

# Stone Chambers Singapore Conference 2014

## Recent Developments in Shipping and Arbitration



Thursday 23 October 2014

Pan Pacific Hotel, 7 Raffles Boulevard, Marina Bay, Singapore

- 9.00am Registration
- 9.15am Welcome from Chairman - Andrew Moran QC
- 9.30am Security for Costs and Security for the Award following Arbitration - Henry Ellis
- 10.20am Interim Relief in Support of Arbitration - Philip Riches
- 11.10am Break
- 11.25am Enforceability of Multi-tiered Dispute Resolution Clauses - Vasanti Selvaratnam QC
- 12.15pm Panel Discussion, moderated by Andrew Moran QC
- 12.35pm Lunch
- 1.35pm Abandoned Cargo - Colin Wright
- 2.25pm The Singapore Bills of Lading Act (Chapter 384) - Charles Debattista
- 3.15pm Break
- 3.30pm Guarantees in Shipping: Recent Developments - Mark Jones
- 4.20pm Terminating Time-Charters - James Shirley
- 5.10pm Panel Discussion, moderated by David Martin-Clark
- 5.30pm Closing from Chairman - Andrew Moran QC
- 6pm Drinks, Canapés & Networking Reception



**Registration Fee: 225 SGD (book 2 places, get 3rd free)**

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## Security for Costs and Security for the Award following Arbitration - Henry Ellis

How Useful are Sections 70(6) and (7) of the Arbitration Act 1996 in Practice? This talk will consider the circumstances in which a respondent, successful in the underlying arbitration, can obtain security or security for costs from an appellant, bringing an appeal as of right under sections 67 and 68 of the Arbitration Act 1996; and how useful section 70 is in practice, as a tool for fending off vexatious and costly appeals.

It will include consideration of the recent cases of *X v Y* [2013] EWHC 1104 and *Konkola Copper Mines PLC v U&M Mining Zambia Ltd* [2014] EWHC 2146 (Comm) and [2014] EWHC 2374 (Comm).

## Interim Relief in Support of Arbitration - Philip Riches

- » Uses of interim relief in support of arbitration.
- » What interim relief is available and when?
  - » From the tribunal
  - » From the courts
  - » How to obtain it.

## Enforceability of Multi-tiered Dispute Resolution Clauses - Vasanti Selvaratnam QC

- » Nature and commercial purpose;
- » The traditional English view
- » The Australian case law;
- » Singaporean case law
- » ICSID reports
- » An analysis of Teare J's approach in *Emirates Trading Agency v PMEPL* [2014] EWHC 2104
- » Top tips for creating an enforceable condition precedent in a multi-tiered dispute resolution clause

## Abandoned Cargo - Colin Wright

Colin Wright will discuss the legal and practical problems which arise when cargo is shipped on board a vessel and then abandoned by the person entitled to claim delivery.

He will consider the legal rights and obligations of the carrier and cargo owners in this situation and discuss the tactical steps that each of the parties involved might take to obtain the best possible solution, thereby avoiding a situation in which the carrying vessel is rendered commercially useless.

Colin will consider the applications that shipowners may make to the court for assistance, in particular applications for interim relief permitting the sale of perishable cargo.

## The Singapore Bills of Lading Act (Chapter 384) - Charles Debattista

In the twenty years since the latest revision of the Singapore Bills of Lading Act, the Singaporean Courts have punched above their weight in the area of cargo claims: which cargo claimants have title to sue; when does the carrier have the right to sue which cargo interest; and are all shipping documents equal in this regard. Many of the cases decided in Singapore on this Act have informed practice not only within this jurisdiction, but also within many others where versions of the UK Carriage of Goods by Sea Act 1924 are in force. In this session, Charles Debattista, author of *Bills of Lading in Export Trade* (3rd ed 2009, 4th forthcoming), will be looking at how Singapore has contributed to this area in the last two decades.

## Guarantees in Shipping: Recent Developments - Mark Jones

The shipping industry makes much use of guarantees, whether the classic parent company guarantees or the refund and payment guarantees that lie at the heart of a major shipbuilding project. Recent years have seen a swathe of important cases in this field. Mark will discuss:

- » Formalities: the modern application of an ancient Act
- » Interpretation: the rise of commercial sense
- » Discharge: variations, consent and purview - "building rigs not cathedrals"
- » Demand guarantee vs classic guarantee: the rise of presumptions
- » Enforcing the guarantee: resistance is futile ... or is it?

