The Right of Arrest – Are we making it too difficult ?

A Common Law Perspective

By : Sitpah Selvaratnam[1]

(Tommy Thomas, Malaysia)

1. Few would contest that the arrest of ships is the charm of maritime law. A privilege to security before judgment; coupled therefore, with some burden.

2. The 1952 Arrest Convention[2] is perhaps one of the most successful chapters of maritime legal adventure. That its success was not replicated by the 1999 Arrest Convention[3], is suggestive of a resistance to measures that go beyond the consensual balance achieved in 1952. Two key features in this balance are observed. Affording the Court of the forum of arrest sufficient autonomy, while providing parties with the choice of forum for the resolution of the substantive dispute; and stipulating specific criteria for arrest that facilitates speed to ensure its efficacy, while allowing for redress in instances of wrongful arrest.

3. The focus must always be on the purpose : arrest as security for maritime claims.

4. In this paper I suggest that an occasional reminder of these balancing features helps to eliminate some of the complexity that have and may develop around arrest. I focus on 4 broad aspects from a legal practitioner's perspective.

The Indian Grace

5. *The Indian Grace*[4] was decided 20 years ago. The effects of that decision of the English House of Lords however, are still felt in parts of the world that look to England as the heartland of common law and admiralty law. *The Indian Grace* substantially diluted the potency of an *in rem* action by equating it with an *in personam* action. By pronouncing

that once an *in personam* judgment against the Owner of a ship had been obtained, *in rem* proceedings for the same cause of action are precluded, *The Indian Grace* struck at the core of the right of arrest. It rocked the common law admiralty world to hear that an arrest under an *in rem* action could not lie against a ship of a judgment debtor, and that *"The idea that a ship can be a defendant in legal proceedings was always a fiction,"* which fiction was to be discarded.[5]

6. The finding of a merger of the original underlying cause of action in the judgment *in personam*, meant that no action *in rem* or arrest on the same cause was permitted. Arrest of ships by an action *in rem* post-arbitration award was under threat. Lord Brandon's creative protection, sometimes known as the *"No Bar Rule"*, revived in *The Rena K*[6] *"that a cause of action in rem, being of a different character from a cause of action in personam, does not merge in a judgment in personam, but remains available to the person who has it so long as, and to the extent that, such judgment remains unsatisfied"*, was in jeopardy.

7. The Court of Appeal of Singapore in *Kuo Fen Ching & another v Dauphine Offshore Engineering & Trading Pte Ltd*[7] considered Lord Steyn's analysis of *in rem* actions in *The Indian Grace* to be *obiter*, viewing the decision to be consequential upon Section 34 of the Civil Jurisdiction and Judgment Act ***("CJJA")***, and the principle of res judicata that it invoked. Such statutory provision had no application in Singapore, and *The Indian Grace* was distinguished.

8. The High Court in New Zealand in *The Irina Zharkikh*[8] reinforced the continued application of *The Rena K* "*No Bar Rule*".

9. The Federal Court of Australia in *The Comandate*[9], acknowledging that *"The utmost respect, of course, must be paid to the reasoning of such an eminent court; and the need for consistent doctrine in international shipping law so far as is possible must be recognised…"* held that the cause of action *in rem* does not merge in a judgment *in*

personam; finding *"the differences between the in rem and in personam actions lay at the heart of Admiralty practice*". Allsop J (as he then was) reminded that :

> *"The place of the maritime lien and the access of the claimant to the ship to enforce it whoever owns the ship, the capacity of the action in rem to continue against the new owner if a sale occurred after commencement of the action, the historical separateness of the judgments on the action in rem and in personam, the restriction in the claimant's rights to the value of the res, the coming in by others to defend their interests in the ship and the coming in to share in the fund by other claimants interested in the ship all point to the reality of the claim against the ship."*

10. The Hong Kong Court of Appeal in ***Alas***[10], possibly the most recent forum moved to consider *The Indian Grace*, held that the decision did not scale back the *"No Bar Rule"* of *The Rena K*, but was based on the construction of Section 34 of the CJJA. *The Indian Grace* was not followed.

11. It would appear that procedurally, the CPR 61.5[11] reverses the position in England, allowing a claimant or judgment creditor to arrest a ship by an action *in rem*. This contains the storm of *The Indian Grace*, in an English tea cup of procedural rules. The effects though, will continue to reverberate in countries, such as Malaysia, that rely by statutory adoption of the *Senior Court Act* 1981 on the English Admiralty jurisdiction, rendering *The Indian Grace* not merely persuasive but binding authority.

