

Glossary of Maritime Law

Abbreviations, Definitions, Terms, Links

By William Tetley, Q.C.†

(extract)

A.A.A. - The American Arbitration Association. Corporate Headquarters, E-mail: Websitemail@adr.org. International Center for Dispute Resolution, E-mail: mailto:MartinezL@adr.org Website: <http://www.adr.org/>

A.A.A. - The Association of Average Adjusters - HQS "Wellington", Temple Stairs, Victoria Embankment, London WC2R 2PN.

Abandonment [Fr.: "délaissement"] [Span.: "abandono"] [Ital.: "abbandono"] [Gr.: "Abandonnierung"; "Aufgabe eines Rechtsanspruches"] - Abandonment is the giving up by the insured of the proprietary rights in insured property to the underwriter in consideration for payment of a constructive total loss (infra) or an actual total loss (infra). See Marine Insurance Act, 1906 (U.K.) sects. 61-63; see also Notice of abandonment (infra). See Tetley, Int'l M. & A. L., 2003 at p.612.

Abandonment ("abandon") is also the ancient principle of a shipowner having responsibility only up to the value of the ship and freight (infra) (but calculated after the collision (infra)). The principle was found in the 1924 Shipowners' Limitation Convention and is still found in the U.S. Shipowners' Limitation of Liability Act, 1851, 46 U.S. Code App. 183. See Tetley, Int'l. C. of L., 1994 at pp. 510-511, 517-518; Tetley, M.L.C., 2 Ed., 1998 at pp. 109-110; Tetley, Int'l. M & A. L., 2003 at pp. 20-21.

Actual fault or privity [Fr.: "faute ou complicité réelle"] [Span.: "falta o complicidad real"] [Ital.: "colpa o connivenza reale"] [Gr.: "tatsächliches Verschulden"] - A faulty act or omission of a party, or his knowledge of or complicity with the faulty act or omission of another for whose conduct he is responsible. Under the Hague and Hague/Visby Rules (infra), the carrier (infra) wishing to avail himself of the exception from liability provided by art. 4(2)(q) must prove that the loss or damage has occurred without his actual fault or privity or the fault or neglect of his servants or agents. See also COGSA (see infra) s. 4(2)(q) (46 U.S. Code App. sect. 1304). (Tetley, M.C.C., 3 Ed., 1988 at pp. 515-524.) Similarly, under the International Convention Relating to the Limitation of the Liability of Owners of Seagoing Ships of Oct. 20, 1957 (the Limitation Convention 1957, infra) art. 1(1), and national legislation based on that Convention, the owner of a seagoing ship may limit his liability in respect of certain claims, "unless the occurrence giving rise to the claim resulted from [his] actual fault or privity". The equivalent term in the American Shipowners' Limitation of Liability Act of 1851 is "privity or knowledge" (infra). See 46 U.S. Code sect. 183(a). See Tetley, Int'l C. of L., 1994 at pp. 511, 517; Tetley, Int'l. M. & A. L., 2003 at pp. 284-286.

Actual Total Loss [Fr.: "perte totale réelle" or "perte totale et réelle"] [Span.: "pérdida total real"] [Ital.: "perdita totale reale"] [Gr.: "tatsächlicher Totalschaden"] - An actual total loss occurs when:

- (1) the insured property is completely destroyed; or
- (2) the assured is irretrievably deprived of the insured property; or
- (3) cargo changes in character so that it is no longer the thing that was insured (e.g. cement becomes concrete); or
- (4) a ship is posted "missing" at Lloyd's, in which case both the ship and its cargo are deemed to be an actual total loss.

See Marine Insurance Act, 1906 (U.K.) sect. 57. See Tetley, *Int'l. M. & A. L.*, 2003 at pp. 606-606.

"Ad Valorem" - "according to value". For example, an ad valorem freight rate is one based on the value of the cargo, rather than on its weight or its cubic measurement.

Affreightment [Fr.: "affrètement"] [Span.: "fletamento"] [Ital.: "noleggio"] [Gr.: "Seefrachtgeschäft"] - In civil law jurisdictions, "affreightment" refers to a contract for the chartering of a ship or some principal part of it. In England, the term is used to refer to the contract for the carriage of goods in a ship, either under a bill of lading (infra) or a charterparty (infra). (Tetley, *Int'l C. of L.*, 1994 at p. 248 note 7; Tetley, *Int'l M. & A. L.*, 2003 at p. 128 note 28).

Anti-suit injunction - An extraordinary procedure where a court issues an order to the effect that proceedings in a second jurisdiction should not proceed. The injunction is usually 1) based on the principle of forum non conveniens (infra); and requires 2) that the first court is more convenient to the parties; 3) a motion of forum non conveniens has been made in the second jurisdiction and has failed; and 4) that the complainant will not be unduly disadvantaged by proceeding in the first jurisdiction. Examples of the injunction are cases where real (immoveable) property in the first jurisdiction is involved or where there is a jurisdiction or arbitration clause calling for proceedings in the first jurisdiction or where a law of the first jurisdiction specifically forbids suit on a certain subject, e.g. claims for damages caused by asbestos produced in the first jurisdiction. See *Amchem Products v. B.C. Workers* [1993] 1 S.C.R. 897; *Opron Inc. v. Aero Systems Engineering*, Quebec Superior Court (February 11, 1999, 500-05-043288-982); *Donohue v. Armco Inc.* [2002] 1 Lloyd's Rep. 425 (H.L.). See Tetley, *Int'l. M. & A. L.*, 2003 at pp. 414-415.

Anton Piller Order - An ex parte injunction used in U.K. and British Commonwealth jurisdictions, whereby the court authorizes a party to a civil action to enter and search premises and to inspect, photograph and/or remove property specified in the order which may be the subject-matter of, or be evidence in, the action. The order is only granted in exceptional circumstances. The name is derived from the English Court of Appeal's decision in *Anton Piller KG v. Manufacturing Processes Ltd.* [1976] Ch. 55. See Martin Dockray, *Anton Piller Orders*, Watson Hill, London, 1992; Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 1022-1025. Statutory authority for the Anton Piller order was provided in the United Kingdom by the Civil Procedure Act 1997, U.K. 1997, c.12, sect. 7, and the order is now referred to in the U.K. as a "search order". The specific rules on the issuance, service and execution of "search orders" are provided in the U.K. by the Civil Procedure Rules 1998 (S.I. 1998/3132), in force April 26, 1999, Part 25 (Interim Remedies) at Rule 25.1(1)(h) and Practice Direction Part 25 (Interim Injunctions) at paras. 7.1 to 7.13. For a Canadian example of an Anton Piller Order, see *Nintendo of America, Inc. v. Coinex Video Games Inc.* [1983] 2 F.C. 189 (Fed.

Ct. of App.). See also Rule 377 of the Federal Court Rules, 1998, SOR 98/106. See also Tetley, *Int'l. M. & A. L.*, 2003 at p. 416.

Appraisalment - The evaluation of a ship by a qualified, court-appointed evaluator before its judicial sale. This practice permits the court to make an informed judgment as to whether the judicial sale price is fair and proper. See Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 1105-1106.

Arbitral award - The decision reached by arbitrators in an arbitration (*infra*). See also award (*infra*).

Arbitration - The settling of disputes between parties who agree not to go before courts, but rather to accept as final the decision of experts of their choice, in a place of their choice, usually subject to laws agreed upon in advance and usually under rules which avoid much of the formality, niceties, proof and procedure required by the courts. See Tetley, *Int'l. C. of L.*, 1994 at pp. 389-419; *Int'l M. & A. L.*, 2003 at pp. 441-443.

Arbitration agreement - The agreement concluded between parties to an arbitration (*supra*), providing for the submission of their dispute to arbitration, the appointment of arbitrators and the rules of procedure governing the arbitration.

Arbitration clause - A clause in a bill of lading (*infra*), a waybill (*infra*) or a charterparty (*infra*), providing that any dispute arising under the contract evidenced by that document shall be submitted to arbitration (*supra*) before one or more arbitrators, in the place and according to the laws and rules specified in the clause. See Tetley, *M.C.C.*, 3 Ed., 1988 at pp. 589-619. For a suggested arbitration clause, see Tetley, *Int'l. C. of L.*, 1994 at p. 411; Tetley, *Int'l. M. & A. L.*, 2003 at pp. 108-109.

Arrest - The procedure whereby, in common law jurisdictions, a ship (and sometimes cargo and/or freight) may be seized by an admiralty court at the institution of or during an action in rem (*infra*) to provide pre-judgment security for the plaintiff's maritime claim. Arrest is governed in the United Kingdom by paras. 5.1 to 5.7 of Practice Direction 61 (Admiralty Claims), promulgated under Part 61 (Admiralty Claims) at Rule 61.5 of the U.K. Civil Procedure Rules 1998 (S.I. 1998/3132) as amended with effect from March 25, 2002; in the United States by Supplemental Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims (*infra*); and in Canada by Rule 481 et seq. of the Federal Court Rules, 1998, SOR 98/106. See Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 958-985. In the People's Republic of China, although the action in rem does not exist, arrest of ships is nevertheless provided for by arts. 21 to 43 of the Chinese Maritime Procedure Code 2000 (*infra*), which came into force July 1, 2000, which provisions largely reflect the Arrest Convention 1999 (*infra*). See Tetley, *Int'l. M. & A. L.*, 2003 at pp. 429-430. See also Sister-ship arrest.

Arrest Convention 1952 [Fr.: "Convention de Bruxelles de 1952"] - International Convention for the Unification of Certain Rules Relating to the Arrest of Seagoing Ships, adopted at Brussels on May 10, 1952 and in force as of February 24, 1956 (see CMI *infra*). See text in Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 958-962, Appendix D at pp. 1439-1448; Tetley, *Int'l. M. & A. L.*, 2003 at pp. 418-419.

Arrest Convention 1999 - International Convention on Arrest of Ships, 1999, adopted at Geneva, March 12, 1999 (Doc. no. A/CONF. 188.6). See Tetley, *Int'l M. & A. L.*, 2003 at pp. 419-421.

Assignment - The transfer by a creditor (the "assignor") to another party (the "assignee") of a debt or right of action which the creditor has against a third party (the "debtor"). The assignment of debts and rights of action is generally permitted in both civil and common law jurisdictions, subject to certain formalities. The assignment of maritime liens (*infra*) is permitted expressly by the Maritime Liens and Mortgages Conventions 1967 (*infra*) (art. 9) and 1993 (*infra*) (art. 10), as well as in France and the United States. In England and Canada, however, the assignment of maritime liens notably for seamen's wages, is more complicated. (See Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 1211-1240; Tetley, *Int'l. M. & A. L.*, 2003 at p. 505).

"Assistance" [Span.: "salvamento"] [Ital.: "assistenza e salvataggio"] [Gr.: "Hilfsleistung"]- A French term, reflecting the civilian equivalent of salvage (*infra*), based on the Roman law concept of *negotiorum gestio* (management of the business of another), whereby the "assistant" is remunerated for his efforts to save ship and cargo, regardless of whether or not those efforts are successful. In French internal law, "assistance", referring to salvage of a ship, cargo, and/or persons in peril at sea, is distinguished from "sauvetage", referring to the salvage of wreck ("sauvetage des épaves") [Ital.: "ricupero"]. Under the Salvage Convention 1910 (*infra*) (art. 1), however, no distinction is to be made between "assistance" and "salvage", although both terms were used in the title of the Convention. The Salvage Convention 1989 (*infra*) refers only to "salvage" (in French, "assistance") in respect of the ship and cargo, using the French word "sauvetage" only in respect of life salvage (art. 16). See Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 333-336; Tetley, *Int'l. M. & A. L.*, 2003 at pp. 322-324.

Association Internationale de Dispatcheurs Européens - Secretariat: c/o Henry Voet-Genicot, Mechelsesteenweg 203 - B 6 - B-2018 Antwerpen, Belgium. Tel.: (03) 218 74 64; telex: :31.653 Voet B.; fax: (03) 218 67 21.

Athens Passenger Convention 1974 - The Convention Relating to the Carriage of Passengers and Their Luggage by Sea, adopted at Athens on December 13, 1974 and in force as of April 28, 1987, with Protocol, adopted at London on November 19, 1976 and in force as of April 10, 1989, a Protocol, adopted at London on March 29, 1990 (not yet in force) and a Protocol adopted at London, November 1, 2002 (not in force). See CMI *infra*. See text in Tetley, *Int'l. M. & A. L.*, 2003 at pp. 703-714.

Attachment [Span.: "detención" or "inmovilización"] [Ital.: "sequestro"] [Gr.: "Beschlagnahme"] - The term used in the United States for the procedure known in French in civil law jurisdictions as the "saisie conservatoire" (*infra*). See Supplemental Rule B (*infra*) of the Supplemental Rules for Certain Admiralty and Maritime Claims and the "general maritime law" (*infra*) of the United States. In the U.S., Rule B attachment, joined to an action in personam, permits specified assets of the defendant (real or personal, moveable or immovable) to be seized by the court at the beginning of the *saisie conservatoire* or during a suit, as security for the plaintiff's claim, in cases where the defendant cannot be found in the judicial district concerned.

See Tetley, M.L.C., 2 Ed., 1998 at pp. 938-941; Tetley, Int'l. M. & A. L., 2003 at pp. 408-409.

The **attachment** has also existed under Roman-Dutch law in South Africa since November 1, 1983. See *Shipping Corp. of India v. Evidomon Corp.* 1994 (1) SA 550 (App. Div.).

Avoidance of the law - In the conflict of laws, the intentional arrangement of connecting factors (contacts) (see *infra*) in an agreement, usually by equal bargaining parties, for a legitimate purpose, in order to ensure the applicability to the agreement of a particular law or jurisdiction. The opposite of evasion of the law ("fraude à la loi"), *infra*. See Tetley, Int'l C. of L., 1994 at pp. 146, 172.

Award -The decision of an arbitral tribunal. See the UNCITRAL Model Law on International Commercial Arbitration 1985 (*infra*), arts. 28-36. See also the UNCITRAL Arbitration Rules, art. 31, and the New York Convention 1958 (*infra*), art. I(2). The term "award" is also used to designate the decision of arbitrators determining the quantum of a salvage reward (*infra*) and ordering the payment of that reward to the salvor(s). See the Salvage Convention 1989 (*infra*), art. 26. See also Tetley, Int'l M. & A. L., 2003 at pp. 347-352.

Bail - Personal security provided by a defendant to the court to prevent the arrest of a ship or to secure its release from arrest. The security takes the form of a bail bond, in which the sureties submit to the jurisdiction of the court and undertake that if the defendant does not pay what may be adjudged against them or what is agreed by settlement, execution may issue against them as sureties for the amount due. Bail is ordinarily set at whatever sum is sufficient to cover the plaintiff's reasonably arguable best case, with interest and costs, but not exceeding the value of the ship or other res. The bail represents the ship and, once released upon bail, the ship is released from the action. A bank guarantee is frequently substituted for a bail bond today. Moreover, security is today usually provided by a letter of undertaking (LOU), *infra*, which is a form of security provided to the seizing creditor, rather than to the court. See Tetley, M.L.C., 2 Ed., 1998 at pp. 1111-1118; Tetley, Int'l. M. & A. L., 2003 at pp. 433, 511.

Bail bond - See "bail" (*supra*).

Baltic and International Maritime Council - See BIMCO (*infra*).

Baltic Exchange- Established in 1744, the Baltic Exchange is the world's oldest shipping market. A large part of the world's open market bulk cargo chartering is negotiated by some members of the Baltic Exchange and much of the world's sale and purchase business is transacted through its brokers. It publishes a daily dry cargo index that is the basis of the freight futures market and is used in order to hedge against movements in freight rates. The Baltic Exchange also publishes a monthly magazine. The present Chief Executive and Secretary of the Baltic Exchange is Jim Buckley (Tel: +44 (0)20 7369 1624); E-mail: jbuckley@balticexchange.com Address: St. Mary Axe, London, EC3A 8BH. Secretariat: Tel: +44 (0)20 7623 5501; fax: +44 (0)20 7369 1622/1623. Website: <http://www.balticexchange.co.uk/>

Bank guarantee - See "bail" (supra).

Bareboat charterparty - See "charterparty by demise", infra.

Barratry [Fr.: "baraterie"] [Span.: "baratería"] [Ital.: "baratteria"] [Gr.: "Barraterie"] - Loss or damage caused to the ship or cargo by the wilful act of the master or seamen. See Tetley, M.C.C., 3 Ed., 1988 at pp. 523, 552; Tetley, Int'l. M. & A. L., 2003 at p. 593.

Bearer bill of lading - See "Bills of Lading & Related Documents" (infra).

Beaufort - Wind Force Scale - A table describing wind forces in numbers (from 1 to 17), ranging from calm to hurricane conditions and providing specifications for each such wind force at sea and on land, giving equivalent mean speeds in knots, statute miles per hour, meters per second and mean wind force in pounds per square foot at standard density. (Tetley, M.C.C., 3 Ed., 1988 at p. 1268.)

