Andrew Tettenborn, 'Shipping Law, Brexit and the City of London' [2022] LMCLQ 123, 132.

In most cases, collision liabilities are not taken out of the ship but instead paid from a combination of hull insurance and P&I cover. Any subrogated insurer might end up as a receiving party seeking compensation from the paying party, which would do anything to decrease its liability and delay *restitutio in integrum*. A jurisdiction agreement among the marine insurers is thus the only feasible remedy to alleviate the detrimental implications of parallel collision proceedings.