## Terminating Time-Charterers - James Shirley

- » Withdrawal under express clauses
- » Interaction with common law rules
- » Discussion of problem areas
- » Consideration of the latest cases

6 Public CPD Points  
Practice Area: Admiralty  
Practice / Shipping  
Training Level: Update



Participants who wish to claim CPD Points are reminded that they must comply strictly with the Attendance Policy set out in the CPD Guidelines. This includes signing-in on arrival and signing-out at the conclusion of the activity in the manner required by the organiser, and not being absent from the entire activity for more than 15 minutes. Participants who do not comply with the Attendance Policy will not be able to obtain CPD Points for attending the activity. Please refer to [www.sileCPDcentre.sg](http://www.sileCPDcentre.sg) for more information.

SRA CPD Accredited - 6.5 hours  
Hong Kong Law Society Accredited - 6.5 hours



Andrew  
Moran QC  
Singapore  
Call: 1977  
QC: 1994

Andrew Moran QC heads up Stone Chambers Singapore. He is a senior Deputy High Court Judge, with extremely wide experience acquired during silk, in civil, maritime and commercial litigation and arbitration. He moved in 2013 under the terms of a Foreign Law Practising Licence granted to Attorney General. Since arriving in Singapore he has been instructed to act concerning collision liability, limitation issues, consequential charterparty. He has worked with major local law firms advising from an English Law standpoint and together with them, in successfully prosecuting claims in arbitration. Since moving to Singapore in 2013, Andrew has already been appointed as arbitrator (in addition to his instructions as Counsel) in numerous arbitrations seated in Singapore and London by parties from all over the region including from Singapore, Korea, Hong Kong, Australia, Malaysia, The Philippines and Indonesia. These include arbitrations proceeding under LMAA Terms, SCMA Rules, SIAC Rules, UNCITRAL Rules and in one case a so called "Hybrid" mix. The disputes subject to the references concern the following: ship sale and purchase, offshore construction, charterparty and bill of lading disputes (including claims for consequential loss in disrupted industrial processes), ship collisions, "wreckhire" and salvage.



Vasanti  
Selvaratnam QC  
Call: 1983  
QC: 2001

Vasanti Selvaratnam QC practices in all aspects of international commercial litigation and arbitration, including shipping (wet and dry), commodities, banking and finance, conflict of law and jurisdiction disputes, all forms of interim urgent relief including freezing orders and anti-suit injunctions, and civil fraud.

Recent cases include the Court of Appeal decisions in *The Wadi Sudr* [2010] 1 Lloyd's Rep 193 (leading case on the arbitration exception, the Judgments Regulation and issue estoppel), *Joint Stock Asset Management Co Ingostrakh-Investments v BNP Paribas* [2012] 1 Lloyd's Rep 649 (leading case on non contractual anti-suit injunctions) and *Madoff Securities International Ltd (in liquidation) v Yacht Bull Corporation* [2010] EWHC 133 (Ch) (interrelationship between the Judgments Regulation and the Insolvency Regulation in relation to jurisdiction).

Other recent noteworthy cases include: *Nakanishi Marine v Gora Shipping and Attica Finance* [2012] EWHC 3383 (Comm) which considers the effects of a tripartite subordination agreement on the rights of a junior lender as against the borrower and guarantor; *RBS v FAI Oil Co Ltd and ors* [2012] EWHC 3628 (Comm) which is a leading case on interim relief under section 25 CJA 1982; *Stolt Kestrel* [2014] EWHC 1731 (Adm) (mandatory extension of time where no reasonable opportunity to arrest under section 190(6) Merchant Shipping Act 1995 and other time bar issues) and *Emirates Trading Agency v PMEPL* [2014] EWHC 2014 (Comm) (friendly discussions clause a condition precedent to right to commence arbitration).

Particular specialism in cases requiring technical expertise. Vasanti is recommended as a leading silk for international arbitration, shipping and commodities in the leading Legal Directories and is also noted for being a "poised and highly measured advocate".