Beneficial owner [Fr.: "véritable propriétaire"]- A term usually referring to the registered shipowner, but which may also designate another party having the equitable ownership of the vessel where it is operated under the cloak of a trust. See *The I Congreso del Partido* [1977] 1 Lloyd's Rep. 536, [1978] Q.B. 500. The term may designate some party behind the registered owner, such as a parent corporation or holding company, having some legal or equitable interest in the vessel, including a right to dispose of it. But it does not encompass a demise charterer, despite the latter's full possession and control of the ship during the term of the demise charterparty. See *Mount Royal/Walsh Inc. v. The Jensen Star* [1990] 1 F.C. 199 (Fed. Ct. of App.). The beneficial owner who is personally liable on certain types of maritime claims at the time they arise may render the ship liable in rem in England and Canada. See the Supreme Court Act 1981, U.K. 1981, c. 54, sects. 20(4)(b)(i) and the Federal Court Act, R.S.C. 1985, c. F-7, sect. 43(3). See Tetley, M.L.C., 2 Ed., 1998 at pp. 573-575, 581-582, 586-587, 1033-1036, 1039-1041, 1043-1045; Tetley, Int'l. M. & A. L., 2003 at pp. 432, 436, 492-493.

Bigham clause - A clause inserted into most non-separation agreements (infra), whereby the cargo owner's share of any general average contribution (infra) payable under such an agreement may not exceed the cost that the cargo owner would have incurred had his cargo been delivered to him at the port of refuge and then been forwarded to destination at his expense.

Bills of Lading & Related Documents

- a) **Bill of lading** [Fr.: "connaissance"] [Span.: "conocimiento de embarque"] [Ital.: "polizza di carico"] [Gr.: "Konnossement"] - Originally called a "bill of loading", a bill of lading is not necessarily the complete contract of carriage of goods but is usually the best evidence of the contract. It is, as well, a receipt signed by the master or on his behalf indicating in what apparent order and condition the goods have been received on board. Finally, it is also a document of title and thus a document of transfer, but not a negotiable instrument. It is usually a standard form contract, prepared and issued by the

carrier (infra) or his agent. (Tetley, M.C.C., 3 Ed., 1988 at pp. 215-222, 227-228; Tetley, Int'l. M. & A. L., 2003 at pp. 65-68, 71-77).

- i) **Bearer bill of lading** [Fr.: "connaissance au porteur"] [Span.: "conocimiento al portador"] [Ital.: "polizza di carico al portatore"] [Gr.: "Inhaberkonnossement"] - A bill of lading (supra) providing for the delivery of the goods to whomever holds the bill. The bill is a bearer bill of lading if: i) it is explicitly identified as such; ii) it names the consignee (infra) as "bearer"; iii) it is an order bill of lading (infra) which fails to mention to whose order it is; or iv) it is an order bill of lading endorsed in blank. A bearer bill is negotiable by its mere delivery. (Tetley, M.C.C., 3 Ed., 1988 at p. 183; Tetley, Int'l. M. & A. L., 2003 at p. 67).
- ii) **Clean bill of lading** [Fr.: "connaissance sans réserves" or "connaissance net"] [Span.: "conocimiento sin reservas", "conocimiento limpio" or "conocimiento neto"] [Ital.: "polizza di carico netta"] [Gr.: "reines Konnossement"] - The face of a clean bill of lading bears no notation of the bad or questionable order of the goods. It means that the goods have been received on board in apparent good order and condition and stowed under deck. (Tetley, M.C.C., 3 Ed., 1988 at pp. 651-652; Tetley, Int'l. M. & A. L., 2003 at pp. 75-77).
- iii) **Long form bill of lading** [Fr.: "connaissance intégral"] [Span.: "conocimiento completo"] [Ital.: "polizza di carico integrale"] - A form of bill of lading (supra) issued by the carrier (infra) setting forth all the terms of the contract of carriage. The long form bill of lading can usually be obtained at the carrier's head office, and its terms are incorporated by reference in the carrier's short form bill of lading (infra). (Tetley, M.C.C., 3 Ed., 1988 at p. 229; Tetley, Int'l. M. & A. L., 2003 at pp. 67-68).
- iv) **Multimodal or combined transport bill of lading** [Fr.: "connaissance de transport multimodal", "connaissance de transport combiné"] [Span.: "conocimiento (de transporte) multimodal", "conocimiento (de transporte) combinado"] [Ital.: "polizza di carico per trasporto multimodale o combinato"] [Gr.: "Multimodales oder Kombiniertes Transport Konnossement"] - A through bill of lading (infra) which involves at least two different modes of transport - road, rail, air and sea. (Tetley, M.C.C., 3 Ed., 1988 at pp. 927-928.)
- v) **Named (nominate) bill of lading** [Fr.: "connaissance à personne dénommée" or "connaissance nominatif"] [Span.: "conocimiento nominativo"] [Ital.: "polizza di carico nominativa"] [Gr.: "Namenskonnossement"] - A bill of lading (supra) providing for the delivery of the goods to a named person, without also specifying "to order or assigns". The named consignee (infra) obtains delivery of the goods by surrendering one of the originals of the bill to the carrier (infra) or his agent. Although a document of title, the nominate bill of

lading is not negotiable. (Tetley, M.C.C., 3 Ed., 1988 at p. 183; Tetley, Int'l. M. & A. L., 2003 at pp. 66-67).

- vi) **Ocean through bill of lading** [Fr.: "connaissance de bout en bout"] [Span.: "conocimiento directo"] [Ital.: "polizza di carico diretta"] [Gr.: "Durchkonossement"] - A bill of lading (supra) invoking a series of contracts to carry goods to a final destination by two or more successive ocean carriers (infra). A "pure" ocean through bill of lading is a bill of lading whereby the issuer undertakes to be responsible for the carriage of goods by successive ocean carriers from the point of reception to final destination. (Tetley, M.C.C., 3 Ed., 1988 at pp. 926-927).

- vii) **Order bill of lading** [Fr.: "connaissance à ordre"] [Span.: "conocimiento a la orden"] [Ital.: "polizza di carico all'ordine"] [Gr.: "Orderkonossement"] - A bill of lading (supra) providing for delivery of the goods to the order of a specified person, by words such as "consigned to XYZ Co. Ltd. or to order or assigns". An order bill is negotiable by endorsement and delivery of the document to the endorsee (infra) ((Tetley, M.C.C., 3 Ed., 1988 at p. 183). In the United States, under the Pomerene Act of 1916, recodified in 1994 (49 U.S. Code 80101-80116)) (infra), an order bill of lading may be negotiated by endorsement (49 U.S. Code 80104(a)) or by transfer (i.e. by its delivery, accompanied by an agreement specifying that title to the goods is being transferred thereby) (49 U.S.C. 80106(a)). (Tetley, M.C.C., 3 Ed., 1988 at p. 191). Note: The 1994 recodification of the Pomerene Act changed the term "order bill of lading" to "negotiable bill of lading". See 49 U.S. Code sect. 80103(a).

- viii) **Received for shipment bill of lading** [Fr.: "connaissance reçu pour embarquement"] [Span.: "conocimiento recibido para embarque"] [Ital.: "polizza di carico ricevuto per l'imbarco"] [Gr.: "Übernahmekonossement"]- A bill of lading (supra) issued when goods have been received for shipment by a carrier (infra) or his agent but have not yet been loaded aboard the ship. (Tetley, M.C.C., 3 Ed., 1988 at pp. 228, 929; Tetley, Int'l. M. & A. L., 2003 at p. 67.)

- ix) **Shipped bill of lading** [Fr.: "connaissance embarqué"] [Span.: "conocimiento embarcado"] [Ital.: "polizza di carico a bordo"] [Gr.: "Bordkonossement"] - A bill of lading (supra) issued when goods have been loaded aboard the ship. (Tetley, M.C.C., 3 Ed., 1988 at p. 228; Tetley, Int'l. M. & A. L., 2003 at p. 67; Hague and Hague/Visby Rules (infra) art. 3(7); Hamburg Rules (infra) art. 15(2)).

- x) **Short form bill of lading** [Fr.: "connaissance abrégé"] [Span.: "conocimiento abreviado"] [Ital.: "polizza di carico abbreviata"] - A form of bill of lading (supra) issued by the carrier (infra) incorporating by reference the terms of the contract of carriage set forth in the carrier's long form bill of lading (supra). (Tetley, M.C.C., 3 Ed., 1988 at p. 229; Tetley, Int'l. M. & A. L., 2003 at pp. 67-68).

- xi) **Straight bill of lading** - A non-negotiable bill of lading (supra) as described in the United States Pomerene Act of 1916 (49 U.S. Code App. 81-124, recodified in 1994 as 49 U.S. Code 80101-80116) (infra). A "straight bill" states that the goods are consigned or destined to a specified person. It is marked "nonnegotiable" or "not negotiable" on its face. It may be transferred by its holder by delivery, accompanied with an agreement (express or implied) to transfer the title to the bill or to the goods it represents. A straight bill cannot be negotiated free from existing equities; its endorsement confers no additional rights on the transferee. (Tetley, M.C.C., 3 Ed., 1988 at pp. 190-191, 950-951, 995-997). Note: The 1994 recodification of the Pomerene Act changed the term "straight bill of lading" to "nonnegotiable bill of lading". See 49 U.S. Code 80103(b). See Tetley, Int'l. M. & A. L., 2003 at p. 129. The term "straight bill" is also sometimes used outside the United States. See *The Brij* [2001] 1 Lloyd's Rep. 431 at p. 434 (Hong Kong High Ct.).
- xii) **Through bill of lading** - A bill of lading (supra) providing for the carriage of goods by water, from their point of origin to their final destination, either by successive ocean carriers (see ocean through bill of lading (supra)) or by more than one mode of transportation (see multimodal or combined transport bill of lading (supra)). (Tetley, M.C.C., 3 Ed., 1988 at pp. 926-928).
- b) **Ship's delivery order** - The U.K. Carriage of Goods by Sea Act 1992 (U.K. 1992 c. 50) at sect. 1(4) provides for ship's delivery orders as follows:
- "References in this Act to a ship's delivery order are references to any document which is neither a bill of lading nor a sea waybill but contains an undertaking which:
- a) is given under or for the purposes of a contract for the carriage by sea of the goods to which the document relates, or of goods which include those goods; and
- b) is an undertaking by the carrier to a person identified in the document to deliver the goods to which the document relates to that person."
- c) **Waybill (Sea waybill)** [Fr.: "lettre de transport maritime"] [Span.: "carta de porte marítima"] [Ital.: "lettera di trasporto marittima"] [Gr.: "Seefrachtbrief"] - A waybill is a non-negotiable receipt issued after receipt of the goods by the carrier (infra). It is clearly marked "non-negotiable". It is usually employed in the container trade for normal shipments with consent of the shipper (infra) who does not insist on being issued a negotiable bill of lading (supra). It is not a document of title, so that delivery of the goods shipped is made, not by presentation of a document, but by the consignee (infra) nominated on the waybill identifying himself. Only one original waybill is usually issued to the shipper. Although it is not a document of title, it is a contract of carriage. The Hague or Hague/Visby Rules (infra) do apply to a waybill in virtue of the

waybill's terms and conditions and also because, when it is used in ordinary commercial shipments, art. 6 of the Hague or Hague/Visby Rules does not exclude it from the application of the Rules. (Tetley, M.C.C., 3 Ed., 1988 at pp. 944-955; Tetley, Int'l. M. & A. L., 2003 at pp. 68, 80.)

A waybill is useful in these times of speedy carriage where cargo often arrives before the documents. It is also useful for transactions where the shipper (infra) and consignee (infra) are related or are subsidiaries of one another and where the rigid production of banking documents is unnecessary. Waybills are also used in large, long-term transactions in which the shipment is only part of a major, well-secured, long-term agreement between the shipper and consignee. Generally waybills are useful wherever financing is not provided in exchange for documents, e.g. open account sales. (Tetley, M.C.C., 3 Ed., 1988 at pp. 941-1002.)

BIMCO - The Baltic and International Maritime Council (BIMCO) is based in Copenhagen and has been in operation since 1905. It is a group of shipowners, brokers, agents, clubs and others interested in carriage by sea and unites them in promoting proper shipping practices and in opposing objectionable and unfair import charges, claims, etc. BIMCO prepares and distributes excellent b/l and c/p forms. Its address is: 161 Bagsvaerdvej, DK-2880 Bagsvaerd, Denmark. Tel.: +45 44 36 68 00; fax: +45 44 36 68 68; e-mail: mailbox@bimco.dk; web site: <http://www.bimco.dk/>. Secretary-General: Mr. Truls W. L'orange.

Booking note [Fr.: "note d'engagement de fret" or "arrêté de fret"] [Span.: "nota de reserva"] [Ital.: "nota impegnativa di prenotazione"] [Gr.: "Buchungsnote"] - An undertaking whereby a carrier (infra) notifies a shipper (infra) that space has been reserved for the carriage of the shipper's goods aboard a particular vessel. See Tetley, Int'l. M. & A. L., 2003 at p. 69.

"Both to blame" clause - A clause inserted into some U.S. bills of lading (supra), which required that in the event of a ship collision (infra) for which both vessels were at fault, cargo indemnify its carrying vessel for any amount which that vessel had had to pay to the colliding vessel in respect of any claim made by cargo against the colliding vessel. The clause was declared invalid under COGSA by the U.S. Supreme Court in *United States v. Atlantic Mutual Insurance Co. (Esso Belgium -- Nathaniel Bacon)* 343 U.S. 236, 1952 AMC 659 (1952), although it has been upheld in private carriage (infra) contracts and some other cases. See Tetley, M.C.C., 3 Ed., 1988 at pp. 631-632, 677, 842, 851-852; Tetley, Int'l. C. of L., 1994 at pp. 485-486; Tetley, Int'l. M. & A. L., 2003 at pp. 249-250.

Bottomry [Fr.: "prêt à la grosse"] [Span.: "préstamo a la gruesa"] [Ital.: "prestito con nave a garanzia"] [Gr.: "Bodmerai"] - A primitive form of ship mortgage (infra), whereby the master, while away from the ship's home port, by signing a "bottomry bond", borrowed money on the credit of the vessel to pay for goods or services needed to preserve the ship or complete the voyage. The creditor's security was extinguished, however, if the ship was lost or destroyed. Although a maritime lien (infra) still exists for bottomry in U.K. and British Commonwealth maritime law, modern means of communications have made bottomry virtually obsolete. See Tetley, M.L.C., 2 Ed., 1998 at pp. 419, 422-423, 473, 517; Tetley, Int'l. M. & A. L., 2003 at p. 482 footnote 60..

Break Bulk - Carriage of goods other than by container.

British Maritime Law Association (BMLA) - Website: <http://www.bmla.org.uk/>.

Brussels Convention 1968 - The Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, adopted at Brussels on September 27, 1968 and in force as of February 1, 1973. This Convention provides uniform rules on jurisdiction and the recognition and enforcement of judgments for all States of the European Union (*infra*). The official text of the Convention, of its Protocol of Interpretation of June 3, 1971 (in force as of September 1, 1975) and of the 1978 Accession Convention, adopted at Luxembourg on October 9, 1978 (whereby the United Kingdom, Denmark and Ireland became parties to the Convention) may be found in O.J.E.C. 1978 L 304/77 of October 30, 1978. The Brussels Convention 1968 has also been amended by the Greek Accession Convention of October 25, 1982 (O.J.E.C. 1983 L 388/1 of December 31, 1982) and by the Spanish and Portuguese Accession Convention (the San Sebastian Convention) of May 26, 1989 (O.J.E.C. 1989 L 285/1 of October 3, 1989). See Tetley, *Int'l C. of L.*, 1994 at pp. 805-808 and 848-856.

Bunker Pollution Convention 2001 - The International Convention on Civil Liability for Bunker Oil Pollution Damage, adopted at London on March 23, 2001, not yet in force.

Byzantine/Rhodian Sea-Law - A maritime code derived from custom, prepared at Byzantium (Constantinople) in the seventh or eighth century A.D., referred to as the "Rhodian Sea-Law" by Ashburner, *The Rhodian Sea-Law* (1909), but better termed the "Byzantine/Rhodian Sea-Law" to avoid confusion with the Rhodian Law (*infra*) of c. 800 B.C. It contained provisions on maritime liens (*infra*) and ship mortgages (*infra*) and influenced the compilation of the *Basilica*. See Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 10-11; Tetley, "The General Maritime Law - The *Lex Maritima*" (1994) 20 *Syracuse J. Int'l. Law* 105-145 at p. 109; reprinted [1996] *ETL* 469-506 at p. 473; Tetley, *Int'l. M. & A. L.*, 2003 at p. 10. See also "Rhodian Law" (*infra*).

Cabotage [Span.: "cabotaje"] [Ital.: "cabotaggio"] [Gr.: "Kabotage"] - A French term, also used in English, to refer to the coasting trade. Cabotage is often governed by statutes, requiring, for example, that only ships flying the flag of the coastal state concerned may engage in the coasting trade between ports of that state, unless "waivers" are obtained from the government of the state.