12. Was the delicate balance achieved in the 1952 Arrest Convention forgotten 45 years later? The general principles of law on estoppel *albeit* codified in the CJJA, were allowed to dissolve the lines carefully crafted by *"an ancient strange rule"*[12].

Cross Border Insolvency and Arrests

13. Insolvency always adds a significant dimension to arrest. The Singapore High Court decision in ***Re Taisoo Suk***[13] raised concern in September 2016; but was very quickly settled

in Singapore in March 2017[14] by the introduction of the UNCITRAL Model Law on Cross Border Insolvency (Insolvency Model Law). It may nevertheless, influence other common law countries, Malaysia for instance, that have not embraced the Insolvency Model Law. The background for concern is this.

14. The common law ancillary liquidation approach, that prevailed prior to the recent surge in direct or indirect acceptance of Insolvency Model Law concepts, generally meant that unless there was a winding up in the domestic jurisdiction of the forum of arrest; *in rem* claims could proceed unhindered by the foreign insolvency process of the shipowner[15]. With the adoption of the Insolvency Model Law, the effective change would be that the incident of *domestic winding-up* that impacts upon an *in rem* action, is replaced by a *domestic recognition of a foreign insolvency process.* I call them the Traditional position, and the Model Law position. The Traditional position was essentially, following prescribed statutory mechanism relating to the winding-up of an unregistered or foreign company.

15. It is the situation in between the Traditional position and Model Law position that creates the shades of grey, and renders arrest uncertain. Uncertain equals difficult. It is the subordination of the *in rem* action, absent either a domestic winding-up or domestic Insolvency Model Law recognition, that gives rise to unease. The gap between the Traditional position and the Model Law position is sought to be filled by *"modified universalism"*.

16. As beneficial as this may be to the fair and efficient distribution of an insolvent company's assets, a statutory right *in rem* should not readily be unseated by a concept of *"modified universalism"*.

17. In the *Convenience Container*[16], the Hong Kong Court of Appeal made clear that domestic maritime creditors remained protected despite foreign insolvency proceedings against a ship owner. The writs in rem were accordingly, allowed to proceed in Hong Kong against the ships of a company in voluntary liquidation in Singapore. The change in beneficial

ownership was a central issue raised and rejected, and to that I will come in a moment. In *Re TPC Korea Co Ltd*[17] too, the sanctity of admiralty rights was maintained, despite Korean rehabilitation process, on the basis that they were a self-contained regime governing ship arrest. The Traditional position was maintained.

18. At the time the *Re Taisoo Suk* order restraining actions *in rem* was granted in relation to Hanjin's Korean rehabilitation process, Singapore had not adopted the Insolvency Model Law. *In rem* proceedings against Hanjin's ships were stayed on the basis of modified universalism. Reliance was placed on the Singapore Court of Appeal decision in *Beluga Chartering*[18]. Notably, the decision in *Beluga Chartering* was premised on a finding that an express statutory provision, Section 377(3)(c) on domestic creditors' priority to payment, did not apply on the facts of that case. As part of a domestic winding-up, preceeds from assets realized in Singapore were remitted to the liquidators in Germany. This would seem consistent with the Traditional position. The *Re Taisoo Suk* decision in contrast, disregarded express statutory rights *in rem*, favouring the recognition of the Hanjin rehabilitation process in Korea, on the footing of modified universalism.

19. Returning to the *Convenience Container*, Reyes J (as he then was) tested the question of a change in beneficial ownership of the ship for purposes of a statutory lien right of arrest, by reference to the *St Merriel*[19] and *The Pangkalan Susu/Permina 3001*[20]: *was the relevant person able to sell or dispose of the ship and convey good title to a third party?*

20. That question is prompted by the need for continuity in the identity of the beneficial owner of the ship, from the moment the cause of action arose (the relevant person) until the writ *in rem* is issued. This is a statutory pre-requisite to the right of arrest in claims under a statutory lien. In the context of insolvency, the inquiry is whether the liquidation of the relevant person causes a change in beneficial ownership of the ship.

21. Upon liquidation, the disposal of the ship is no longer under the hand of the Board of Directors, but the Liquidator. Nevertheless, the disposal remains in the name of the

company that is the relevant person. Reyes J seemed to prefer the reasoning in *Linter Textiles Australia Ltd (in liquidation) v Commissioner of Taxation* [21] over *Ayerst (Inspector of Taxes) v C&K (Construction) Ltd*[22]. In any event, the revenue law interpretation of beneficial ownership in *Ayerst* was considered to be of *"marginal interest"* in the Admiralty context, concluding that there was no change in beneficial ownership.