Charles  
Debattista  
Call: 1978 (Malta)  
Call: 2004  
(England & Wales)

Charles Debattista practises full time in shipping and international trade disputes. With full rights of audience before the courts, he works particularly in the areas of charterparties and bills of lading, commodities contracts and international trade disputes generally, including letters of credit. Since 2002 he has either acted as counsel or sat as arbitrator in over 200 arbitrations, under various institutional rules including LMAA, ICC, GAFTA and FOSFA rules, as well as in ad hoc arbitrations. Charles also has an advisory practice on all matters relating to international trade. He has sat as sole arbitrator, chairman and party-appointed. He has had a number of his Awards confirmed on referral to the Courts in England and has had a number of his publications cited by courts in England and elsewhere. Charles has written extensively in his areas of expertise and chaired the international drafting groups responsible for Incoterms 2000 and 2010. Charles is also a CEDR accredited mediator.

He is recommended in Chambers & Partners UK Bar 2015 and the Legal 500 for both shipping and commodities.



Colin Wright  
Hong Kong  
Call: 1987

Colin Wright is a practising barrister who acts as adviser and advocate in disputes before courts and arbitral tribunals. He has particular experience in cases involving the carriage of goods and international trade. His clients include leading shipping companies, P&I Clubs, insurers and financial institutions.

Before commencing in practice as a barrister, Colin Wright worked with two leading firms of maritime solicitors where he acquired extensive experience of handling cases relating to the carriage of goods by sea.

Colin is a member of the Hong Kong Admiralty Court Users' Committee. He has also served as an Executive Committee of the Hong Kong Maritime Law Association.

Colin is recommended for commercial dispute resolution in Chambers & Partners Asia-Pacific. Sources say Colin Wright is a "user-friendly and reliable" counsel. He is known among peers for his shipping expertise. (Chambers & Partners Asia-Pacific 2013)



Mark Jones  
Call: 2000

Mark Jones has a broad commercial practice, with a particular focus on international trade, commodities, shipping, insurance and related finance. His expertise extends to all corners of the shipping industry, from charterparties to salvage, from cargo claims to collisions, from ship finance to performance guarantees, and from marine insurance to general average. He acts in arbitrations both in London and abroad, and appears regularly in the English Courts. He also provides expert evidence on English maritime law for use in foreign proceedings. Before moving to the Bar, Mark qualified

as a litigation solicitor at Ince & Co specialising in shipping and insurance.

Mark is recommended as a leading barrister in the fields of Shipping and Commodities by both Chambers & Partners and the Legal 500, where he has been described in various editions as being "a very knowledgeable, sharply minded and skilful barrister" who pays "phenomenal attention to detail and gives prompt and pragmatic advice", and as "an effective operator with a great sense of humour" and a "great analytical mind", who is "very friendly, and easy to deal with."

Over the years, he has appeared in a number of leading shipping cases (wet and dry). Most recently, he appeared alone in the Court of Appeal in *Cosmotrade SA v Kairos Shipping Ltd, The "Atlantik Confidence"* [2014] 1 Lloyd's Rep 586 (limitation fund may be constituted by guarantee), and *ED&F Man Sugar Ltd v Unicargo Transportgesellschaft GmbH, The "Ladytramp"* [2014] 1 Lloyd's Rep 412 (marine insurance: meaning of "mechanical breakdown"). He acted in the well-known major casualties of the "*Alexandros T*" and the "*MSC Napoli*", and has acted in cases that have had a significant impact on the law – for example: *The "Starsin"* [2004] 1 AC 715 (House of Lords: bills of lading), *The "Sea Angel"* [2007] 2 Lloyd's Rep 517 (Court of Appeal: frustration), and *Progress Bulk Carriers Ltd v Tube City IMS LLC* [2012] 1 Lloyd's Rep 501 (Commercial Court: lawful act duress).



Philip Riches  
Call: 2001

Philip Riches has a busy and wide-ranging commercial practice in arbitration and litigation. He has considerable advocacy experience in applications, trials and appeals, including in applications for freezing injunctions, anti-suit injunctions and other interim relief, full trials (in both arbitration and litigation) with expertise in cross-examination and other witness handling, appeals, arbitration appeals and arbitration award enforcement proceedings.