Carriage of Goods by Sea Act, 1924 (U.K. 14 & 15 Geo. 5, c. 22) - The Act giving effect in the United Kingdom to the Hague Rules 1924 (*infra*). It was repealed effective June 23, 1977 with the coming into force of the Carriage of Goods by Sea Act 1971, *infra*.

Carriage of Goods by Sea Act 1971 (U.K. 1971 c. 19) - The United Kingdom statute giving effect to the Hague Rules 1924(*infra*) as amended by the Visby Protocol 1968 (see Visby Rules, *infra*). The Act came into force June 23, 1977. The Visby S.D.R. Protocol 1979 (see Visby Rules, *infra*) was given the force of law in the U.K. by the

Merchant Shipping Act 1981 (U.K. 1981 c. 10), in force Feb. 14, 1984. (See text in Tetley, M.C.C., 3 Ed., 1988 at pp. 1223 et seq.).

Carriage of Goods by Sea Act 1924 (U.K. 1924 c. 50) - The curiously named U.K. Bills of Lading Act. It is a statute which covers bills of lading, sea waybills, ship's delivery orders (supra) and, in the future, electronic documents. It replaced the U.K. Bills of Lading Act, 1855, 18 & 19 Vict. c. 111 (supra) and came into force September 16, 1924. (See text at [1994] JMLC 143). It might have been better titled the "Carriage of Goods by Sea Documents Act."

Carrier - A party who contracts to carry goods or passengers by water (the "contracting carrier"), or the party who actually performs such carriage in whole or part (the "actual carrier"). See Tetley, M.C.C., 3 Ed., 1988 at pp. 233-263, and particularly at pp. 234-235; Tetley, Int'l. M. & A. L., 2033 at pp. 104-105.

Cesser clause - A clause in a charterparty (infra) which releases the charterer from his personal liability to the shipowner and substitutes the bill of lading (supra) holder as the debtor. The substituted bill of lading holder thus becomes personally liable for the charges and the shipowner waives his rights against the charterer. See Tetley, M.L.C., 2 Ed., 1988 at pp. 757, 774; Tetley, Int'l. M. & A. L., 2003 at p. 142.

Chamber of Shipping - E-mail: director.general@british-shipping.org; website: <http://www.british-shipping.org/>. Formerly the General Council of British Shipping.

Characteristic performance - The essential contact of the rebuttable presumption (infra) in art. 4(2) of the Rome Convention, 1980 (infra), to the effect that the most closely connected country is the one in which the party who is to carry out the characteristic performance has his habitual residence or its central administration and, in some cases, its principal place of business. See also art. 3113 Quebec Civil Code and Tetley, Int'l C. of L., 1994 at pp. 299-301; Tetley, Int'l. M. & A. L., 2003 at p. 177.

Charterparty [Fr.: "charte-partie"] [Span.: "fletamento"] [Ital.: "noleggio"] [Gr.: "Chartervertrag"] - A charterparty is a contract of lease of a ship in whole or in part for a long or short period of time or for a particular voyage. It has been said that its origin lies in the mediaeval Latin "carta partita" or "charta partita" or "charta divisa", where an agreement was torn into two pieces and one half was given to each party. Proof of the whole contract was no doubt difficult if one party was obstinate - modern methods of photocopying the contract for each party seem preferable. A charterparty is part contract of hire (affreightment (supra)) and part contract of transport (carriage). The proportion of "affreightment" decreases as one moves from a demise charter, to a time charter and then to a voyage charter, while the proportion of "carriage" increases from a demise charter through a time charter to a voyage charter. Affreightment is essentially placing a ship at the disposal of another party, while transport is essentially the carrier (supra) taking charge of goods. Hire (infra) is the consideration paid under demise and time charterparties; freight (infra) is the consideration paid under voyage charterparties and bills of lading (supra).

a) **Charterparty by demise** [Fr.: "contrat d'affrètement coque-nue"] [Span.: "fletamento (arrendamiento) con cesión de la gestión náutica"] [Ital.:

"noleggio con cessione della gestione nautica" [Gr.: "Chartervertrag für ein Schiff ohne Besatzung"] - A charterparty by demise is a contract by which the lessor (shipowner) places a ship in the hands of the lessee (the demise charterer) who assumes possession and control. The consideration paid by the charterer is "hire" (infra), which is payable at specified intervals during the term of the charter. Under a demise charterparty, the shipowner appoints the master and the crew, although they are paid and controlled by the demise charterer. See Tetley, *Int'l. M. & A. L.*, 2003 at pp. 160-172.

A **bareboat charter** (also sometimes called a "net charter") is a demise charter whereby the bareboat charterer names, pays and controls the master and the crew. See Tetley, *Int'l C. of L.*, 1994 at pp. 249-250.

Among the most common forms of demise charter are "Barecon A" and "Barecon B" of BIMCO and the SHELLDEMISE.

- b) **Consecutive voyage charter** [Fr.: "contrat d'affrètement pour voyages successifs"] [Span.: "fletamento por viajes consecutivos"] [Ital.: "noleggio per viaggi consecutivi"] [Gr.: "Fortlaufende Reisecharter"] - A consecutive voyage charter party is a voyage charterparty for a determined number of consecutive voyages.
- c) **Slot charter** - A charterparty whereby the shipper (infra) leases one or more "slots," each capable of holding a 20-foot container, aboard a container ship.
- d) **Space charter** [Fr.: "contrat de tonnage"] [Span.: "COA"] [Ital.: "contratto di trasporto di carico parziale"] [Gr.: "Raumchartervertrag"] - A space charter, or a "contrat de tonnage" as it is known in French (sometimes confusingly called a "contract of affreightment" (COA) in English), depends, like any contract, on its terms. It can resemble a charterparty (i.e. a lease of a ship or ships) or a contract of carriage. It is a contract whereby a capacity of carriage is put at the disposal of the shipper (infra) for the carriage of his goods during a period of time under particular terms and conditions. Whether it is a contract of hire or a contract of carriage or even a contract of agency like a freight forwarder's (infra) contract, depends on its terms. (For charterparties under law, Tetley, *Int'l. C. of L.*, 1994 at pp. 247-252).
- e) **Time charterparty** [Fr.: "contrat d'affrètement à temps"] [Span.: "contrato de fletamento por tiempo"] [Ital.: "noleggio a tempo"] [Gr.: "Zeitchartervertrag"] - A time charterparty is a contract whereby the lessor (the shipowner or demise charterer) places a fully equipped and manned ship at the disposal of the lessee (the time charterer) for a period of time for a consideration called "hire" (infra) payable at specified intervals during the term of the charter. Among the most common forms of time charterparty are the New York Produce Exchange (NYPE) form and the Baltime form of BIMCO and SHELLTIME. A "time charter for a trip" is a time charter for a particular voyage or voyages, rather than for a period of years, days or months, with hire (infra) payments made at periodic intervals (as under a time charterparty), rather than "freight" (infra) being payable, at the completion of the voyage, on

the quantity of cargo carried (as under a voyage charterparty). See Tetley, Int'l. M. & A. L., 2003 at pp. 145-159.

- f) **Voyage charterparty** [Fr.: "contrat d'affrètement au voyage"] [Span.: "contrato de fletamento por viaje"] [Ital.: "noleggio a viaggio"] [Gr.: "Reisechartervertrag"] - A voyage charterparty is a contract whereby the lessor (the shipowner or demise or time charterer) places all or part of the carrying capacity of a ship at the disposal of the lessee (the voyage charterer) for the transport of goods agreed upon, on one or more voyages, for a consideration called "freight" (infra), based on the quantity of cargo carried, and usually payable at the end of the voyage. Among the most commonly used forms of voyage charterparty are the "Asbatankvoy" form of tanker charter of the Association of Ship Brokers and Agents (U.S.A.) Inc., and the "Gencon" form of BIMCO. See Tetley, Int'l. M. & A. L., 2003 at pp. 134-144.

C.I.F. (named port of destination) [Fr.: "C.A.F. - coût, assurance, fret"] [Span.: "coste, seguro, flete"] [Ital.: "costo-assicurazione-nolo"] [Gr.: "Kosten, Versicherung und Fracht (benannter Bestimmungshafen)"] - C.I.F., or cost, insurance, freight, is a term of the contract of sale whereby the seller undertakes to pay the cost of the insurance and transport of the goods to the named port of destination. Legal delivery occurs when the goods cross the ship's rail in the port of shipment. The purchaser takes actual delivery (possession) of the goods at the quay or other place named in the contract, as the place of destination. (The insurance premium and freight (infra) charges are included in the price of the goods.) The risk is with the purchaser and his insurance underwriters from the moment the transportation begins (e.g. from the time the goods pass the ship's rail in the port of shipment). A C.I.F. sale has sometimes been understood as a sale of documents, rather than as a sale of goods, but the prevalent view today is that both goods and documents conforming to the contract must be delivered under a C.I.F. sale. Incoterms 2000 (infra) gives the following description (in part) of C.I.F.:

"Cost, Insurance and Freight" means that the seller delivers when the goods pass the ship's rail in the port of shipment.

The seller must pay the costs and freight necessary to bring the goods to the named port of destination BUT the risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time of delivery, are transferred from the seller to the buyer. However, in CIF the seller also has to procure marine insurance against the buyer's risk of loss of or damage to the goods during the carriage.

Consequently, the seller contracts for insurance and pays the insurance premium. The buyer should note that under the CIF term the seller is required to obtain insurance only on minimum cover. Should the buyer wish to have the protection of greater cover, he would either need to agree as much expressly with the seller or to make his own extra insurance arrangements.

The CIF term requires the seller to clear the goods for export.

This term can be used only for sea and inland waterway transport. If the parties do not intend to deliver the goods across the ship's rail, the CIP [carriage and insurance paid to] term should be used."

C.F.R.: Cost & Freight (named port of destination) [Fr.: "Coût et fret"] [Span.: "coste y flete"] [Ital.: "costo e nolo"] [Gr.: "Kosten und Fracht (benannter Bestimmungshafen)"]. Incoterms 2000 (infra) gives the following description (in part) of C.F.R.:

"Cost and Freight" means that the seller delivers when the goods pass the ship's rail in the port of shipment.

The seller must pay the costs and freight necessary to bring the goods to the named port of destination BUT the risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time of delivery, are transferred from the seller to the buyer.

The CFR term requires the seller to clear the goods for export.

This term can be used only for sea and inland waterway transport. If the parties do not intend to deliver the goods across the ship's rail, the CPT [carriage paid to] term should be used."

Circular Indemnity Clause - In such a clause, the cargo owner stipulates that no claim will be made against the carrier's (supra) agents, servants, stevedores, terminal operators and subcontractors and that if a claim is made, the cargo owner will indemnify the carrier against all consequences. (See Tetley, M.C.C., 3 Ed., 1988 at pp. 772-774.) The circular indemnity clause is sometimes combined with a "Himalaya clause" (see infra).

Civil Jurisdiction Convention 1952 - The International Convention on Certain Rules Concerning Civil Jurisdiction in Matters of Collision, adopted at Brussels on May 10, 1952 and in force as of September 14, 1955. See CMI (infra).

Civil law - Civil law may be defined as that legal tradition which has its origin in Roman law, as codified in the Corpus Juris Civilis of Justinian (528 to 534 A.D.), and as subsequently developed in Continental Europe and around the world. Civil law eventually divided into two streams: the codified Roman law (as seen in the French Civil Code of 1804 and its progeny and imitators - Continental Europe, Québec, and Louisiana being examples) - and uncoded Roman law (as seen in Schotland and South Africa). Civil law is highly systematised and structured and relies on declarations of broad, general principles, often ignoring the details. Professor René David has said that the civil law "... consists essentially of a 'style': it is a particular mode of conception, expression and application of the law, and transcends legislative policies that change with the times in the various periods of the history of a people." See Tetley, "Mixed Jurisdictions: Common Law vs Civil Law (Codified and Uncodified) (Part I)" (1999-4) Uniform Law Review 591-619 at p. 596; Tetley, Int'l. M. & A. L., 2003 at p. 8. See also common law (infra).

Civil Liability Convention 1969 (CLC 1969) - The International Convention on Civil Liability for Oil Pollution Damage, adopted at Brussels on November 29, 1969 and in force June 19, 1975, with its 1976 Protocol, adopted at London, November 19,

1976, in force April 8, 1981; its 1984 Protocol, adopted at London, May 25, 1984 which never came into force; and its 1992 Protocol, adopted at London, November 27, 1992, in force May 30, 1996. See CLC 1992 and IMO (*infra*).

Civil Liability Convention 1992 (CLC 1992) - The International Liability Convention on Civil Liability for Oil Pollution Damage, 1992, being arts. I to XII *ter* of the Civil Liability Convention 1969 (CLC 1969), as amended by the 1992 Protocol to that Convention.

Classification societies- Classification societies are independent contractors who inspect, study and report on the seaworthiness and the general and particular condition of individual ships. They issue a certificate of “class” of the ship. The leading societies and members of the International Association of Classification Societies (IACS) are: Lloyd’s Register of Shipping (LR), American Bureau of Shipping (ABS), Nippon Kaiji Kyokai (NK), Registro Italiano Navale (RINA), Det Norske Veritas (DNV), and Korean Register of Shipping (KRS). There are many other deemed “lesser” classification societies. All classification societies have jealously guarded their independence and have just as jealously limited their liability to the persons who employ them, i.e. shipowners, charterers, underwriters, and even governments. For the most part, the courts have declared that classification societies are not responsible in delict/tort to third parties such as cargo owners, seamen and charterers. See *The Nicholas H.* [1995] 2 Lloyd’s Rep. 299, (House of Lords), where the court held that there was not a sufficiently close relationship to impose a duty of care on the classification society to cargo owners and that it would not be fair, just and reasonable to impose such a duty, notably because the classification society acted for the collective welfare and unlike shipowners they did not have the benefit of any limitations provisions. As well, see *The Sundancer* (*Sundance Cruises v. A.B.S.*) 1994 AMC 1; [1994] 1 Lloyd’s Rep. 183 (2 Cir. 1993), where the court held that losses to a shipowner whose vessel sank from design or construction defects ascertainable but unknown to it were not damages flowing from negligence or from a classification society issuing certificates. The court went on to find that where the owner retains responsibility for conversion, repair and maintenance, the society cannot be said to have assumed any of those responsibilities and its fees are too small in relation to potential liabilities to be consistent with an intent to assume them. For commentary, see France, W., “Classification societies: their liability” [1996] *IJOSL* 67.

The Comité Maritime International (CMI) has attempted to bring about an international convention on the responsibility of classification societies without success so far. In 1992 the CMI set up a Joint Working Group on Class Societies (CSJWG) to consider legal rights, duties, and liabilities of classification societies. By May 1998, the CMI Assembly adopted Principles of Conduct for Classification Societies. These principles imposed certain duties and procedures and outlined standards of practice and performance for societies which adopt them. A year later, the CMI Assembly adopted Model Contractual Clauses which define and clarify, subject to national law, the circumstances under which civil liability of the classification societies and their employees and agents should be regulated or limited. The Model Clauses are suggested for (I) inclusion in agreements between societies and governments and (II) inclusion in the rules of the societies (which contain the terms of agreements between societies and shipowners). As to the latter, the clauses impose certain duties on both the societies and shipowners. The limits of liability,

however, have not yet been agreed upon. The classification societies have been in serious negotiation with European Union (EU) authorities to produce, if possible, a mutually acceptable directive on liability of classification societies. As of 2003, no agreement has been reached.

The International Safety Management Code or ISM code (The International Management Code for the Safe Operation of Ships and for Pollution Prevention, which is Annex IX to the Safety of Life at Sea (SOLAS) Convention 1974 as amended) obliges shipowners and ship operators to maintain a high standard of management of their ships and this has increased the extent of classification society duties and reports.

Port state control is the procedure whereby governments examine a percentage of ships, which visit their shores, in order to ensure that those ships meet international safety and environmental standards. Such examination is often conducted by classification societies under contract with the state concerned. Other states, however, have government inspection agencies which inspect visiting ships. Many states take note of the number of detentions by them of ships already inspected and classed by each classification society. For example see the tabulations of the Australian Maritime Safety Authority which carries out port state control in Australia and the Paris MOU (Memorandum of Understanding). (See Port State Control)

Clean bill of lading - See "Bills of Lading & Related Documents" (supra).

Club letter - See "Letter of undertaking" (infra).

