



UCTshiplaw.com *bulletin*

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In keeping with our undertaking to send UCTshiplaw.com*bulletin* on a regular basis the students of the shipping law LLM programme have compiled this exciting issue. We have included various articles and news of updates to our UCTshiplaw.com website. You may access these directly by clicking on the hyperlink provided - but please take the time to browse through the site. We know you will find it full of interesting surprises.

As always, we would welcome any suggestions you may have on how we can improve the Bulletin or our website. Please e-mail your comments to shiplaw@law.uct.ac.za

SHIPPING LAW UNIT NEWS

ROB KNUTZEN...

The Shipping Unit is pleased to announce that Rob Knutzen will be joining us again next year to jointly teach Maritime law and Carriage of Goods by Sea. His working knowledge of the industry has proven to be of great value to the students, especially his expertise regarding the workings of charterparties, the business of ship owning, building, management and financing.

For further details see www.uctshiplaw.com/staff.htm

JOINT SESSIONS WITH TULANE FOR ADMIRALTY JURISDICITON NEXT YEAR - THE WORLD'S FIRST COMPARATIVE SHIP ARREST COURSE ACROSS THE WIRE?

There are exciting plans afoot for the course in Admiralty Jurisdiction & Practice for the first semester of 2003. As part of our LLM module, we will be holding a joint course with the Institute of Maritime Law at Tulane University in New Orleans. One of the world's top shipping law schools, Tulane will link up with us for about shared sessions across the videoconferencing wire. We tried this a few times in 2003, and all proclaimed it as an unqualified success.

Prof Martin Davies of Tulane will be teaching half of the shared module and Prof John Hare the other half. Our classes will join together across the wire for interactive sessions. With Tulane, we hope to award participating class members appropriate certificates for this world-first truly international course in ship arrest.

PUTTING THEORY INTO ACTION

On the 25th of July the UCT's Maritime Class of 2002 had its **first** of its three excursions to the Cape Town harbour we were given a warm welcome by the Master, Tsay His Chyi, of the *MV Ever Gentle*. On the bridge the class gained information about the vessel's radar and other means of orientation and noted the speed at which containers can be loaded into the ship's holds. For many of them this trip was the first chance to set foot on a cargo carrier.



Left: class and crew (far left and far right in green jackets) on board the Ever Gentle. **Right:** The Sandviken on a cold Cape Town winter's day.

On the **second** outing on the 13th of August the class visited the *MV Sandviken*, a break bulk "Laker" with a narrow beam strengthened against ice designed for the Great Lakes trade. What was uncommon for this handysize ship was the number of 6 cargo holds and hatches compared to the usual number of 5 which made her appear even longer and narrower. What was furthermore curious for a bulker was that she had a Kort Nozzle propulsion system at her stern. The class learned about load lines and the dangerous practice of "hogging" by filling the front and back ballast tanks with water to bend the ship to raise the load line.

The **third** trip on the 11th of September offered the students the enjoyment of joining two pilot tugs during a towing of the handimax bulk carrier the *MV Yasa H. Mulla* to the bunker quay. This excursion gave the class a practical illustration to compliment what they had learned about towage and pilotage. The students watched how a heaving line was thrown down to the tug, how the tow wire was connected and thereafter lifted up to the tow's hawse-hole. The masters of the tugs could not hide their surprise that the students knew about the Voith Schneider propulsion system and gave them an impressive performance of their vessels' maneuverability by doing a 360 degree turn.

The students of the Maritime Class of 2002 thank Prof. John Hare for the opportunity to go on these excursions.

By: Elmar Schleif

WEBSITE NEWS

WHAT'S NEW ON THE SITE?

We are fortunate to have Brian Ingpen's [Sea Watch](#) as a regular on our site from October 2002. Sea Watch takes over where George Young's *Sea Views* left off. We posted Sea Views onto the site for many months, and while we are sad that George has found it necessary to step back from such a monumental career in maritime journalism, we wish his worthy successor (and erstwhile mentee) Brian well with Sea Watch. He would love input from readers.