22. In a paper presented in 2016, then as Professor of Legal Practice of the University of Hong Kong[23], Professor Reyes suggests that he may have been wrong in the *Convenience Container,* in view of the principle of modified universalism endorsed in *Singularis Holdings Ltd v Pricewaterhouse Coopers*[24] that is followed by Hong Kong, and the *"generous"* view now taken of the power to assist a foreign liquidation process. I venture to suggest that Professor Reyes was right first time around, on the analysis that follows.

23. Modified universalism has its limits, and is *"subject to local laws and local public policy"*, and "*the court can only ever act within the limits of its own statutory and common law power*[25]. It is premised on the concept of cooperation and efficient maximization of value of the assets. It cannot displace statutory provisions and the domestic definition of beneficial ownership under Admiralty and company law.

24. By way of illustration, before the onset of liquidation, the ship of the relevant person is legally and beneficially owned by that company. The directors manage the ship for the ultimate benefit of the shareholders of the company. Upon liquidation, the directors are replaced by liquidators, who then manage the ship for the benefit, first of the creditors, and then the shareholders of the company. The shift in identities of the fiduciary and beneficiary, does not alter the legal and beneficial ownership of the ship itself.[26] Creditors have no direct interest in the ship. They have *"a special kind of trust"* that does not amount to a proprietary beneficial interest, but a right to have the assets administered in accordance with insolvency provisions[27].

25. Modified universalism does not change this fundamental position in common law. There is no change in beneficial ownership in the ship by reason only of the order to wind-up the company. The beneficial ownership and the right of arrest remain to be recognized and enforced in accordance with the statutory position under admiralty law of the forum. More so where the arrest initiated after the commencement of the foreign liquidation, is pursuant to a maritime lien. Any change in beneficial ownership is irrelevant to such arrest.

26. On this analysis, modified universalism cannot justify the ***Re Taisoo Suk*** restraint of *in rem* proceedings.

27. With beneficial ownership placed to a side, I look next at the remaining effects of insolvency.

28. Insolvency necessarily impacts on the right of suit. By statutory provision, proceedings are stayed upon a winding-up order, and the winding-up dates back to the date of the presentation of the petition or originating process in court. Leave of court to commence or proceed with actions *in rem* would be required after a winding-up order is made against the owner of the ship. That is incident upon the insolvency.

29. Attachments, sequestration, or execution against property of the company, after winding-up has commenced, are rendered void. Again, this is an incident of insolvency.

30. An arrest is however, not an execution[28] process, but may be a sequestration[29] that permits validation. This is a classic interplay of admiralty and insolvency laws. It is not an execution because the arrest precedes judgment, and is for security. It may be validated as a sequestration because the arrest is in exercise of a maritime lien, or the ship is able to be sold free of encumbrance at a better price under Admiralty proceedings.

31. Between the time of the presentation of the petition and the winding-up order, there is ordinarily no stay of proceedings. There is therefore, no reason to consider the filing of

an *in rem* action within that period to be anything but valid[30]. This is so despite the subsequent relation back of the date of commencement of the winding-up. Leave of court to proceed with such action would be granted as the *in rem* claimant is a secured creditor, at least from the issuance of the writ *in rem*; whether or not the writ had been served on the ship[31]. The ability to serve the writ on the ship, despite a change in ownership of the ship once the writ *in rem* had been issued, confirms his status as a secured creditor.

32. The foregoing exhibits the great lengths to which Admiralty courts go, to protect the action *in rem*, and the right of arrest.

33. After the winding-up order is made, leave of Court to proceed with the *in rem* action is granted to claimants with maritime liens. They are considered to have security that attaches to the hull of the ship from the moment of the event giving rise to the lien. Claimants with a right to a statutory lien are generally thought to be denied leave of Court to proceed with an *in rem* action once a winding-up order is made; or at best, the position is unclear.

34. I suggest that a claimant with a statutory lien is a secured creditor. An analogy may be drawn with a floating charge. An immediate security in the ship is created by admiralty law the moment the claim with a statutory lien arises. It is however, coupled with the right for the shipowner to carry on dealing with the ship until the writ *in rem* is issued. Once the writ *in rem* is issued, the security crystalizes if the ship remains in the same beneficial ownership. A right to then follow the ship into the hands of any new owner attaches.