His practice includes a considerable amount of shipping, commodities, energy and insurance work, both in arbitration and litigation. His work covers all aspects of dry shipping disputes, including cargo, charterparty, ship finance, and sale and purchase matters. He also has considerable experience of shipbuilding disputes having been involved in a large number of shipbuilding arbitrations arising out of overcapacity of Chinese yards following the financial crisis.

Philip is recognised as a leading junior in Commercial Litigation, International Arbitration, Insurance and Shipping (Chambers & Partners, Chambers & Partners Global and Legal 500) and in Civil Fraud (Legal 500).

Philip's arbitration work includes both ad hoc and institutional arbitrations, including LCIA, ICC, HKIAC, SIAC, SCC and LMAA. Philip also accepts appointments as and has experience as an arbitrator, including as an ICC arbitrator.



James Shirley practises in all areas of commercial law, in particular shipping and international arbitration, jurisdictional disputes, the sale and carriage of goods, and insurance. Legal 500 2013 describes him as “highly regarded” and “a very able lawyer” and recommends him as a leading junior barrister. In the 2012 edition, he was described as “gifted”.

Recent reported work includes *BDMS Limited v Rafael Advanced Defence Systems* [2014] EWHC 451 (Comm), Hamblen J - successfully disputing the English court’s jurisdiction in commercial court proceedings brought in

breach of an ICC arbitration clause which the claimants alleged had been repudiated by the defendant’s non-payment of the ICC’s fees; acting for the successful appellant in “*Aquafaitth*” [2012] EWHC 1077 (Comm), one of the most important shipping and general contract law cases of recent years.

Confidential and other work includes several high-value and novel disputes in arbitration as well as arbitration applications/appeals/challenges under s. 9, s. 67, s. 68 and s. 69 of the Arbitration Act 1996.

Academically, James tutors a first-year contract law class on a voluntary basis at UCL and has recently had an article published in the Law Quarterly Review (On the Classification of Amphibious Avians (and Contractual Terms): The Astra, LQR 2014, 130 (Apr)).



Henry Ellis works on a broad range of commercial matters for a variety of clients. He has appeared in the Commercial Court and the Court of Appeal and regularly acts in arbitration. During 2011 Henry spent six months on secondment to the Shipping and Transport Litigation Department of Holman Fenwick Willan LLP, where he assisted on a wide range of both dry and wet shipping disputes.

Henry appeared as Junior Counsel to Vasanti Selvaratnam QC for the Second Defendant at first instance in *BNP Paribas SA v OJSC Russian Machines & anr* [2012] 1 Lloyd’s Rep. 61 (Blair J.) and [2012] EWHC 1023 (Teare J.), and then subsequently in the Court of Appeal in the conjoined appeals in *Joint Stock Asset Management Company Ingosstrakh-Investments v BNP Paribas SA* [2012] EWCA Civ 644. The case concerned complex issues of service and jurisdiction, as well as interim anti-suit relief obtained by the claimant bank against the Russian-domiciled Second Defendant.



After a career in the marine insurance industry, David Martin-Clark became an Associate Member of Chambers in 2006 and has developed his practice as a maritime arbitrator and commercial disputes mediator. Outside Chambers, he continues to be active as a shipping and insurance consultant.

David spent the greater part of his commercial career at the firm of Thomas Miller in the City of London. From his time in Millers, David gained wide experience in the shipping and transport and related insurance industries. He served as Chief Executive and then Chairman of the Miller group and was a

Director of its regional subsidiaries in the United States, Australia, Hong Kong and Singapore. He was resident in Hong Kong for some years and founded there the Miller group holding company for Asia Pacific.

David is an experienced arbitrator. He is a Chartered Arbitrator and a Fellow of the Chartered Institute of Arbitrators. He arbitrates in London, as a full member of the London Maritime Arbitrators Association, and at the London Court of International Arbitration; in Hamburg, as a member of the German Maritime Arbitrators Association; in Singapore, as a panelist of the Singapore International Arbitration Centre and the Singapore Chamber of Maritime Arbitration; in Hong Kong, as a member of the International Panel of Arbitrators of the Hong Kong International Arbitration Centre, in Shanghai, as a panelist of the China Maritime Arbitration Commission and in Malaysia, as a panelist of the Kuala Lumpur Regional Centre for Arbitration. He has also acted as Chairman and member of various International Chamber of Commerce arbitration tribunals.