Readers can access Sea Watch from our contents page or direct at www.uctshiplaw.com/seawatch/swindex.htm

We have hundreds of useful and interesting links on our site - and more are added every week. Please let us have details of any you may have found. Our *Links of the Month* are [Maritime SA Online](#) which covers a wide range of maritime news and events and [Ship Lists & Links Resource Page](#) which covers immigration, naturalization, passenger lists, shipping pictures, archives, databases and e-mail discussion lists – Both well worth a visit.

Past students of Marine & Shipping Law are encouraged to visit our [Alumni Cyberhome](#), and through its pages to let us have updates of what you are doing and where you are doing it!

RECENT & UNREPORTED CASES

A continuously updated list of recent judgements in the Supreme Court of Appeal and the High Courts at Durban and Cape Town may be found via our contents page or direct to www.uctshiplaw.com/unrepcas.htm most with a short synopsis, accessed by clicking on the name of the vessel. Full text judgements are available in PDF format.

The most recent decisions and summaries to appear on the site are:

- The [Minas Del Frio](#)
- The [Als Express](#)
- The [Evelyn](#)
- The [MSC Alexandra](#)
- The [Able Monarch](#)
- The [Ya Mawlaya](#)

ARTICLES

GERMAN SHIP FINANCING ON THE MOVE

Germany in general and Hamburg in particular is the biggest ship financing market in the world. German nationals are currently holding shipping assets of an estimated 10 Billion Euro, German banks involved in ship financing approximately 34 Billion Euro led by Hamburgische Landesbank, which is known to have the world's biggest shipping portfolio. This popularity of shipping investments has been based on the so-called KG-system – KG standing for Kommanditgesellschaft, the German limited partnership. The basis of the KG-system has been the single purpose one ship limited partnership, with the unlimited partner being a limited liability company with sometimes several hundred investors forming the limited partners.

In former times the KG-system offered significant fiscal advantages for German high-income individuals – the often-cited doctors and dentists were accorded tax advantages. The core of these tax laws was a depreciation of 150 percent for investments in merchant ships to be deducted from taxable income. Such deduction was accompanied by a 50 percent tax reduction on sales profits and the opportunity to offset ancillary costs such as fees and administrative costs entirely in the first year. However, in 1999 German tax law was switched to a tonnage tax system cutting down the rate of tax deduction significantly but offering a comparatively low tax based on the ship's net tonnage for vessels listed in the German ship register.

The KG-system based on tax deduction for decades adapted comparatively smoothly to these new conditions, although the focus in ship financing has switched from making losses for tax deduction to generating income, raising the number of vessels registered in Germany up to more than 1,000 during the last three years. Ship financing in Germany in fact has become so popular that some voices say the massive ordering, especially of container vessels during the last decade, has boosted the decline of the charter market during the recent months – and there still are numerous vessels ordered by German interests in the pipeline. Whether there will be a market for those seemingly ever growing container vessels under a friendlier general economic environment remains to be seen.

However, the German ship financing market faces further grave restructuring. This will mainly be initiated by the updated capital adequacy rules issued by the Bank of International Settlements in Basel – the rules better known as 'Basel II'. The currently applicable rules were introduced in 1988 as a risk restricting system in order to keep banks from lending more capital than their liquidity allows. Under this regime banks have to allocate 100 percent capital, which is equivalent to eight percent of the amount of the loan, to every shipping investment. This concept of risk restriction will change significantly under Basel II following a far more individual approach for each loan engagement.