CMI- The Comité Maritime International (CMI) was established in 1897 in Antwerp as a committee of the International Law Association. It is a private organization of over 40 national maritime law associations and has been instrumental in the adoption of many important international conventions including:

- 1) Collisions between Vessels, 1910.
- 2) Assistance and Salvage at Sea, 1910.
- 3) Limitation of the Liability of Owners of Sea-going Vessels, 1924.
- 4) The Hague Rules 1924, (Bills of Lading).
- 5) Maritime Liens and Mortgages, 1926.
- 6) Immunity of State-owned Ships, 1926 and the Additional Protocol, 1934.
- 7) Penal Jurisdiction in Matters of Collision or other Incidents of Navigation, 1952.
- 8) Civil Jurisdiction in Matters of Collision, 1952.
- 9) Arrest of Sea-going Ships, 1952.
- 10) Limitation of the Liability of Owners of Sea-going Vessels, 1957. (This Convention is designed to replace the 1924 Convention.)
- 11) Stowaways, 1957 (not yet in force).
- 12) Carriage of Passengers by Sea, 1961.
- 13) Liability of Operators of Nuclear Ships, 1962.
- 14) Carriage of Passengers' Luggage by Sea, 1967 (not yet in force).
- 15) The 1967 Protocol amending the Assistance and Salvage at Sea Convention of 1910.
- 16) Maritime Liens and Mortgages, 1967 (not yet in force).

- 17) Vessels under Construction, 1967 (not yet in force).
- 18) Protocol to the Hague Rules (The Visby Rules) 1968.
- 19) International Carriage of Goods, 1969 (The Tokyo Rules). This is the CMI proposed multimodal convention (not yet in force).
- 20) Protocol to the Hague Rules, 1979 (The Visby S.D.R. Protocol).
- 21) York/Antwerp Rules 1974, 1990, 1994 (Not an international convention).

N.B. Many of these conventions are also referred to as "Brussels Conventions", because the diplomatic conferences at which they were adopted were held in Brussels and the Belgian Government acted as depositary of the Conventions and of the related instruments of ratification, accession and denunciation.

The CMI has also produced the following documents:

- 1) CMI Uniform Rules for Sea Waybills (1990) (see text at (1991) 22 JMLC 617-619);
- 2) CMI Rules for Electronic Bills of Lading (1990) (see text at (1991) 22 JMLC 620-625);
- 3) Charterparty Laytime Definitions 1980 (prepared jointly with BIMCO, FONASBA and GCBS) (see text at (1981) 12 JMLC 421-426).
- 4) Voyage Charterparty Laytime Interpretation Rules 1993 ("Voylayrules 93") (prepared jointly with BIMCO, FONASBA and Intercargo) (see text in John Schofield, *Laytime and Demurrage*, 4 Ed., LLP Limited, London, 2000, *infra*, Appendix. Voylayrules 93 superseded the Charterparty Laytime Definitions 1980 (*supra*).

Other Conventions drafted by the CMI adopted or in the process of adoption by IMO, UNCITRAL, etc, include:

- a) International Convention for the Unification of Certain Rules Regarding the Recognition and Enforcement of Judgments in Matters of Collision;
- b) A Convention on Off-Shore Mobile Craft;
- c) A Convention relating to the International Carriage of Passengers and their Luggage by Sea and by Inland Water-Way in Air-Cushion Vehicles;
- d) A Convention on Salvage - Montreal, 1981 (now the Salvage Convention 1989, adopted under the auspices of IMO). On the basis of the CMI draft the Legal Committee of IMO prepared a draft convention on salvage. As a result of these preparatory works, an International Convention on Salvage was adopted in 1989 under the auspices of IMO (see reference to IMO).
- e) A Convention on Maritime Liens and Mortgages - Lisbon, 1985 (now the UN/IMO Convention on Maritime Liens and Mortgages 1993). On the basis of the CMI draft, an IMO -UNCTAD Joint Intergovernmental Group prepared a draft convention on maritime liens and mortgages. As a result of these preparatory works, an International Convention on Maritime Liens and Mortgages was adopted in 1993 by a Conference convened under the auspices of the UN and IMO (see reference to IMO).
- f) A Convention on Arrest of Ships - Lisbon, 1985. The IMO-UNCTAD Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related subjects is at present considering a draft arrest convention prepared on the basis of the CMI draft.

Website: <http://www.comitemaritime.org/>

C.M.R.- [Fr.: "Convention relative au contrat de transport international des marchandises par route"]. (The International Convention on the Carriage of Goods by Road, Geneva, 1956).

COGSA - Carriage of Goods by Sea Act, 1936, 46 U.S. Code sects. 1301 et seq. The American statute enacting the Hague Rules (*infra*). (See text: Tetley, M.C.C., 3 Ed., 1988 at pp. 1199-1210).

Collision [Fr.: "abordage"] [Span.: "abordaje"] [Ital.: "urto" or "collisione"] [Gr.: "Kollision"] - "any accident involving two or more vessels which causes loss or damage even if no actual contact has taken place" (see Lisbon Rules 1987, *infra*). Contact between a vessel and an object other than another vessel is an "allision" (*supra*). See Tetley, Int'l M. & A. L., 2003 at pp. 215-265.

Collision Convention 1910 - The International Convention for the Unification of Certain Rules of Law with Respect to Collision Between Vessels, adopted at Brussels, September 23, 1910 and in force as of March 1, 1913. See CMI (*supra*).

Collision Regulations 1972 (COLREGS) - The International Regulations for the Prevention of Collisions at Sea, annexed to the Convention on the International Regulations for the Prevention of Collisions at Sea, adopted at London, Oct. 20, 1972 (see CMI, *supra*). Most countries of the world are party to the "COLREGS", which are also often referred to as the "Rules of the Road" (*infra*).

Comity - The doctrine requiring courts of one state to recognize the laws of foreign states and judgments of competent courts of such states, in order to secure the reciprocal recognition by that foreign state of the laws of the first state and the judgments of its courts. See Tetley, M.L.C., 2 Ed., 1998 at pp. 1095-1097; Tetley, Int'l C. of L., 1994 at pp. 9 and 320; Tetley, Int'l M. & A. L., 2003 at p. 414.

Common (public) carriage - Carriage performed by a "common carrier", who undertakes to transport the public's goods from and to places advertised and at times advertised, usually on regular, "liner" (*infra*) routes and under "liner" bills of lading, in consideration of the payment of freight (*infra*) by the shipper (*infra*). Common carriage is the opposite of private carriage (*infra*). See Tetley, "Tug and Tow" (1991) *Il Diritto Marittimo* 893 at p. 898; Tetley, M.C.C., 3 Ed., 1988 at pp. 9-10, 35; Tetley, Int'l M. & A. L., 2003 at pp. 65- 116.

Common law - Common law is the legal tradition which evolved in England from the 11th century onwards. Its principles appear for the most part in reported judgments, usually of the higher courts, in relation to specific fact situations arising in disputes which courts have adjudicated. The common law is usually much more detailed in its prescriptions than the civil law (*supra*). See Tetley, "Mixed Jurisdictions: Common Law vs Civil Law (Codified and Uncodified) (Part I)" (1999-4) *Uniform Law Review* 591-619 at p. 597; Tetley, Int'l M. & A. L., 2003 at pp. 7-8.

Common venture - A basic theme in maritime law, reflecting the understanding of maritime commerce as a joint undertaking on the part of shippers (*infra*), carriers

(supra) and consignees (infra); shipowners and charterers; and their respective insurers, who (directly or indirectly) confront the perils of the sea together, and who should therefore share both the profits and the risks attendant upon their combined operation. The common venture principle is evident in fields such as the carriage of goods (the Hague, Hague/Visby and Hamburg Rules (infra) all providing for the sharing of risks of seagoing transportation as between shippers and consignees, on the one hand, and carriers on the other), as well as in general average (infra) and marine insurance. The old Admiralty rule requiring damages to be divided equally in the event of a ship collision (supra), was also founded upon the common venture concept. See Tetley, M.L.C., 2 Ed., 1998 at pp. 440, 473; Int'l C. of L., 1994 at p. 478; Tetley, Int'l. M. & A. L., 2003 at pp. 53-54.

Comparative fault - See proportionate fault (infra).

Condition - A term of a contract, the breach of which will allow the offended party to demand rescission of the contract (along with damages). See also indeterminate term (infra) and warranty (infra).

Connecting factors (contacts) - In a conflict of laws case, connecting factors, or contacts, are facts which tend to connect a transaction or occurrence with a particular law or jurisdiction (e.g. the domicile, residence, nationality or place of incorporation of the parties; the place(s) of conclusion or performance of the contract; the place(s) where the tort or delict was committed or where its harm was felt; the flag or country of registry of the ship; the shipowner's base of operations, etc.). Connecting factors are often taken into consideration and weighed by courts and arbitrators, in determining the proper law (see infra) to apply to decide the case. See Tetley, Int'l. C. of L., 1994 at pp. 41, 195-196.

Consignee - The party to whom delivery of the goods is to be made under a contract for the carriage of goods by water.

Constructive total loss [Fr.: "perte réputée totale" or "perte totale et implicite"] [Span.: "pérdida reputada total"] [Ital.: "perdita totale da abbandono"] [Gr.: "Fingierter Totalschaden"] - A constructive total loss occurs when:

- 1) the insured property is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value;
 - 2) where the insured is deprived of the possession of the insured property by a peril insured against and it is either unlikely that he can recover it or too costly to attempt to do so; or
 - 3) where repairing the damage to the insured property would be too costly.
- See Marine Insurance Act, 1906 (U.K.) sect. 60. See Tetley, Int'l. M. & A. L., 2003 at pp. 607-609.

Contributory negligence - The former method of apportionment of damages under English common law, which prohibited a plaintiff from recovering any damages from a defendant in tort if the plaintiff's own fault or negligence had contributed to his own loss or damage in even the slightest degree. In traditional English admiralty law, the common law "contributory negligence bar" to recovery by negligent plaintiffs did not

apply to ship collisions, but rather damages in cases where both vessels were to blame for the collision were apportioned according to the divided damages (*infra*) rule, which was later replaced by proportionate fault (*infra*) in the United Kingdom, Canada and other British Commonwealth jurisdictions under national statutes giving effect to the Collision Convention 1910 (*supra*). Contributory negligence was replaced by proportionate fault in English common law by the Law Reform (Contributory Negligence) Act, 1945, 8 & 9 Geo. 6, c. 28, although several Canadian common law provinces had enacted such legislation some twenty years earlier. In Canadian maritime law, the contributory negligence bar was replaced by proportionate fault for maritime torts other than ship collisions by the Supreme Court of Canada's decision in *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.* [1997] 3 S.C.R. 1210, (1997) 153 D.L.R.(4th) 385. See Tetley, *Int'l C. of L.*, 1994 at pp. 476-477, 479-481, 488; Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 49-50, 86, 93, 159 and 1190; Tetley, *Int'l. M. & A. L.*, 2003 at pp. 219-222, 235.

Corporate veil - Although a corporation, with its separate legal personality, ordinarily has rights and obligations totally distinct from those of its shareholders, courts sometimes "**pierce the corporate veil**" so as to hold the shareholders personally liable for the liabilities of the corporation. Courts may also "lift the corporate veil", in order to determine who actually controls the corporation or, in the conflict of laws, to ascertain the corporation's true contacts. See Tetley, *Int'l C. of L.*, 1994 at pp. 159, 219-224.

Country Damage - Damage to baled or bagged goods (e.g. cotton) caused by excessive moisture from damp ground or exposure to weather, or by grit, dust or sand ashore.

Court of Appeal - The Court of Appeal of the United Kingdom. An example of the approved citation is [1981] 2 Q.B. 137 (C.A.).

Court of Appeals - The United States Court of Appeals which is divided into thirteen circuits. An example of the citation is: 100 F. 2d 871 (5 Cir. 1939).

CRISTAL - Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution. This contract was in effect until February 20, 1997 and was not renewed after that date. See also the reference to TOVALOP (*infra*).

"cumul" - A French civil law term referring to the combining of contractual and delictual (i.e. tortious) recourses in a single lawsuit. Many modern civil codes prohibit "cumul", by providing that neither party to a contract may avoid the rules governing contractual liability by opting for rules more favourable to him (i.e. rules of delictual, or "extra-contractual", liability). See, for example, the Québec Civil Code 1991 at art. 1458 second para. See also art. 133(3) of the Swiss Federal Statute on Private International Law, 1987 and art. 4(2) of the Netherlands Conflict of Maritime Laws Act, 1993. See Tetley, *Int'l. C. of L.*, 1994 at pp. 453-454; Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 718-719; Tetley, *Int'l. M. & A. L.*, 2003 at p. 106.

Deadfreight - A sum of damages payable by the charterer to the shipowner or intermediate charterer where the charterer loads less cargo than promised in the

charterparty. See Tetley, M.L.C., 2 Ed., 1998 at pp. 755-756; Tetley, Int'l. M. & A. L., 2003 at p. 141.

Deadweight cargo capacity - See "Tons & Tonnage" (infra).

Deadweight tonnage - See "Tons & Tonnage" (infra).

Demise charterparty - See charterparty (supra).

Demise clause [Fr.: "clause de dévolution"] [Span.: "cláusula de cesión"] [Ital.: "clausola di cessione"] [Gr.: "Demise-Klausel"] - A clause in a bill of lading (supra) providing that, unless the ship is owned by or chartered by demise to the party who issues the bill, the shipowner or demise charterer is the carrier (supra). See Tetley, M.L.C., 3 Ed., 1988 at pp. 248-258; Tetley, Int'l. M. & A. L., 2003 at p. 104.

Demurrage [Fr.: "surestaries"] [Span.: "demora" or "sobrestadías"] [Gr.: "Liegegeld"] - In a voyage charterparty (supra), an agreed amount payable to the shipowner by the charterer in respect of delay in loading or discharging the vessel beyond the laytime (infra), for which the owner is not responsible. In the United Kingdom, demurrage is regarded as liquidated damages, while in the United States, it is seen as extended freight (infra). See Tetley, M.L.C., 2 Ed., 1998 at pp. 756-757, 770-771; Tetley, Int'l. M. & A. L., 2003 at p. 141 footnote 98.

Deviation [Fr.: "déroutement"] [Span.: "desviación"] [Ital.: "deviazione"] [Gr.: "Kursabweichung"] - A departure by the carrier (supra) of goods by sea from the agreed or customary geographic route, done without the consent of the cargo interests. At common law, a deviation deprived cargo of its insurance coverage, so that the carrier was treated as the insurer of the goods. Under the Hague and Hague/Visby Rules (infra), art. 4 par. 4, any deviation in saving or attempting to save life or property at sea, or any "reasonable deviation", is not deemed to be a breach of the convention or of the contract of carriage. An unreasonable geographic deviation, however, may be considered as a "fundamental breach" of the contract which causes the carrier to lose the benefit of the package or package/kilo limitation, and should also result in loss of his other defences under the convention and the contract. (Tetley, M.L.C., 3 Ed., 1988 at pp. 100-131; Tetley, Int'l. M. & A. L., 2003 at pp. 89-90.) In the United States, unjustified deck carriage is also often referred to as a "deviation".

Direct action - The right of a third party who has a liability claim against an insured to proceed directly by suit against the insurer, usually because the insured has been declared bankrupt or has become insolvent. In most jurisdictions, direct action is permitted only by statute. See Tetley, Int'l. C. of L., 1994 at pp. 362-381; Tetley, Int'l. M. & A. L., 2003 at pp. 617-619.

Dispatch [Fr.: "dispatch-money" or "prime de célérité"] [Span.: "premio por despacho adelantado"] [Ital.: "riscatto di stallia"] [Gr.: "Eilgeld"] - In a voyage charterparty (supra), an agreed amount payable by the shipowner if the vessel completes loading or discharging before the laytime (infra) has expired.

Displacement tonnage - See "Tons & Tonnage" (infra).

Disponent owner - A person, such as a bareboat or time charterer, who, while not being the registered owner of a ship, nevertheless has the right to "dispose of it" (i.e. to control its commercial operation), notably by sub-chartering it to a third party. Although lacking title to the vessel, the disponent owner may have many of the rights and responsibilities of the owner. See *Somareff v. ABS* 1989 AMC 2330 at p. 2338 (D. N.J. 1989); *Arb. of Andros Compania v. Marc Rich* 1978 AMC 2108 at p. 2109, note 1 (2 Cir. 1978). The disponent owner may be an agent of the shipowner: *The Nortuna* 1955 AMC 1576 at p. 1578 (S.D. N.Y. 1955). He may also be the ship's manager: *Asty Maritime v. Rocco Giuseppe* [1985] 2 Lloyd's Rep. 109 (C.A.).

Divided damages - The former method of apportioning damages from a ship collision under the general maritime law of civil law countries, as well as under English and American admiralty law, whereby such damages were equally divided between the ships involved in the collision, regardless of the degree to which each of them was to blame. Divided damages differed from the traditional contributory negligence (*supra*) rule of apportionment of damages, which precluded a plaintiff from recovering any damages from a negligent defendant if the plaintiff himself was to at fault in even the slightest degree. The divided damages method was eventually replaced by the proportionate fault (*infra*) method of apportionment under the Collision Convention 1910 (*supra*) and national legislation giving effect to that Convention, and in the United States, by the Supreme Court's decision in *United States v. Reliable Transfer Co.* 421 U.S. 397, 1975 AMC 541, [1975] 2 Lloyd's Rep. 286 (1975). See Tetley, *Int'l C. of L.*, 1994 at pp. 471-483, 489, 497; Tetley, *M.L.C.*, 2 Ed., 1998 at p. 50; Tetley, *Int'l. M. & A. L.*, 2003 at pp. 223-228.