35. The shipowner's right to deal with the ship prior to the issuance of the writ means, the right of security of the statutory lien holder over the ship could be lost by change in ownership before the security crystalizes; much like a floating charge.

36. Maritime liens attach from the moment of their creation, and continue to follow into the hands of the new owner. The difference lies only in the deferment of crystallization in statutory liens. They are both nonetheless, secured interests in the ship, created the moment the claims arise. Leave of court to commence or proceed with an *in rem* action should be given to both, maritime lien and statutory lien claimants.

37. This approach would allow the exemptions to the stay of proceedings under the Insolvency Model Law to apply to claims under a statutory lien; a matter left open in *Yakushiji v Daiichi Chuo Kisen Kaisha*[32].

38. The maritime claimant then participates in the insolvency as a secured creditor. That must have been the intention of the 1952 Arrest Convention, and domestic statutory proclamation of a right *in rem* over the *res*; separate from a right *in personam*. The statutory lien claimants were clearly intended to have better rights than general unsecured creditors of the shipowner. More so, when funds are limited, as in an insolvency. This policy decision is thwarted by denial of leave of court to file a writ *in rem*, to crystalize an existing security. To deny the statutory lien claimant the status of secured creditor in an insolvency, is to rob him of his umbrella on a rainy day!

39. The historical and international nature of the creation of maritime debts, that continue to this day, have nurtured a legitimate expectation that claimants with maritime and statutory liens be recognized to have taken ***secured risks*** in their dealings with ships. The right of arrest should not be made more difficult than intended.

Maritime Liens and the Lex Fori

40. Maritime liens are recognized as the superior cousin to statutory liens. Their place in the pecking order, duly honoured. When formal insolvency intervenes, a kink in the chain develops. The OWB scramble highlights this.

41. Typically the request, in the OWB context, for bunker emanated from the ship or its charterers, made to OWB. OWB then separately contracted with various physical suppliers for the delivery of the bunker. The bunkers were stemmed directly to the ships by the physical suppliers. OWB went into formal insolvency. Receivers were appointed by OWB's secured creditor, ING. Administrators were subsequently appointed over OWB.

42. The physical suppliers of bunker did not get paid by OWB, given the later's insolvency. The physical suppliers demanded payment from the ships, to which bunker had been directly stemmed. They relied on clauses in their respective contracts with OWB to assert a maritime lien over the ships. Ships around the world were arrested, or threatened with arrest.

43. In Malaysia, the ship 'Malik Al Ashtar' was arrested twice; once by the physical supplier of the bunker, and later by ING/OWB. Two sets of security by way of payment into court were put up by the shipowners to have the ship released from arrest.

44. The physical suppliers' court attempts to get payment were by and large unsuccessful in Singapore[33], Malaysia[34], and England[35] for a variety of reasons; the supply of necessaries, including bunker, was not recognized in these *fori* as a claim carrying a maritime lien; there was no privity of contract between the physical suppliers and the shipowner; there was no effective retention of title by the physical suppliers over the bunker supplied, and more[36].

45. Quite separately was the endeavor in *The Sam Hawk*[37] to elevate the bunker supplier to a status of maritime lien holder, by reference to a choice of law clause that provided for the law of the United States of America to apply to determine the existence of the maritime lien contractually asserted. It succeeded at first instance. The Federal Court of Australia reversed the decision, and re-aligned the role of the *lex fori* to Article 9 of 1952 Arrest Convention. Allsop CJ held :

> *"… it is important, both for owners and creditors, to know, with as much certainty as possible, what the legal regimes are for the creation and enforcement of maritime claims in the various port to which the ship is sent. The widespread use of time charters and the usual responsibility of the time charterer for bunkers makes the question of the creation of a lien for necessaries (such as bunkers) that may affect the property in the ship of the owner a matter calling for certainty and fairness. It is an important practical question that concerns the potential arrest of valuable working ships, which arrests must be dealt with (including by decisions on jurisdiction) speedily. So, the principle engaged to resolve the issue should be as simple as possible, conformable with clarity, certainty and fairness."*

The law of the forum of arrest was reinstated as the applicable law to determine the ultimate characteristics of a maritime lien, in line with *Halcyon Isle*[38].

46. The wide casting of the net of maritime liens would make for easier arrest, but the use of substantive laws of a country different from the forum of arrest to achieve that end, would give rise to much uncertainty. It makes arrest more difficult, requiring expert evidence on foreign law to be tendered and considered at a moment when speed and time are paramount.