Depending on the risk involved the capital allocation could rise up to far more than 100 percent for riskier deals based on the eight percent allocation mark. This may result in a

two-digit percentage equivalent amount – and it is not yet decided, whether this mark will remain unchanged under Basel II is yet to be seen. On the other hand of course low risk deals might require capital allocation of less than 100 percent putting the overall allocation percentage far under eight percent. Basel II thus forces banks to introduce risk assessment procedures, which consider various factors over the whole loan period and therefore are far more complex than those currently in operation. While Basel II is not due to come into force prior to 2005 banks already try to structure their long running ship financing loans according to the new regime. Basel II is still under discussion and its consequences are not yet clear in every detail. Practice, however, already shows that lending money for ship financing in the future might become more expensive and more difficult.

The other major impact on German ship financing is the restructuring of the German Landesbanken. These state-owned banks enjoy highest possible AAA ratings due to state guarantees issued in their favour, while other banking institutions do not have these opportunities. This has been held to be unfair competition by the EU authorities, which imposed a cut-down on these privileges by the Landesbanken until the beginning of 2003. While the Landesbanken are trying to cope with these new market conditions, Hamburgische Landesbank and Landesbank Schleswig-Holstein have announced that they will merge in 2003. Since both banks are traditionally involved in shipping investments, such a merger will create a new major player in ship financing giving the market a new edge. So while it is difficult to say in which direction German ship financing will move in the context of ever-changing shipping business, it is certain that it will move.

By: Sven Deters

WE'VE HAD THE DRESS REHEARSALS . BUT WHEN IS THE SA GOVERNMENT GOING TO WAKE UP AND ACCEDE TO THE FUND CONVENTIONS AND ITS PROTOCOLS?

The 1969 Civil Liability Convention (CLC) came into force on 19 June 1975. Its main purposes are to ensure adequate compensation for those affected by oil spills and to provide uniform rules regarding clean-up procedures following a spill. It includes a strict liability permitting member states to take action against offending tankers in their waters. This convention was not a coincidence but came about as a result of the super-tanker Torrey Canyon casualty, which caused great environmental pollution off the British coast in 1967, by spilling 10,000 tonnes of crude oil into the English Channel, affecting both the British and French Coastlines. But the 1969 Convention limits of liability are now way out of date.

In June 2000, The Treasure, a 135 000 tonne ore carrying bulker sank off our Cape coastline causing R50 million in damage and leaking bunker oil which caused extensive harm to 40% of the world's African penguin population.

In September 2001, The Ikan Tanda, a fertiliser-carrying freighter beached herself on the rocks of Scarborough on the Cape Coast. Only because of the successful salvage and wreck removal operations by Messrs. Smit, formerly Smit Pentow Marine, was a disaster averted.

The Cape of Storms, as it has been aptly named, claims its ships and seafarers every year, with its concomitant cost to our environment.

Having already witnessed the pollution damage by bunker fuel alone, it goes without saying that a tanker disaster would be on a scale far greater than previously experienced. We have had plenty of warnings - The Wafra, The Sivella, The Kazimah, the Castillo de Bellver. It is only a matter of time before another Very Large Crude Carrier (VLCC) meets its nemesis on our seaboard.



The 'Prestige' breaks in two and sinks off the Spanish coast earlier this month. had she sunk here, South Africans would have had to pay dearly out of their own pockets, with little chance of proper recompense
Photo courtesy Sky News

Currently, SA law would impose a cap of about R200 million on the liability of a ship owner whose vessel causes pollution damage. This derives from the now outdated 1969 liability convention. Any amount in excess of that would be a loss which lies where it falls - it would not be recoverable from the ship owner, and would therefore ultimately be borne by the SA taxpayer.

Bearing in mind that the grounding of the Exxon Valdez which spilled 87 000 tonnes of crude oil into in Prince William Sound in Alaska gave rise to claims of more than \$5 billion, not to mention the recent grounding of the tanker, the Prestige off the coast of Spain whose damage is yet to be comprehensively assessed but which threatens to be Europe's biggest ecological disaster in decades, the loss of a VLCC which carries upwards of 300 000 tonnes would be calamitous. There is now in place a re-worked liability convention (the 1992 Fund Convention and its protocols) which pushes liability limits to above \$200 million, being roughly R2 billion. These limits are to be increased still further in 2003. Yet SA drags its heels in implementing this new and far more generous regime. We cannot afford to continue to court disaster in this fashion.