Dock receipt - A receipt issued by the carrier (*supra*) attesting to the delivery of the goods to the dock prior to their loading aboard the ship.

Documentary credit [Fr.: "crédit documentaire"] [Span.: "crédito documentario"] [Ital.: "credito documentario"] [Gr.: "Dokumentenakkreditiv"] - A documentary credit is defined as follows in the Uniform Customs and Practice for Documentary Credits, 1993 Revision (UCP 500) (*infra*), of the International Chamber of Commerce, Paris (see I.C.C. Publication No. 500), at art. 2:

"any arrangement, however named or described, whereby a bank (the "Issuing Bank") acting at the request and on the instructions of a customer (the "Applicant") or on its own behalf,

- i. is to make a payment to or to the order of a third party (the "Beneficiary"), or is to accept and pay bills of exchange (Draft(s)) drawn by the Beneficiary, or
- ii. authorises another bank to effect such payment or to accept and pay such bills of exchange (Draft(s)), or
- iii. authorises another bank to negotiate, against stipulated document(s), provided that the terms and conditions of the Credit are complied with."

Documentary credits, also known as "banker's commercial credits" and "commercial letters of credit", provide the seller in an international sale of goods with security that he will be paid for his goods after they are shipped, even if the buyer fails to pay for them or if his payment is dishonoured. An international sale of goods involving a documentary credit typically involves the following steps:

The buyer of the goods applies in his own country to his bank (the Issuing Bank), on the bank's standard form, to open a credit in favour of the seller in the other country. The opening of the credit involves an undertaking by the Issuing Bank to pay the contract price of the goods or to accept or pay a bill of exchange (e.g. a draft) drawn by the seller for that sum. The Issuing Bank may require the buyer to provide funds to cover its prospective liability to the seller, or may rely on the buyer's creditworthiness. The standard conditions of opening the credit may also provide the Issuing Bank with a charge on the goods and the shipping documents relating to them. Once the Issuing Bank approves the opening of the credit, it asks the "Advising Bank" in the seller's country to advise the seller of the opening of the credit in his favour. The Advising Bank may also undertake to pay the seller, in which case the credit is referred to as a "confirmed" (as opposed to an "unconfirmed") credit. The seller then provides the Advising Bank with the "shipping documents" (including, among others, the invoice for the goods, the bill of lading (*supra*) or sea waybill (*supra*) and, in CIF sales, the marine insurance policy). If the documents are in order, the Advising Bank pays, accepts or negotiates the bill of exchange drawn by the buyer, thus paying the seller for the goods and claims reimbursement from the Issuing Bank. The Advising Bank then sends the shipping documents to the Issuing Bank which releases them to the buyer, to permit him to take delivery of the goods at the port of discharge. The "Issuing Bank" makes a charge for issuing the credit, which is passed on to the buyer. See generally, Roy Goode, *Commercial Law*, 2 Ed., Penguin Books, London, 1995 at pp. 960-1025.

Economic loss - Economic loss is financial damages sustained as a result of a tort or delict. Generally, the claimant may not recover loss of profit unless there is physical damage under the common law, but may do so under the civil law. See *Murphy v. Brentwood District Council* [1991] 1 A.C. 398, [1990] 2 All E.R. 918, [1990] 3 W.L.R. 414 (H.L.); *Robins Dry Dock Co. v. Flint* 275 U.S. 303, 1928 AMC 61 (1927); *CNR v. Norsk Pacific Steamship Co. (The Jervis Crown)* [1992] 1 S.C.R. 1021, (1992) 91 D.L.R.(4th) 289; *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.* [1997] 3 S.C.R. 1210, (1997) 153 D.L.R.(4th) 385. See also Tetley, *Int'l. C. of L.*, 1994 at pp. 719-727; Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 131-135; Tetley, *Int'l. M. & A. L.*, 2003 at pp. 255-259.

Endorsee - A party to whom an order bill of lading (*supra*) is endorsed by the original consignee (*supra*) or a previous endorsee of that same bill of lading. See Tetley, *M.C.C.*, 3 Ed., 1988 at p. 183.

Equity [Fr.: "équité" [Span.: "equidad"] [Ital.: "equità"] [Gr.: "Billigkeitsrecht"] - A principle of fundamental fairness and justice applied by admiralty courts and arbitrators in maritime disputes where the circumstances of the case warrant doing so (e.g. altering the normal order of ranking of maritime claims, recognizing "equitable" liens, dismissing claims on grounds of laches (*infra*), marshalling (*infra*), awarding certain post-arrest expenses as custodia legis expenses (*supra*) where they have been incurred in the common interest of all the creditors even though they have not been previously authorized by the court). As used in maritime law, the term "equity" must not be confused with "Equity", being that body of law administered by a court of Equity such as the Court of Chancery in England, before the consolidation of the courts in the U.K. in 1873. See Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 235-236, 855-856

and 859-863; Tetley, *Int'l. M. & A. L.*, 2003 at pp. 54-56; French Civil Code art. 1135; Québec Civil Code art. 1434; Louisiana Civil Code arts. 21 and 2055.

Estoppel - Estoppel is a common law bar to denying, in some cases, a fact which a party has already acknowledged, e.g., the issuer of a clean bill of lading (*supra*) is estopped from contradicting it as against a third party who has relied on it. (Tetley, *M.C.C.*, 3 Ed., 1988 at pp. 273-280; Tetley, *Int'l. M. & A. L.*, 2003 at p. 75.) "Fins de non-recevoir", or "irrecevabilité" ("inadmissibility"), is not the civil law equivalent of estoppel, but is a generic term referring to various exceptions to rights or procedures that prevent a claim or defence. (*National Bank of Canada v. Soucisse*, [1981] 2 S.C.R. 339 at p. 360).

European Maritime Law Organization - (EMLO) - Website: <http://www.emlo.org/>

European Union [Fr.: "Union européenne"] [Span.: "Unión europea"] [Ital.: "Unione europea"] [Gr.: "Europäische Union"] - The present name for the former "European Economic Community" (E.E.C.), consisting of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom. E-mail: europa@cec.eu.int ; website: <http://europa.eu.int/>.

Evasion of the law - A principle of the conflict of laws, better known in civilian jurisdictions (under the French name "fraude à la loi") [Span.: "fraude de ley"] [Ital.: "violazione di norme di legge"] [Gr.: "Rechtswidrige Umgehung eines Gesetzes"] than in common law jurisdictions, which consists of the intentional and improper manipulation of contacts (connecting factors), in order to avoid invalidity under the principle of public order/public policy (*infra*), to avoid a compulsorily applicable law or to avoid the most appropriate jurisdiction. Evasion of the law must be contrasted with "avoidance of the law" (*supra*), which is the acceptable arrangement of connecting factors for a legitimate purpose in an agreement, usually between two equal bargaining parties, in order to select an applicable law or jurisdiction. (Tetley, *Int'l C. of L.*, 1994 at pp. 135-172.)

F.A.S. (named port of shipment)[Fr.: "F.L.B. - Franco Long du Bord" or "franco le long du navire"] [Span.: "franco al costado del buque"] [Ital.: "franco lungo bordo"] [Gr.: "Freie Längsseite See- oder Binnenschiff (benannter Verschiffungshafen)]-Free Alongside Ship is a term of the contract of sale. Incoterms 2000 (*infra*) gives the following abbreviated description of F.A.S.:

"Free Alongside Ship" means that the seller delivers when the goods are placed alongside the vessel at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that moment. The FAS term requires the seller to clear the goods for export.

THIS IS A REVERSAL FROM PREVIOUS INCOTERMS VERSIONS WHICH REQUIRED THE BUYER TO ARRANGE FOR EXPORT CLEARANCE.

However, if the parties wish the buyer to clear the goods for export, this should be made clear by adding explicit wording to this effect in the contract of sale.

This term can be used only for sea or inland waterway transport."

"Faute lourde" (gross negligence) - The type of fault described by Pothier as: "...le soin que les personnes les moins soigneuses et les plus stupides ne manquent pas d'apporter à leurs affaires" (translation: the care which the least careful and most stupid persons do not fail to devote to their own affairs). This definition was adopted by Rinfret, Chief Justice of Canada, in *The King v. Canada Steamship Lines Ltd.* [1950] S.C.R. 532 at pp. 537 and 539.

F.C.- Federal Court Reports. The official bilingual reports of the Federal Court of Canada of first instance and in appeal (including Admiralty) which replaced Exchequer Court Reports (Ex. C.R.) in 1971. Published by Canada Communications Group. An example of the citation is [1971] F.C. 123. Website: http://reports.fja.gc.ca/index_en.html

F.C.L.- (Full container load). Here the shipper (infra) usually packs its goods in the container and seals it.

F.C. & S. Clause - A standard clause in a marine insurance policy by which the insurer excludes coverage of loss due to "capture" and "seizure" as well as "arrest, restraint or detriment, and the consequence thereof or of any attempt thereat (piracy excepted), and also from all consequences of hostilities or warlike operations, whether before or after declaration of war."

F.I.A.T.A.- International Federation of Freight Forwarders Associations. Website: <http://www.fiata.com/>

Flotilla principle - The principle whereby the tonnage of both the tug and the tow were taken into consideration in calculating the shipowner's limitation of liability arising out of collisions between the tow and another vessel or a stationary object. The principle originally applied in England where the tug and tow belonged to the same shipowner, and even if the fault or negligence which caused the collision was committed only aboard the tug. Today, however, the combined tonnage of tug and tow are taken into consideration in calculating the shipowner's limitation in England, whether or not those vessels are commonly owned, but only if the fault or negligence that caused the collision was committed aboard both those vessels. See *The Bramley Moore* [1963] 2 Lloyd's Rep. 429 (C.A.) and *The Sir Joseph Rawlinson* [1972] 2 Lloyd's Rep. 437. In Canada, on the other hand, the traditional flotilla principle still applies, so that the combined tonnage of the tug and the tow will be taken into account in calculating the shipowner's limitation, provided that both the tug and the tow were commonly owned when the collision occurred, and provided that both the tug and the tow caused or contributed to the collision, even if the causal fault or negligence was committed only aboard the tug. See *The Rhone v. The Peter A.B. Widener* [1993] 1 S.C.R. 497. This position remains unchanged now that Canada is party to the Limitation Convention 1976 (infra). See *Bayside Towing Ltd. v. C.P.R.* [2001] 2 F.C. 258 (Fed. C. of Can.). The United States applies the same flotilla doctrine, requiring both the tug and tow to be surrendered in the limitation proceedings, if they were under common ownership and engaged in a "single enterprise" (as a unit) when the negligently-caused collision happened. See *Cenac Towing Co. Inc. v. Terra Resources, Inc.* 734 F.2d 251 at p. 254 and note 4 (5 Cir. 1984); *Valley Line Co. v. Ryan* 771 F.2d 366 at p. 376 (8 Cir. 1985). See also

Seaspan, Lim. Procs. 2001 AMC 2366 at pp. 2368-2369 (W.D. Wash. 2001). See Tetley, *Int'l. M. & A. L.*, 2003 at pp. 304-306.

F.O.B.(named port of shipment) [Fr.: "Franco Bord"] [Span.: "franco a bordo"] [Ital.: "franco a bordo"] [Gr.: "Frei an Bord (benannter Verschiffungshafen)"]- F.O.B. (Free on Board) is a term of the contract of sale. Incoterms 2000 (infra) gives the following abbreviated definition of F.O.B.:

"Free on Board" means that the seller delivers when the goods pass the ship's rail at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that point. The FOB term requires the seller to clear the goods for export. This term can be used only for sea or inland waterway transport. If the parties do not intend to deliver the goods across the ship's rail, the FCA term [free carrier] should be used."

In the port of Antwerp, Belgium, the term "F.O.B.", in general, means that the seller fulfils his obligation to deliver the goods when he delivers them to the ocean carrier (supra) in the port of shipment, the buyer bearing all costs and risks from that moment onwards. There are certain variations in this rule, depending on whether general cargo, heavy cargo, bulk cargo or containerized cargo is involved. See Robert Wijffels, "Les Problèmes de la vente F.O.B." [1978] ETL 531-549.

F.P.A.- "Free of particular average". A formerly standard clause in a marine insurance policy, meaning that the insurance covers only a total loss and not a partial or percentage loss. F.P.A. is obsolete, now that "A", "B" and "C" cargo clauses are used. See Tetley, *Int'l. M. & A. L.*, 2003 at p. 609.

FONASBA - The Federation of National Associations of Ship Brokers and Agents. E-mail: fonasba@ics.org.uk; website: <http://www.fonasba.com/>.

"Forum conveniens" - ("appropriate (convenient) court"), referring to the principle whereby a court which does not have jurisdiction over a claim nevertheless accepts jurisdiction, because there is no other appropriate jurisdiction to hear the claim, in order to ensure that justice is done. (Tetley, *Int'l C. of L.*, 1994 at p. 803.; *The Rosalie* (1853) 1 Sp. 188 at p. 192, 164 E.R. 109 at p. 112 (High Ct. of Adm.); Québec Civil Code art. 3136).

"Forum non conveniens" - ("inappropriate (inconvenient) court"), referring to the principle whereby a court which has jurisdiction over a claim nevertheless stays conditionally or dismisses unconditionally the suit, in order to send the claim to be tried in another jurisdiction to which the defendant is amenable and which the court believes is more appropriate or convenient for the litigation, in the interests of justice. (Tetley, *Int'l C. of L.*, 1994 at pp. 798-800; Tetley, *Int'l. M. & A. L.*, 2003 at pp. 412-413.)

Free pratique ("libre pratique") - Permission given to a ship to use a port after it has been certified free of disease by competent health authorities.

Freezing injunction (or "freezing order")- See "Mareva injunction" (infra).

Freight [Fr.: "fret"] [Span.: "flete"] [Ital.: "nolo"] [Gr.: "Fracht"] - "the remuneration payable for the carriage by the vessel of property or passengers or for the use of the

vessel" (Lisbon Rules 1987, *infra*). The consideration for the carriage of goods under bills of lading (*supra*), sea waybills (*supra*) and voyage charterparties (*supra*).

Freight forwarder - A party who arranges for the carriage of other people's goods by sea, for a fee, usually calculated as a percentage of the freight (*supra*) charge plus expenses. At times, the freight forwarder acts as a principal contractor in respect of the shipper (*infra*) and bears the responsibilities of a common carrier. At other times, the freight forwarder acts merely as an agent of the shipper, with the obligation to exercise reasonable care and skill. In France, the freight forwarder as principal contractor is known as a "commissionnaire de transport", and the freight forwarder agent is known as a "transitaire". See Tetley, *M.C.C.*, 3 Ed., 1988 at pp. 691-711. See also NVOCC (*infra*), ocean freight forwarder (*infra*) and ocean transportation intermediary (*infra*).

"Freinte de route" [Span.: "mermas"] [Ital.: "calo"] [Gr.: "Schwund an Raumgehalt oder Gewicht"] - A French term, referring to the normal, minor shrinkage, evaporation or deterioration of certain cargoes while in transit, for which no damages are ordinarily awarded in a cargo claim. (Tetley, *M.C.C.*, 3 Ed., 1988 at pp. 327-328; Tetley, *Int'l. M. & A. L.*, 2003 at p. 100.).

Full faith and credit [Fr.: "reconnaissance totale"] - In the conflict of laws, the principle of "full faith and credit" requires courts in one jurisdiction in a federal State to recognize and enforce the laws and court judgments of other jurisdictions within the same State. The principle is enshrined in Art. IV sect. 1 of the Constitution of the United States of America and at art. 118 of the Australian Constitution. In Canada, the full faith and credit doctrine has emerged in the case law of the Supreme Court of Canada in decisions such as *Morguard Investments Ltd. v. DeSavoye* [1990] 3 S.C.R. 1077 at pp. 1100-1101 and *Hunt v. T. & N. plc.* [1993] 4 S.C.R. 289 at pp. 321-325. See Tetley, *Int. L. of C.*, 1994 at pp. 706-707 and 826.

Fund Convention 1971 - The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, adopted at Brussels on December 18, 1971 and in force as of October 16, 1978, and its 1976 Protocol, adopted at London November 19, 1976 and in force November 22, 1994; its 1984 Protocol, adopted at London May 25, 1984, which never came into force; and its 1992 Protocol, adopted at London, November 27, 1992, in force May 30, 1996. The Fund Convention 1971 ceased to be in force on May 24, 2002, pursuant to a Protocol amending its art. 43.1, adopted at London, on September 27, 2000, which came into force on June 27, 2001. Most Contracting States to the Fund Convention 1971 are now parties to the Fund Convention 1992 (*infra*). See also IMO (*infra*).

Fund Convention 1992 - The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, consisting of Arts. 1 to 36 quinquies of the Fund Convention 1971, as amended by its 1992 Protocol. The Fund Convention 1992 has replaced the Fund Convention 1971, which ceased to be in force on May 24, 2002.