47. The appellate decision in *Sam Hawk* is a welcome readjustment. The balance in favour of speed and efficacy in arrest, and the role of the forum of arrest, restored.

Arrest as of Right

48. Finally, I consider the bread and butter issue of an admiralty practitioner – what do I need to satisfy to have a warrant of arrest issued by court? Tied to this issue is the duty of full and frank disclosure, and the grounds to set-aside a warrant of arrest.

49. The line may be drawn at *The Varna*[39], and the amendments in 1986 to the English Rules of the Supreme Court 1965[40] that made arrest *"as of right"*. Malaysia, noting the benefits

of this approach, adopted similar provisions in the 2012 version of the Rules of Court. Provided the requirements of the Rules, that reflect the admiralty pre-requisites identified in the Senior Court Act 1981 are fulfilled, a warrant of arrest is issued at the instance of the claimant, as of right. It is not discretionary. As such, the general *ex-parte* discretionary principles of full and frank disclosure do not apply to an arrest.

50. On the other side of the divide, is the view that the issuance of a warrant of arrest is discretionary, and it is incumbent on the arresting party to fully and frankly disclosure material facts[41], that is, facts relevant to the decision to issue the warrant. The premise is that an arrest is serious, with far reaching consequences and is not to be trifled with. The result however, is that the arrest waters get murky.

51. Hong Kong, as with Singapore, adopts the discretionary route to arrest[42].

52. What is to be disclosed must be enough to meet an arguable case, not on the merits of the claim, but as to the jurisdiction *in rem*; not to the point of *"peccadilloes"* but motivated by common sense[43]. The bench mark for common sense necessarily varies, as does the *Chancellor's Foot*. It imports a high level of uncertainty into the process of arrest. For the very reason than an arrest is not to be trifled with, the right to arrest should be made certain; grounded on compliance with objective criteria.

53. Material non-disclosure as a ground to set-aside a warrant of arrest is possibly not the most efficacious manner of dealing with an arrest. The warrant should be set-aside if the prescriptions of the Rules and admiralty statute are not met. This is tested against facts and evidence produced by the ships' interests, when challenging the arrest. The legitimacy of the arrest does not turn on what was or was not disclosed. The heart of the matter is; *Is the arrest permitted in law?*

54. The motive or intent of the arrest may to some extent be discerned by what was not disclosed. That may go to malice or gross negligence, upon an inquiry of wrongful arrest.

It is nevertheless, separate from the validity of the arrest. It would seem that material non-disclosure adds nothing more to protect interests, but imports arbitrary findings on relevance and breach of duty.

55. An arrest is always done at speed, upon key information. Disclosure of matters that provide a "knock-out blow"[44], or of plausible defences, would need to be identified when turning around arrest papers in 24 to 48 hours. But, the right to arrest is not an exercise in equity. It is the prosecution of a statutory right provided against an identified close set of categories. Are we making arrest more difficult than it was intended to be?

56. The check and balance lies in the risk taken by the arresting party that the warrant will be set-aside, and if malice or gross negligence established, damages awarded.

57. The Australian decision in *Xin Tai Hai*[45] provides a variation to the discretionary power of arrest. It is a qualified discretion, limited to scrutiny of fulfilment of matters provided by the rules, and no more. That seems to be a balanced alternative to the *"as of right"* approach. Perhaps, it is the same approach, just presented differently. In any case, it doesn't make arrest too difficult.

Conclusion

58. I have chosen to highlight a few aspects of arrest that have troubled me. Some of them have been resolved in particular jurisdictions over time, but not without an acute level of consciousness of the need to re-align to the primary objectives of an arrest. They remain capable of reactivation in other jurisdictions.

59. The potential to complicate arrest will always exist. The objectives of arrest under the 1952 Arrest Convention, and domestic statues that mirror those ideals, have to act as anchor. Although that must seem plain, the obvious sometimes gets lost in the complex

mix of the old with the new, and the overlap in disciplines of the law. For Malaysia, sovereign statutory pronouncement of her admiralty jurisdiction is imperative.