It is the duty of every South African to lobby the Minister of Transport to accede to the 1992 Convention with its higher limits of compensation before another tanker disaster leaves our beaches soiled and our pockets empty.

**By: P J Veldhuizen and
Arabella Bennett**

THE MERAK S APPEAL – SOME FURTHER REMARKS

As mentioned in the *Bulletin* 5/2002, on 27 March 2002 the Supreme Court of Appeal of South Africa delivered its decision regarding the motor vessel *Merak S*. The decision was recently reported in *Lloyd's List* (Sea Melody Enterprises v. Bulktrans (Europe) Corporation (The “*Merak S*”) [2002] 2 *Lloyd's Rep.* 287). A reason for the report might have been the possible importance of this decision for international admiralty jurisdiction dealing with the acceptance of bank guarantees and P&I Club letters provided as security for the release of ships under arrest. Although especially the issuance of P&I Club letters in order to keep ships from being detained are daily practice in shipping business, there have apparently been no major decisions dealing with the acceptability of such means as security under the various existing arrest regulations, as yet.

A reason for this might well be that no-one wishes to challenge the well-established system of P&I Club letters, which developed internationally over recent decades to meet the need for quickly available means of security without undue tying up of ships or capital. The parties involved in this convenient practice are clearly not interested in jeopardising such a well working but fragile system by dragging it to court - which might possibly decide that P&I Club letters are insufficient security and thus endanger the whole system.

The *Merak S* started out as a fairly routine case for South African admiralty jurisdiction. The vessel was arrested as security for London arbitration and released under issuance of a bank guarantee in favour of the vessel's creditors. The owners of the *Merak S* subsequently applied for a reduction of the security amount and therefore the court a quo, inter alia, had to deal with the acceptability of bank guarantees as security under the South African Admiralty Jurisdiction Regulation Act. For several reasons the court a quo held that a bank guarantee was insufficient as such security, which led the owners to appeal the judgement.

The appeal court realised the importance of the ‘live issues’ contained in the case and delivered on a decision although a ruling had become unnecessary during trial, since the creditors had abandoned arbitration. The appeal court then held that ‘[t]here can be no doubt that as a matter of ordinary language a guarantee can be regarded as constituting security’. Citing *Halsbury* the appeal court further pointed out the long-standing and almost exclusive practice of providing guarantees as security in international shipping

business. It was clear that ‘in England ten years before our (Admiralty Jurisdiction Regulation) Act was passed a guarantee that was acceptable to the plaintiff was regarded in maritime legal circles as “security”’. It was agreed that arrested vessels ‘were almost invariably released in South African maritime practice in 1983 (the year the Admiralty Jurisdiction Regulation Act came into force) on the furnishing of P&I Club letters or bank guarantees’. A reason why this should have changed under the new Act the appeal court could not find and ‘accordingly (was) satisfied that the word “security” as used in the Act also applies to guarantees such as that furnished in this case’.

With this judgement, the appeal court finally confirmed the practice of providing security for the release of an arrested vessel by means of a bank guarantee. However, the appeal court explicitly only accepted a bank guarantee as security, since it was only a bank guarantee that had been provided in the present case. Nevertheless, as the learned judge at one stage referred to the practice of providing P & I Club letters as security, one can assume that this well-established practice would also have passed the test. In any event, since South African admiralty jurisdiction has its roots in English admiralty law, which again has significant influence on international shipping business, the *Merak S* decision might cause ripples reaching farther than South African waters.

By: Sven Deters

ENDQUOTES

"And it should be the law: If you use the word `paradigm' without knowing what the dictionary says it means, you go to jail. No exceptions."

David Jones @ Megatest Corporation

"The most overlooked advantage to owning a computer is that if they foul up there's no law against wacking them around a little."

Porterfield

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