Fundamental breach - A common law principle first developed in English decisions in the 1930's, which became very popular in the U.K. and British Commonwealth jurisdictions in the 1960's, prior to the enactment of consumer protection legislation.

By virtue of this doctrine, a party who had committed an intentional breach of contract so serious as to "go to the root of the contract", depriving the other contracting party of substantially the whole benefit of the contract, was held to have fundamentally breached the contract and was consequently deprived of the protection of limitation and exception clauses in the contract. Since the House of Lords' decisions in *Suisse Atlantique Société d'Armement S.A. v. N.V. Rotterdamsche Kolen Centrale* [1967] 1 A.C. 361 and *Photo Production v. Securicor Transport* [1980] A.C. 827, however, fundamental breach has ceased to be a doctrine of substantive law, and has become purely a question of construction of the contract. In maritime law, however, fundamental breach is still evident in three areas of the law on carriage of goods by sea: knowing misrepresentation by the shipper (*infra*) of the nature or value of the goods (Hague and Hague/Visby Rules (*infra*) art 4, par. 5 fourth par.), unreasonable geographic deviation (Hague and Hague/Visby Rules art. 4 par. 4) and unjustified deck carriage (Hague and Hague/Visby Rules art. 1(c)). (Tetley, M.C.C., 3 Ed., 1988 at pp. 100-135.) "Fundamental breach" has been translated into French in different ways, including "violation d'une clause essentielle" (see *Z.I. Pompey v. Ecu-Line N.V.* [1999] A.C.F. No. 1584 (Fed. C. of Can. per Hargrave P.) and *Z.I. Pompey v. Ecu-Line N.V.* [1999] A.C.F. No. 2017 (Fed. C. of Can. per Blais J.)); "rupture fondamentale" (see *Armada Shipping Lines v. Chaleur Fertilizer* [1995] 1 F.C. 3 (Fed. C. A. of Can.)); and "inexécution fondamentale" (see *Hunter Engineering v. Syncrude Canada* [1989] 1 S.C.R. 426 (Supr. C. of Can.)).

General Average act [Fr.: "acte d'avarie commune"] [Span.: "acto de avería común"] [Ital.: "atto di avaria comune"] [Gr.: "Gemeinschaftlicher Havarieakt"] - "There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure." (York/Antwerp Rules 1994, Rule A first para.; Marine Insurance Act, 1906 (U.K.) sect. 66(2); Tetley, M.C.C., 3 Ed., 1988 at pp. 713-736; see generally Tetley, *Int'l. M. & A. L.*, 2003 Chap. 9, pp. 361-396).

General Average contribution [Fr.: "contribution d'avarie commune"] [Span.: "contribución a la avería común"] [Ital.: "contribuzione in avaria comune"] [Gr.: "Gemeinschaftlicher Havariebeitrag"] - The monetary contribution required of shipowners and cargo owners (or their respective insurers) in respect of general average expenditures and general average sacrifices. Cargo's claim for general average contributions against the ship is secured by either a maritime lien (*infra*) or a statutory right in rem (*infra*), depending on the jurisdiction concerned. The shipowner's claim for general average contribution is secured by a possessory lien (*infra*) on the cargo. Both claims may also be asserted by an action in personam. See Tetley, M.L.C., 2 Ed., 1998 at pp. 439-450; Tetley, *Int'l. M. & A. L.*, 2003 at pp. 384-388.

General Average expenditure [Fr.: "dépense d'avarie commune" or "avarie-frais"] [Span.: "gasto (contribución) de avería común"] [Ital.: "spese d'avaria comune"] [Gr.: "Gemeinschaftliche Havariekosten"] - An extraordinary expenditures incurred by the shipowner intentionally and reasonably to preserve from peril the property involved in a common maritime adventure (e.g. port of refuge expenses, salvage remuneration, etc.).

General Average loss [Fr.: "perte d'avarie commune"] [Span.: "pérdida de avería común"] [Ital.: "perdita d'avaría comune"] [Gr.: "Gemeinschaftlicher Havarieschaden"] - "A general average loss is a loss caused by or directly consequential on a general average act. It includes a general average expenditure as well as a general average sacrifice" (Marine Insurance Act, 1906, sect. 66(1)). See Tetley, *Int'l. M. & A. L.*, 2003 at p. 610.

General Average sacrifice [Fr.: "sacrifice d'avarie commune"] [Span.: "sacrificio de avería común"] [Ital.: "sacrificio d'avaría comune"] [Gr.: "Gemeinschaftliche Havarieaufopferung"] - An extraordinary sacrifice intentionally and reasonably made to preserve from peril the property involved in a common maritime adventure (e.g. jettison of cargo, cutting away the mast or anchor).

Geneva Conventions 1958 - The Geneva Conventions on the High Seas, on the Territorial Sea and Contiguous Zone, on the Continental Shelf and on Fishing and Conservation of the Living Resources of the High Seas, adopted at Geneva on April 29, 1958.

Gold Clause Agreement - An agreement drawn up by the British Maritime Law Association, signed August 1, 1950 and amended July 1, 1977, substituting for the 100 gold value of the carrier's (supra) package limitation under the Hague Rules 1924 (infra) (arts. 4 (5) and 9), a value of 200 (1950), increased in 1977 to 400 English currency, where suit or arbitration (supra) was taken in the U.K. The Agreement ceased to have effect as at midnight on May 31, 1988. See text of the Agreement as amended in 1977 in Tetley, *M.C.C.*, 3 Ed., 1988, Appendix "C" at pp. 1235-1239, with commentary at pp. 1239-1241.

Good faith [Fr.: "bonne foi"] [Sp.: "buena fe"] [It.: "buona fede"] [Gr.: "guter Glaube"]- A principle found throughout the civil law, to the effect that parties must negotiate and carry out a contract honestly and fairly. The common law, in recent years, has adopted the principle to some extent, especially in the negotiations, prior to reaching a final agreement. Good faith is a basic principle of such modern conventions, rules and codes as the Vienna Sales Convention, 1980; the UNIDROIT Principles of International Commercial Contracts 1994 and the Uniform Commercial Code. See Tetley, *Int'l. M. & A. L.*, 2003 at pp. 174-175.

Gross negligence - See "faute lourde" (supra).

Gross register tonnage (g.r.t.) - See "Tons & Tonnage" (infra).

Gross tonnage - See "Tons & Tonnage" (infra).

Hague Rules [Fr.: "Convention de Bruxelles de 1924" or "Règles de La Haye"] [Span.: "Convención de Bruselas de 1924" or "Reglas de La Haya"] [Ital.: "Convenzione di Bruxelles del 1924" or "Regole dell'Aja"] [Gr.: "Haager Regeln"] - "The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading" - Brussels, August 25, 1924 (adopted at the instigation of the CMI and in force as of June 2, 1931). (See French and English texts, Tetley, *M.C.C.*, 3 Ed., 1988 at pp. 1111-1132).

Hague/Visby Rules: The Hague Rules (*supra*) as amended by the Visby Rules (*infra*).

Hamburg Rules [Fr.: "Règles de Hambourg"] [Span.: "Reglas de Hamburgo- "] [Ital.: "Regole di Amburgo"] [Gr.: "Hamburger Regeln"] - The United Nations Convention on the Carriage of Goods by Sea", adopted at Hamburg on March 30, 1978 and in force as of November 1, 1992. See English text: Tetley, M.C.C., 3 Ed., 1988 at pp. 1143-1165.

Harter Act 1893 - 46 U.S. Code App. 190-196. It is the precursor of COGSA (*supra*), 1936 in the U.S. It continues to apply to coasting trade and to shipping exempt from COGSA and also governs the carrier's (*supra*) liability for the goods before loading and after discharge. See the text in Tetley, M.C.C., 3 Ed., 1988 at pp. 1208-1210.

HNS Convention 1996 - The International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, adopted at London, May 3, 1996 (not yet in force). See IMO (*infra*); Tetley, M.L.C., 2 Ed., 1998 at pp. 142-143.

Himalaya clause [Fr.: "clause Himalaya"] [Span.: "cláusula Himalaya"] [Ital.: "clausola Himalaya"] [Gr.: "Himalaya-Klausel"] - A clause in a bill of lading (*supra*) extending to specified third parties, such as servants or agents of the carrier (*supra*) and independent contractors (e.g. stevedores and terminal operators) employed by the carrier, the benefit of the exemptions, limitations, defences and immunities of the carrier under the bill of lading. The name is derived from the decision of the English Court of Appeal in *Adler v. Dickson (The Himalaya)* [1955] 1 Q.B. 158, [1954] 2 Lloyd's Rep. 267 (C.A.). (Tetley, M.C.C., 3 Ed., 1988 at pp. 757-779.) The "Himalaya clause" is sometimes combined with a "circular indemnity clause" (see *supra*). The Contracts (Rights of Third Parties) Act 1999, U.K. 1999, c. 31, at sects. 1 and 6(5) to (7), permits a third party to take advantage of a term excluding or limiting liability in a contract for the carriage of goods by sea, thus providing a statutory basis for the Himalaya clause. See <http://tetley.law.mcgill.ca/maritime/himalaya.pdf>.

Hire [Fr.: "loyer" or "loyer d'affrètement"] [Span.: "precio" or "tarifa"] [Ital.: "prezzo di noleggio"] [Gr.: "Mietzins"] - The consideration in bareboat, demise and time charterparties.

Home port doctrine - A principle of the general maritime law whereby a maritime lien existed for the supply of necessaries (*infra*) to a vessel only if the necessaries were supplied away from the vessel's home port. The home port doctrine is still enshrined in French maritime law in respect of necessaries and master's disbursements (*infra*), but has been repealed by statute in the modern maritime law of most common law jurisdictions. See Tetley, M.L.C., 2 Ed., 1998, 552, 580, 596-597, 607, 608; Tetley, *Int'l. M. & A. L.*, 2003 at p. 494.

I.C.C. - The International Chamber of Commerce (ICC) is the world business organization. It is formed of national associations and has its head office in Paris. It makes rules that govern the conduct of business across borders. Among them are the Incoterms (the latest being Incoterms 2000 (*infra*), in force January 1, 2000) and the Uniform Customs and Practice for Documentary Credits (*infra*), the latest (1993)

revision of which came into effect on January 1, 1994. They are known as UCP 500. E-mail: webmaster@iccwbo.org ; web site: <http://www.iccwbo.org/>.

I.C.S. - The Institute of Chartered Shipbrokers - Website: <http://www.ics.org.uk/>. See also International Chamber of Shipping (ICS), *infra*.

Identity of carrier clause [Fr.: "clause d'identité du transporteur"] [Span.: "cláusula de identificación del porteador"] [Ital.: "clausola d'identificazione del vettore"] [Gr.: "Identity-of-carrier-Klausel"] - A clause in a bill of lading (*supra*) providing that the shipowner is the carrier (*supra*). See Tetley, M.C.C., 3 ed., 1988 at pp. 258-259; Tetley, Int'l. M. & A. L., 2003 at p. 104.

I.F.F. - Institute of Freight Forwarders - The former name of the British International Freight Association, *supra*.

IMO (before 1982 it was named IMCO)- International Maritime Organization (IMO), formerly Inter-governmental Maritime Consultative Organization (IMCO), is a specialized agency of the United Nations ; e-mail: info@imo.org web site: <http://www.imo.org/>. IMO was instrumental in the preparation of many international conventions and protocols.

Immunity of State-owned Ships Convention 1926 - The International Convention for the Unification of Certain Rules Concerning the Immunity of State-owned Ships, adopted at Brussels on April 10, 1926 and in force as of January 8, 1937, and its Additional Protocol of May 24, 1934, in force as of January 8, 1937. See Tetley, M.L.C., 2 Ed., 1998 at pp. 1163-1165.

In personam (against the person) - A type of legal proceedings directed against the defendant personally (e.g. an action for breach of contract, the commission of a tort or delict or the possession of property). Where an action in personam is successful, the judgment may be enforced against all of the defendant's assets, real and personal, moveable and immovable. See Tetley, M.L.C., 2 Ed., 1998 at pp. 958-985. The jurisdiction of a court to try actions in personam is referred to as the court's in personam jurisdiction. See Tetley, Int'l. C. of L., 1994 at p. 795; Tetley, Int'l. M. & A. L., 2003 at pp. 404-408. In the U.K., Admiralty claims formerly known as "claims in personam" under the Civil Procedure Rules 1998 (S.I. 1998/3132), in force April 26, 1999, are now governed, as of March 25, 2002, by Practice Direction 61 (Admiralty Claims), paras. 12.1 to 12.6 (Other Claims) and such claims proceed in accordance with Part 58 (Commercial Court) (see para. 12.2). The relevant claim form must be in Form ADM1A (see para. 12.3).

In rem (against the thing) - A type of legal proceedings, taken in an admiralty court in a common law jurisdiction, against the ship (and sometimes against cargo and/or freight) (the res) as defendant, in respect of particular types of maritime claims (e.g. to enforce a claim secured by a maritime lien (*infra*) or a statutory right in rem (*infra*)). The taking of an action in rem is generally accompanied by the arrest (*supra*) of the res, which provides pre-judgment security for the claim and confirms the admiralty court's in rem jurisdiction. Where an action in rem is successful, the judgment may be enforced against the res by way of judicial sale. If the defendant files an appearance in the action in rem, however, the action proceeds as a combined action in personam and

in rem, and an eventual judgment in the plaintiff's favour may then be executed against both the res and the defendant's other personal assets. On in rem jurisdiction, see Tetley, *Int'l. C. of L.*, 1994 at p. 795; Tetley, *Int'l. M. & A. L.*, 2003 at pp. 404-408. In the United Kingdom, an action in rem is now termed a "claim in rem". See paras. 3.1 to 3.5 of Practice Direction 61 (Admiralty Claims), promulgated under Part 61 (Admiralty Claims) at Rule 61.3 of the Civil Procedure Rules 1998 (S.I. 1998/3132), in force April 26, 1999, as amended with effect from March 25, 2002.

The action in rem does not exist in civilian jurisdictions, but in such jurisdictions, the action in personam (supra) may be accompanied by the saisie conservatoire (conservatory attachment) (infra) of the ship, cargo or freight, which, like the action in rem, provides pre-judgment security for the claim. See Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 958-985; Tetley, *Int'l M. & A. L.*, 2003 at p. 406.

Inchmaree Clause - A clause in the hull policy extending the perils to include negligence of master and crew and other additional perils. See Tetley, *Int'l. M. & A. L.*, 2003 at p. 603 footnote 138.

Incoterms 2000 - The Incoterms, the internationally accepted and employed terms for contracts of sale, were first published by the International Chamber of Commerce (ICC) (supra) in 1936. They were revised in 1953 and reprinted in 1974, including two new terms that had been adopted in 1967, and again in 1976, 1980 and 1990. The latest revision, known as "Incoterms 2000", came into force on January 1, 2000. It modifies some of the existing terms in an updated format for ease of use, providing traders, lawyers, transport officials and insurers with a modern text reflecting the latest changes in the trading environment. See the ICC website:<http://www.iccwbo.org/>.

Institute of International Container Lessors (I.I.C.L.) The trade association for the international container and chassis leasing industry and leading publisher of inspection and repair publications for container and chassis. E-mail: info@IICL.org; web site: <http://www.iicl.org/>.

Institute of Marine Law - A specialized institute within the University of Cape Town, South Africa, which provides teaching and research facilities in regard to the public law of the sea. Website: <http://web.uct.ac.za/depts/pbl/imel/intro.htm>. See also "Shipping Law Unit" and "University of Cape Town".

Institute of Maritime Law - A specialized institute within the Faculty of Law of the University of Southampton, which provides maritime law courses for practitioners and students. E-mail: mailto:%20iml@soton.ac.uk; web site: <http://www.soton.ac.uk/~iml/>.

Intermediate (innominate) term - A term of a contract which cannot easily be classified as either a condition (a contractual term the breach of which deprives the aggrieved party of substantially the entire benefit which it was intended he should obtain from the contract, thus permitting him to sue for the annulment of the contract and/or damages) or a warranty (breach of which is of a less serious nature, sounding only in damages). An intermediate (innominate) term, by comparison, is a term which (if the parties have not stipulated that is either a condition or a warranty) the court

must examine on a case-by-case basis, evaluating the nature and consequences of its breach in the light of the contract as a whole, in order to decide whether it should be treated as a condition or as a warranty. See *Hong Kong Fir Shipping Co., Ltd. v. Kawasaki Kisen Kaisha, Ltd.* [1962] 1 All E.R. 474 (C.A.). See also *Bunge Corp. v. Tradax Export S.A.* [1981] 2 Lloyd's Rep. 1 (H.L.), where the existence of intermediate (innominate) terms was acknowledged, but where it was also held that in mercantile contracts where "time is of the essence", the breach by one party of a time-related provision, which precludes the other party from performing his bargain under the contract, should normally be treated as the breach of a condition, rather than as the breach of a warranty.