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[1] *LLB (Wales), LLM (Cantab), Barrister (Lincoln's Inn), Dip ICArb*
Advocate & Solicitor (High Court of Malaya), FCIArb, FMIArb
Consultant to the law firm, Tommy Thomas, Kuala Lumpur, Malaysia
E-mail : sitpah@tommythomas.net

[2] *International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, 1952*

[3] *International Convention on Arrest of Ships, 1999*

[4] *The Indian Grace (No. 2) [1998] AC 878, HL*

[5] *Ibid, 913*

[6] *The Rena K [1979] 1 QB 377, 405-406*

[7] *Kuo Fen Ching & another v Dauphin Offshore Engineering & Trading Pte Ltd [1999] 2 SLR(R) 793*

[8] *The Irina Zharkikh [2001] 2 Lloyd's Rep 319, HC*

[9] *The Comandate [2008] 1 Lloyd's Rep 119, 136 FCAFC*

[10] *The Alas [2015] 6 HKC 557, CA*

[11] *Part 61 – Admiralty Claims, Civil Procedure Rules*

[12] *The Indian Grace (No.2), 911-912*

[13] *Re Taisoo Suk [2016] SGHC 195*

[14] *With effective from 31 March 2017*

[15] *Re TPC Korea [2010] 2 SLR 617; The Convenience Container & Ors [2007] 4 HKC 484; Singularis Holdings Ltd v PricewaterhouseCoopers [2015] AC 1675, 1685, 1687*

[16] *The Convenience Container & Ors [2007] 4 HKC 484*

[17] *Re TPC Korea Co Ltd [2010] 2 SLR 617*

[18] *Beluga Chartering GmbH (in liquidation) and others v Beluga Projects (Singapore) Pte Ltd (in liquidation) and another (deugro (Singapore) Pte Ltd, non-party) [2014] SGCA 14*

[19] *Smith's Dock Co. Ltd v The St Merriel (Owners). St Merriel[1963] P 247*

[20] *The Pangkalan Susu/Permina 3001 [1975-77] SLR 252*

[21] *Commissioner of Taxation of the Commonwealth of Australia v Linter Textiles Australia Ltd (in liquidation) [2005] 220 CLR 592*

[22] *Ayerst (Inspector of Taxes) v C&K (Construction) Ltd [1976] AC 167*

[23] *At the Conference on Anglo-Chinese Maritime Law & Practice in Transition organized on 20th and 21st April 2016 by the Institute of Maritime Law of the University of Southampton*

[24] *Singularis Holdings Ltd v Pricewaterhouse Coopers [2015] AC 1675*

[25] *Ibid, 1694*

[26] *The Eypo Agnic[1988] 1 WLR 1090; Re Resource 1 [2000] 3 HKCFAR 187*

[27] *Buchler v Talbot [2004] 2 AC 298, 2854*

[28] *The Zafiro [1960] P 1, PD; The "Kiama" ("Mubum") Unreported, 16 March 1998, FCA*

[29] *The Constellation [1996] 1 WLR 272, PD*

[30] *The Bolivia [1995] BCC 666, contrast with The "Hull 308" [1991] 2 SLR (R) 643*

[31] *Re Aro Co Ltd [1980] 1 Ch 196, CA*

[32] *Yakushiji v Daiichi Chuo Kisen Kaisha [2015] FCA 1170*

[33] *Precious Shipping Public Co Ltd and others v OW Bunker Far East (Singapore) Pte Ltd and others [2015] SGHC 187*

[34] *The Malik Al Ashtar [2016] 12 MLJ 497; [2017] 7 MLJ 87*

[35] *Res Cogitans [2016] UKSC 23*

[36] *Compare the position in Canada in Canpotex Shipping Service Ltd v Marine Petrobulk Ltd 2015 FC 1108; ING Bank NV v Canpotex Shipping Services Ltd 2017 FCA 47*

[37] *The Ship "Sam Hawk" v Reiter Petroleum Inc 2016 FCAFC 26*

[38] *Halcyon Isle [1981] AC 221, PC*

[39] *The Varna [1993] 2 Lloyd's Rep 253*

[40] *Order 75 Rule 5(6) Rules of the Supreme Court 1985*

[41] *The "Damavand" [1993] 2 SLR(R) 136*

[42] *Birnam Ltd v Owners of 'Hong Ming' [2011] 5 HKC 512, CFI ; Oceanic Group Pte Ltd & Anor v The Owners and/or Demise Charterers of the Ship or Vessel Oriental Dragon [2013] HKCU 2819, CFI ; The Harima [1987] 2 HKC 118*

[43] *The "Vasiliy Golovninv" [2008] 4 SLR(R) 994, 1026, CA ; Bunga Melati 5 [2012] 4 SLR 546*

[44] *The Xin Chang Shu [2016] 1 SLR 1096, 1113; The Eagle Prestige [2010] 3 SLR 294*

[45] *Atlasnavios Navegacao, LDA v The Ship "Xin Tai Hai" (No. 2) [2012] 301 ALR 357, FCA*