International Association of Classification Societies (IACS) - Website: <http://www.iacs.org.uk/>.

International Association of Dry Cargo Shipowners (INTERCARGO) - E-mail: info@intercargo.org. Web site: <http://www.intercargo.org/>.

International Association of European General Average Adjusters - c/o Henry Voet-Genicot, Mechelsesteenweg 203 B6, B-2018, Antwerpen, Belgium.

International Association of Independent Tanker Owners (INTERTANKO) - Website: <http://www.intertanko.com/>.

International Association of Ports and Harbours (IAPH) - Secretary General: Satoshi Inoue. E-mail: <mailto:info@iaphworldports.org>; website: <http://www.iaphworldports.org/>. European representative: Peter van der Kluit. E-mail: pvdkluit@msr-r.nl.

International Bar Association (IBA) - Website: <http://www.ibanet.org/>.

International Cargo Handling Co-ordination Association (ICHCA) - Website: <http://www.ichcainternational.co.uk/>.

International Chamber of Shipping (ICS) - Website: <http://www.marisec.org/>.

International Congress of Maritime Arbitrators (ICMA) - A convention of maritime arbitrators held every second year in different parts of the world since 1972, also attended by many judges, lawyers, and shipping officials concerned with maritime arbitration (supra).

International Federation of Shipmasters' Associations (IFSMA) – Web site: <http://www.ifsma.org/>.

International Group of P. & I. Clubs - e-mail: international.group@btinternet.com.

International Law Association (I.L.A.) - Website: <http://www.ila-hq.org/>.

International Maritime Mobile Satellite Organization (INMARSAT) - E-mail: customer_care@inmarsat.com; website: <http://www.inmarsat.com/>. IMSO

(International Mobile Satellite Organization) is the inter-governmental organization (IGO) formed to oversee INMARSAT's public safety and services obligations since becoming a private company (Inmarsat Ltd.) on April 15, 1999.

International Maritime Dangerous Goods Code (IMDG Code) - The International Maritime Dangerous Goods Code, adopted by the International Maritime Organization. See consolidated edition 1994, in four volumes with one Supplement.

International Maritime Law Institute - A specialized institute established under the auspices of the International Maritime Organization (IMO), providing maritime law courses to practitioners and students in Malta. Director: David J. Attard. E-mail: info@imli.org; website: <http://www.imli.org/>.

International Maritime Lecturers Association (I.M.L.A.) - c/o The World Maritime University, P.O. Box 500 S 201 24, Malmo, Sweden. See World Maritime University, *infra*.

International Maritime Pilots' Association (I.M.P.A.) - E-mail: <mailto:sec@impahq.org>; Website: <http://www.impahq.org/>.

International Navigation Association (PIANC-AIPCN) -A world-wide non-political and non-profit making technical and scientific organization of private individuals, corporations and national governments, formerly known as the Permanent International Association of Navigation Congresses (PIANC) (*infra*). Website: <http://www.pianc-aipcn.org/>.

International Oil Pollution Compensation Funds (IOPC Funds) - E-Mail: info@iopcfund.org. Website: <http://www.iopcfund.org/>. See Tetley, *M.L.C.*, 2 Ed., 1998 at p. 138; Tetley, *Int'l. M. & A. L.*, 2003 at pp. 453-454.

International Safety Management Code (ISM Code) - The International Management Code for the Safe Operation of Ships and for Pollution Prevention was originally the annex to Resolution No. A.741(18), adopted by the IMO Assembly at its Eighteenth Session on November 4, 1993, but has now become Annex IX to the Safety of Life at Sea (SOLAS) Convention, *infra*. See text published by IMO, London, 1994. See Tetley, *Int'l. M. & A. L.*, 2003 at pp. 465-467.

International Salvage Union (I.S.U.) - E-mail: associationservices1@compuserve.com; Website: <http://www.marine-salvage.com/>.

International Ship Suppliers' Association (I.S.S.A.) - Website: <http://www.shipsupply.org/>. ISSA is the international association representing nearly 2,000 ship suppliers throughout the world. 38 national associations of ship suppliers are full ISSA members and there are associate members in 44 other countries where no national association exists.

International Support Vessel Owners' Association (I.S.O.A.) - E-mail: <mailto:isoa@marisec.org>. Website: <http://www.marisec.org/isoa/>

International Tanker Owners Pollution Federation (ITOPF) - E-mail: central@itopf.com; web site: <http://www.itopf.com/>

International Transport Workers' Federation (I.T.F.) - The ITF is a global organization of more than 594 transport trade unions in 136 countries, representing around 5 million workers. It is one of 10 Global Union Federations (formerly International Trade Secretariats) allied to the International Confederation of Free Trade Unions (ICTFU). Founded in 1896, it organizes workers in seafaring, docks, railways, road transport, civil aviation, inland navigation, fisheries, and civil aviation and tourism. It represents the interests of transport workers at world level through its input into global solidarity, promotes independent and democratic trade unionism and defends human and trade union rights. Website: <http://www.itf.org.uk/>.

International Underwriting Association of London (I.U.A.) - An association of international insurers and reinsurers created in 1998 by the merger of the Institute of London Underwriters (I.L.U.) and the London International Insurance and Reinsurance Market Association (LIRMA). Website: <http://www.iaa.co.uk/>.

International Union of Marine Insurance (IUMI) - The international association of marine insurers (hull, cargo, liability, energy & offshore) has its head office in Zurich, Switzerland. E-mail: mail@iumi.com; website: <http://www.iumi.com/>.

Intervention Convention 1969 - The International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, adopted at Brussels, November 29, 1969 and in force May 6, 1975. See also the Protocol to the International Convention relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, adopted at London, November 2, 1973, in force March 30, 1983. See IMO (*supra*).

Jason clause / New Jason clause - A clause in American bills of lading which permits the carrier (*supra*) to collect general average contributions (*supra*) from cargo owners in situations where the carrier is at fault, but is not responsible for the cargo loss or damage under the Harter Act 1893 (*supra*) or COGSA (*supra*). The name originates in the U.S. Supreme Court's decision in *The Jason* 225 U.S. 32 (1912), where the clause was upheld under the Harter Act. The clause evolved into the "New Jason clause" with the advent of COGSA in 1936. (See Tetley, *M.C.C.*, 3 Ed., 1988 at pp. 722-723; Tetley, *Int'l. M. & A. L.*, 2003 at p. 371).

Joint liability - Two or more debtors who are obligated to the same creditor for the same obligation are "jointly liable" where they may only be compelled to perform the obligation separately and only up to their respective shares of the debt. See Québec Civil Code 1994, art. 1518; Louisiana Civil Code, art. 1788.

Joint and several liability - Two or more debtors who are obligated to the same creditor for the same obligation are "jointly and severally liable" where any one of them may be compelled to perform the whole obligation and where performance by one of them releases the other debtors towards the creditor. See French Civil Code, art. 1200; Québec Civil Code 1994, art. 1523. In the civil law, a joint and several obligation is referred to as a "solidary" obligation (in French, "une obligation solidaire") and joint and several liability is termed "solidarity" (in French,

"solidarité"). See French Civil Code, art. 1200 and 1201; Québec Civil Code 1994, arts. 1523 and 1525; Louisiana Civil Code, arts. 1794 and 1796.

Jurisdiction - A term referring to the nature and extent of the legal authority bestowed upon a legislature to enact laws (legislative jurisdiction) or of courts to hear and determine actions and other legal proceedings (judicial jurisdiction), as determined by international conventions or national laws. A court exercises its "jurisdiction" (i.e. decision-making authority, or "competence") over proceedings of certain types ("subject-matter jurisdiction", or "jurisdiction *ratione materiae*") and over a defined territory ("territorial jurisdiction", or "jurisdiction *ratione loci*"). Its authority to adjudicate may also be limited to certain persons or to certain maximum amounts of money in dispute. "Jurisdiction" may also refer to one or more States or political subdivisions governed by a particular legal system (e.g. "common law jurisdictions", "civilian jurisdictions"). The term may also refer to the type of legal proceedings whereby a court assumes and exercises its decision-making function (e.g. the court's "in personam" or "in rem" jurisdiction (*supra*)). "Jurisdiction" may be used with respect to a particular type of subject-matter jurisdiction exercised by a court (e.g. the "Admiralty jurisdiction" of the Court of Queen's Bench), as well as with respect to the geographic limits of the territorial jurisdiction of the court (e.g. service "out of the jurisdiction"; assets "within the jurisdiction").

Jurisdiction clause - A clause in a bill of lading (*supra*), a waybill (*supra*) or a charterparty (*supra*), providing that any dispute arising under the contract evidenced by that document shall be tried before the competent court of a particular State (e.g. "the courts of France") or by a specific court within that State (e.g. the "Tribunal de Commerce de Rouen"). See Tetley, *M.C.C.*, 3 Ed., 1988 at pp. 781-820; Tetley, *Int'l. M. & A. L.*, 2003 at p. 107.

Law of the flag - The conflict of laws rule, still reflected in many national laws and international conventions, which subjected various maritime law matters to the law of the flag or port of registry of the ship. The concept bore the imprint of nineteenth-century theories of the law of the citizen, espoused by Napoleon Bonaparte and Mancini. Today, the emergence of flags of convenience, double-flagging, flagging out, and the increasing insistence in many international conventions on a "genuine link" between the flag and the ship, have reduced the importance of the law of the flag to merely one contact, or connecting factor, among others in maritime conflicts of law. See Tetley, *Int'l C. of L.*, 1994 at pp. 175-224.

Law of the Sea Convention 1982 (LOS 1982) - The United Nations Law of the Sea Convention, adopted at Montego Bay, Jamaica, December 10., 1982 and in force November 16, 1994. This Convention was the product of nine years of work by the Third United Nations Conference on the Law of the Sea (1973-1982). See Tetley *M.L.C.*, 2 Ed., 1998 at p. 141; Tetley, *Int'l. M. & A. L.*, 2003 at pp. 633-644.

Laytime [Fr.: "staries" or "délai de staries"] [Ital.: "stallie"] [Gr.: "Liegezeit"] - In a voyage charterparty (*supra*), the period of time agreed between the parties during which the shipowner will make and keep the vessel available to the voyage charterer for loading or discharging without payment additional to the freight (*supra*). See Tetley, *Int'l. M. & A. L.*, 2003 at p. 135 footnote 67.

L.C.L. - (less than a container load). Here the carrier (supra) takes the goods from two or more shippers (infra), packs them into the container and seals it.

Leader - An underwriter whose judgment is so respected by other underwriters that they will follow his lead in accepting a risk presented by the assured's broker. His syndicate or company will be the first to initial the slip presented by the assured's broker.

Letter of guarantee [Fr.: "lettre de garantie"] [Span.: "carta de garantía del consignatario"] [Ital.: "lettera di garanzia all'arrivo"] [Gr.: "Garantiebrief"] - A written undertaking, usually provided by a bank, promising to hold the carrier (supra) harmless, up to a certain sum, for claims that may arise from the delivery of goods to a particular person who is unable to surrender the original bills of lading in return for the goods. See Tetley, M.C.C., 3 Ed., 1988 at p. 822.

Letter of indemnity [Fr.: "lettre d'indemnité"] [Span.: "carta de garantía del cargador"] [Ital.: "lettera di manleva" or "lettera di garanzia alla partenza"] [Gr.: "Indemnitätsbrief"] - A written undertaking by a shipper (infra) to indemnify a carrier (supra) for any liability which the carrier may incur for having issued a clean bill of lading (supra) when, in fact, the goods received were not as stated on the bill of lading (supra). Such a letter is usually a central document in a fraud, whereby the shipper and carrier knowingly misrepresent to third parties the actual order and condition of the goods at the time of shipment or the bad order of the packing, or whereby they issue duplicate bills of lading to replace lost or stolen originals. Letters of indemnity should not be condoned by courts and are generally held ineffective as against third parties. See Tetley, M.C.C., 3 Ed., 1988 at pp. 821-837; Tetley, Int'l. M. & A. L., 2003 at p. 73; Hamburg Rules (supra) art 17(2) and (3) (referring to letters of indemnity as "letters of guarantee").

Letter of undertaking (LOU) [Fr.: "lettre d'engagement"] [Ital.: "lettera di impegno"] [Gr.: "Schuldübernahme"] - A written undertaking provided by a P. & I. club (see P. & I. insurance, infra) to secure the release of a ship belonging to one of the Club's shipowning members from arrest or attachment, or to prevent such arrest or attachment. The letter provides the seizing creditor with a guarantee that his claim will be satisfied up to the amount specified by the letter. It also usually replaces the ship as security and contains a submission to the jurisdiction of the competent court or arbitral tribunal, as well as an undertaking to accept service on behalf of the shipowners in personam besides in the name of the ship. See Tetley, M.L.C., 2 Ed., 1998 at pp. 1111-1118.

"lex causae" - The law applicable to the case.

"lex fori" - The law of the forum.

"lex loci contractus" - The law of the place of conclusion of the contracting.

"lex loci delicti" - The law of the place of the tort/delict.

"lex loci solutionis" - The law of the place of performance of the contract.

Limitation Convention 1957 - The International Convention Relating to the Limitation of the Liability of Owners of Seagoing Ships, adopted at Brussels on October 10, 1957 and in force as of May 31, 1968. See also the Protocol, adopted at Brussels on December 21, 1979 and in force as of October 6, 1984. See CMI (supra).

Limitation Convention 1976 - Convention on Limitation of Liability for Maritime Claims, adopted at London on November 19, 1976 and in force as of December 1, 1986. See also the Protocol, adopted at Geneva on May 3, 1996 (not yet in force). See IMO (supra).

Limitation fund [Fr.: "fonds de limitation"] [Span.: "fondo de limitación"] [Ital.: "fondo di limitazione"] [Gr.: Haftungsbegrenzungsfond"] - The fund which is constituted in court by the party seeking to limit its liability under the Limitation Conventions 1957 (art. 2) or 1976 (art. 11) (supra). Once constituted, the limitation fund is available only to pay claims subject to limitation, so that other claims must be asserted separately, and claimants against the fund are barred from proceeding against other assets of the defendant. The fund is constituted by the deposit with the court of the sum or approved security, as determined under the relevant Convention, for the benefit of all claimants. The constitution of the fund results in a stay of proceedings in any actions already begun in respect of the casualty concerned, and in the filing of all claims relating to the casualty in the limitation proceedings, in accordance with the principle of "concursum" (supra). At the conclusion of the limitation proceedings, the fund is distributed in proportion to the "established claims". See Tetley, *Int'l. M. & A. L.*, 2003 at pp. 300-311.

Limitation of shipowners' liability - The ancient right of shipowners, later extended to charterers, managers, salvors and insurers of ships, to limit their liability for certain maritime claims, either to a sum representing the value of the vessel and pending freight after the casualty, or to a sum determined by the tonnage of the vessel, depending upon the jurisdiction concerned and the applicable limitation convention or national law. See Tetley, *Int'l. C. of L.*, 1994, at pp. 505-531; Tetley, *Int'l. M. & A. L.*, 2003, Chap. 7, at pp. 267-316.

Liner [Fr.: "navire de ligne"] [Span.: "buque de línea"] [Ital.: "nave di linea"] [Gr.: "Linienschiff"] - A vessel habitually employed on a regular schedule and loading and discharging at specified ports.

Lisbon Rules 1987 [Fr.: "Règles de Lisbonne 1987"] [Span.: "Reglas de Lisboa 1987"] [Ital.: "Regole di Lisbona 1987"] [Gr.: "Lissabonner Regeln 1987"] - A set of rules on the assessment of damages in ship collisions (supra), prepared by the CMI and adopted at Lisbon in 1987. The Rules do not have the force of law, but are intended rather as guidelines for judges, arbitrators, insurers, average adjusters and others concerned with evaluating collision damages. They may also be chosen by the parties to a collision dispute, after it arises, to govern damage assessment. See text at (1987) 18 *JMLC* 577-582, with commentary by J. Warot at pp. 583-587. See also Tetley, *Int'l. M. & A. L.*, 2003 at p. 259.

Lloyd's List - A daily newspaper published in London, England, and also available on the Internet, providing information on world shipping, insurance, energy and

logistics markets. E-mail: mailto:lloydslist@informa.com; website: <http://www.lloydslist.com/>.

Lloyd's Register of Shipping - A parent organization which is the world's leading classification society. The Register of Ships contains details of some 83,000 merchant ships from around the world. For publications, contact Marine Information Publishing Group. E-mail: mipg@lr.org. Web site: <http://www.lr.org/>.

Lloyd's Rep. and Ll. L. Rep. - Lloyd's List Law Reports (since 1950 the title has been Lloyd's Reports.) They are the leading maritime law reports of Great Britain, published by LLP Professional Publishing. An example of the citation up to 1950 is: (1950) 84 Ll. L. Rep. 123 and thereafter is: [1970] 1 Lloyd's Rep. 123. Website: <http://lloydslawreports.com>

Lloyd's Standard Form of Salvage Agreement - See LOF 2000 (infra).

Load lines [Fr.: "lignes de charge"] [Span.: "líneas de carga"] [Ital.: "linee di massimo carico" or "marche di bordo libero"] [Gr.: "Ladelinie"] - Lines painted on the side of a ship, indicating the maximum depth to which the vessel may safely be loaded. See also the International Convention on Load Lines 1966, in force July 21, 1968 (IMO, supra). See also "Plimsoll line" (infra).

LOF 2000 (Lloyd's Standard Form of Salvage Agreement)- A form of salvage contract approved and published by the Council of Lloyd's to replace, as of September 1, 2000, the previous Lloyd's Standard Form Salvage Agreement (LOF 1995). The acronym "LOF" derives from the former name of the Agreement ("Lloyd's Open Form"). LOF 2000 provides for salvage services to be rendered on the principle of "no cure - no pay" (infra), subject, however, to the provisions of the Salvage Convention 1989 (infra) relating to special compensation (infra) and to the SCOPIC Clause (infra). See Tetley, Int'l. M. & A. L., 2003 at pp. 327-328.

Log (ship's log) [Fr.: "journal de bord" or "livre de bord"] [Span.: "diario de navegación"] [Ital.: "giornale di bordo"] [Gr.: "Logbuch"] - A record book carried aboard a ship in which all significant events relating to the journey are recorded by the ship's officers authorized to make such entries. A ship may have aboard more than one log, including an "official" log, an engine room log, a radio log, a "rough" log, etc. The log is at time prima facie (infra) evidence in a maritime dispute. See Cour de Cassation, July 2, 1996, DMF 1996, 1145. note P. Delebecque. The modification of or failure to produce logs is regarded by courts with suspicion. See Old Colony Ins. Co. v. S.S. Southern Star 280 F. Supp. 189 at p. 191, 1967 AMC 1641 at p. 1644 (D. Ore. 1967); International Produce, Inc. v. Frances Salman 1975 AMC 1521 at p. 1540, [1975] 2 Lloyd's Rep. 355 at p. 365 (S.D. N.Y. 1975); Tetley, M.C.C., 3 Ed., 1988 at pp. 140-141 ("Fourth Principle of Proof").

London Court of International Arbitration - See "LCIA" (supra).

London Maritime Arbitrators' Association (LMAA) - A major association of maritime arbitrators. Website: <http://www.lmaa.org.uk/>.

London Shipping Law Centre - A specialized institute within the Faculty of Laws of University College London, which provides maritime law courses to practitioners and students. It is an industry-based forum for education, discussion, interaction and development of professional links. Address: The London Shipping Law Centre, Dr. Aleka Mandaraka-Sheppard, Founding Director, University College London, Bentham House, Endsleigh Gardens, London WC1H 0EG, England. Tel.: +44 (0)20 7679 1512 or 1434; fax: +44 (0)20 7679 1512. E-mail: shipping@ucl.ac.uk; web site: <http://www.london-shipping-law.com/>. Prospective Master's students can contact Marion Mark at the Graduate Office, Faculty of Laws, Bentham House, Endsleigh Gardens, London WC1H 0EG, England. E-mail: m.mark@ucl.ac.uk.

Long form bill of lading - See "Bills of Lading & Related Documents" (supra).

L.N.G. - Liquefied natural gas carrier. A specially constructed ship designed to carry natural gas at low temperatures and under pressure.

LO - LO - Lift On - Lift Off is the conventional container ship as opposed to the Ro-Ro (Roll On - Roll Off).

Lugano Convention 1988 - The Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, adopted at Lugano on September 16, 1988 (O.J.E.C. 1988 L 391/1) and in force as of May 1, 1992, establishes uniform rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters as between the States of the European Union (supra) and those of E.F.T.A. (the European Free Trade Association, made up of Iceland, Liechtenstein, Norway, and Switzerland). See W. Tetley, *Int'l. C. of L.*, 1994 at pp. 809 and 856-858. N.B.: Austria, Finland and Sweden are no longer members of E.F.T.A., having joined the European Union.

Maintenance and cure - Expenses incurred for food and lodging during recovery (maintenance) and necessary medical services (cure) for a seaman suffering from an illness or injury sustained in the service of the ship. The expenses arise in contract or in virtue of the general maritime law and they are payable for a reasonable period of time, depending on the circumstances of each case until "maximum cure" is achieved. See Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 304-308; Tetley, *Int'l. M. & A. L.*, 2003 at pp. 560-561.

Mandatory rules - In the conflict of laws, mandatory rules are compulsorily applicable rules of law, found in applicable international conventions or national statutes, which cannot be contracted out of. In some cases, they may also be rules which apply regardless of the law otherwise applicable under the forum's rules of private international law. Mandatory rules frequently give effect to social and economic policies deemed by the country concerned to be of overriding importance, particularly in fields such as consumer protection, employment, monetary and fiscal policy. In maritime law, the Hague/Visby and Hamburg Rules (supra) on the carriage of goods by sea, and various national statutes making those rules compulsorily applicable, are examples of mandatory rules. The Rome Convention 1980 (infra) recognizes mandatory rules of the sole connected law (art. 3(3)), of a closely connected law (art. 7(1)) and of the forum (art. 7(2)), as well as specific mandatory rules on consumer contracts (art. 5(2)), employment contracts (art. 6(1)) and contracts

concerning immovable property (art. 9(6)). See Tetley, *Int'l C. of L.*, 1994 at pp. 101-102, 124-131 and 166-170.

Mareva injunction - An injunction issued by the courts of the United Kingdom and other British Commonwealth countries, on the motion of a plaintiff at the beginning of or during a suit, enjoining the defendant from removing from the jurisdiction, and/or from dealing with, specified assets (real or personal, moveable or immovable), in cases where it appears to the court that without the grant of such an injunction, the plaintiff's recovery on his claim will be jeopardized. The injunction was first granted by Lord Denning M.R. in 1975 in *Nippon Yusen Kaisha v. Karageorgis* [1975] 2 Lloyd's Rep. 137 (C.A.), and the name "Mareva" derives from Lord Denning's second decision issuing such an injunction, in *Mareva Cia. Naviera S.A. v. International Bulkcarriers (The Mareva)* [1975] 2 Lloyd's Rep. 509 (C.A.). In the United Kingdom, the Mareva injunction is now provided for by legislation, at sect. 37(3) of the Supreme Court Act 1981 (U.K. 1981 c. 54). See Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 987-997, 1001-1006; Tetley, *Int'l. M. & A. L.*, 2003 at pp. 409-411. In the United Kingdom, the Mareva injunction is now known as a "freezing injunction" (or "freezing order) under the Civil Procedure Rules 1998 (S.I. 1998/3132), in force April 26, 1999, and such an injunction may be granted either to restrain the removal from England and Wales of assets located in that jurisdiction or to restrain dealing with any assets worldwide, pursuant to the Civil Procedure Rules 1998, Part 25 (Interim Remedies), at Rule 25.1(1)(f) and Practice Direction Part 25 (Interim Injunctions) at para. 6. Examples of both types of freezing injunction are provided in the annexes to that Practice Direction. The Mareva injunction does not exist in the United States. See *Grupo Mexicano de Desarrollo v. Alliance Bond Fund, Inc.* 527 U.S. 308, 1999 AMC 1963 (U.S. Supr. Ct. 1999).

Marine Insurance - The original form of insurance in Western society, pre-dating all insurance ashore, marine insurance was developed by Lombard merchants in the city states of northern Italy in the twelfth century, whence it gradually spread north to the cities of the Hanseatic League, and later to London, where King Henry IV of England (1399-1413) granted the "Lombard merchants" a sector of the City of London in which to live and practise their trade, which came to be known as "Lombard Street". In succeeding centuries, London emerged as the major world centre of the marine insurance and reinsurance markets, a position which it continues to occupy, being the seat of both Lloyd's and the International Underwriting Association of London (formerly the Institute of London Underwriters).

Marine insurance was originally an aspect of the medieval European, transnational *lex mercatoria*, or Law Merchant, rooted in the civil law, whose usages were eventually codified in the ordinances of various maritime commercial centres on the Continent and later in the *Ordonnance de la Marine* (1681). In England, thanks largely to the efforts of Lord Mansfield, Chief Justice of King's Bench from 1756 to 1788, these Continental sources of marine insurance law were frequently cited and came slowly to be incorporated into the common law of England. In 1906, the bulk of this common law was codified in the U.K.'s Marine Insurance Act, 1906, 6 Edw VII, c. 41 (*infra*), in force January 1, 1907. The 1906 enactment, a masterpiece of legislative drafting attributable to Sir Mackenzie Chalmers, has been copied, almost verbatim, by various Commonwealth jurisdictions (e.g. Australia and Canada) and even influences American judges in rendering decisions on marine insurance matters, although the

United States has no statute on the subject. The historic *lex mercatoria* continues to apply to contracts of marine insurance in England the Commonwealth, however, thanks to provisions such as sect. 91(2) of the U.K.'s Marine Insurance Act, 1906, which perpetuates the "... rules of the common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act". See Tetley, "The General Maritime law - The *Lex Maritima*" (1994) 20 *Syracuse J. Int'l L. & Comm.* 105-145 at pp. 129-130; reprinted in [1996] *ETL* 469-505 at pp. 492-493; Tetley, "Maritime Law as Mixed Legal System (With Particular Reference to the Distinctive Nature of American Maritime Law, Which Benefits from Both its Civil Law and Common Law Heritages)" (1999) 23 *Tul. Mar. L.J.* 317-350 at p. 336 and at <http://tetley.law.mcgill.ca/maritime/marlawmix.htm>.

By sect. 1 of the U.K.'s Marine Insurance Act, 1906, a contract of marine insurance is "... a contract whereby the insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure." Definitions given in other statutes and treatises are similar. See Tetley, *Int'l C. of L.*, 1994 at pp. 336-338. The three basic types of marine insurance are hull insurance (on the ship and its machinery), cargo insurance (on cargo) and Protection and Indemnity, or "P. & I." insurance (insurance in respect of third party liability resulting from the operation of the ship). See also marine reinsurance (*infra*). See Tetley, *Int'l. M. & A. L.*, 2003, Chap. 15, at pp.573-622.

Marine Insurance Act, 1906 - (U.K.) 6 Edw. VII, c. 41 - The basic statute on marine insurance, which has been copied almost verbatim in many British Commonwealth countries and which is frequently looked to as authoritative, even by American courts, in marine insurance decisions. See Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 831-840 and *Int'l. M. & A. L.*, 2003 at p. 583, with respect to marine insurance liens.

Marine reinsurance - A contract whereby risks insured under a number of marine insurance contracts are redistributed among one or more reinsurers. Marine reinsurance contracts are often termed "reinsurance treaties". See Tetley, *Int'l C. of L.*, 1994 at pp. 361-362; Tetley, *Int'l. M. & A. L.*, 2003 at pp. 619-620.

Maritime law - is a complete system of law, both public and private, substantive and procedural, national and international, with its own courts and jurisdiction, which goes back to Rhodian law of 800 B.C. and pre-dates both the civil and common laws. Its more modern origins were civilian in nature, as first seen in the *Rôles of Oléron* of circa 1190 A.D. Maritime law was subsequently greatly influenced and formed by the English Admiralty Court and then later by the common law itself. That maritime law is a complete legal system can be seen from its component parts. For centuries maritime law has had its own law of contract - of sale (of ships), of service (towage), of lease (chartering), of carriage (of goods by sea), of insurance (marine insurance being the precursor of insurance ashore), of agency (ship chandlers), of pledge (bottomry and *respondentia*), of hire (of masters and seamen), of compensation for sickness and personal injury (maintenance and cure) and risk distribution (general average). It is and has been a national and an international law (probably the first private international law). It also has had its own public law and public international law. Maritime law is composed of two main parts - national maritime statutes and international maritime conventions, on the one hand, and the general maritime law (*lex maritima*), on the other. The general maritime law has evolved from various

maritime codes, including Rhodian law (circa 800 B.C.), Roman law, the Rôles of Oléron (circa 1190), the Ordonnance de la Marine (1681), all of which were relied on in Doctors' Commons, the English Admiralty Court, and the maritime courts of Europe. This *lex maritima*, part of the *lex mercatoria*, or "Law Merchant" as it was usually called in England, was the general law applicable in all countries of Western Europe until the fifteenth century, when the gradual emergence of nation states caused national differences to begin creeping into what had been a virtually pan-European maritime law system. Today's general maritime law consists of the common forms, terms, rules, standards and practices of the maritime shipping industry - standard form bills of lading, charterparties, marine insurance policies and sales contracts are good examples of common forms and the accepted meaning of the terms, as well as the York/Antwerp Rules on general average and the Uniform Customs and Practice for Documentary Credits. Much of this contemporary *lex maritima* is to be found in the maritime arbitral awards rendered by arbitral tribunals around the world by a host of institutional and ad hoc arbitral bodies. See Tetley, *Int'l. M. & A. L.*, 2003, Chap. 1, at pp. 1-30.

Maritime lien [Fr.: "privilège maritime"] [Span.: "privilegio marítimo"] [Ital.: "privilegio speciale marittimo"] [Gr.: "Seerechtliches Pfandrecht; Schiffsgläubigerrecht"] - A secured claim against a ship (and sometimes against cargo or bunkers) in respect of services provided to the vessel or damages done by it. A maritime lien is a substantive right in the property of another, derived from the general maritime law (supra) and rooted in the civil law concept of a "privilège". It arises without notice, registration or other formalities, at the time the services are rendered or the damages are done. Unlike a common law possessory lien (infra), it does not depend for its existence on the possession of the res by the creditor. It travels with the ship, so as to encumber the title of subsequent owners or possessors and survives the conventional sale of the vessel. It remains inchoate from the moment it attaches, until it is enforced by an action in rem, when it relates back to the time it first attached. In the U.K. and British Commonwealth countries, it ranks after special legislative rights (infra), the costs of arrest and sale and custodia legis expenses (supra) and before ship mortgages (infra) and statutory rights in rem (infra).

In the U.K. and Commonwealth, maritime liens are restricted to seamen's and master's wages, master's disbursements (infra), salvage (infra), damage, bottomry (supra) and respondentia (infra) (the last two being obsolete). In the U.S. and civilian jurisdictions, maritime liens are more numerous, including, notably, contract maritime liens for the supply of necessaries (infra) and liens for general average contributions (supra) (which in Anglo/Commonwealth law are secured only by statutory rights in rem (infra)). American law also distinguishes between "preferred maritime liens" (infra) and other maritime liens. American and civilian ranking of maritime liens also differs from that applied in the U.K. and Commonwealth. See Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 56-60 (generally) and re ranking at pp. 872-876 (U.S.), 884-890 (U.K.), 892-897 (Canada) and 903-905 (France); Tetley, *Int'l. M. & A. L.*, 2003 at pp. 469-514 (generally) and re ranking at pp. 498-505.

Maritime liens are expunged by the extinction of the debt (e.g. by payment), by the loss or destruction of the res, by prescription, laches (supra), waiver or judicial sale.

Maritime Liens and Mortgages Convention 1926 - The International Convention for the Unification of Certain Rules of Law Relating to Maritime Liens and Mortgages, adopted at Brussels on April 10, 1926 and in force as of June 2, 1931. See text in Tetley, M.L.C., 2 Ed., 1998, Appendix A at pp. 1413-1420; Tetley, Int'l. M. & A. L., 2003 at pp. 498-500.

Maritime Liens and Mortgages Convention 1967 - The International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, adopted at Brussels on May 27, 1967 (not yet in force). See text in Tetley, M.L.C., 2 Ed., 1998, Appendix B at pp. 1421-1428; Tetley, Int'l. M. & A. L., 2003 at pp. 498-500.

Maritime Liens and Mortgages Convention 1993 - The International Convention on Maritime Liens and Mortgages, adopted at Geneva on May 6, 1993 (not yet in force). See text in (1996) 27 JMLC 233-241, with commentary by José María Alcántara, *ibid.* at pp. 219-232, as well as in Tetley, M.L.C., 2 Ed., 1998, Appendix C at pp. 1429-1438; Tetley, Int'l. M. & A. L., 2003 at pp. 498-500.

MARPOL 1973/1978 - The International Convention for the Prevention of Pollution from Ships (MARPOL), adopted at London, November 2, 1973, as amended on February 17, 1978, which came into force on October 2, 1983, except for Annex II (in force April 6, 1987), Annex III (in force July 1, 1992) and Annex V (in force December 31, 1988), together with several amendments (see IMO, *supra*). See Tetley, Int'l. M. & A. L., 2003 at p. 449.

Marshalling - The equitable process, whereby the Marshal or the court orders a creditor who has a secured right on more than one res or more than one fund belonging to the debtor or security from two or more debtors for the same debt, to exercise his right on the security in a manner which will be in the best interests of all the creditors. See Tetley, M.L.C., 2 Ed., 1998 at pp. 857-858; Tetley, Int'l. M. & A. L., 2003 at p. 504.

Master's disbursements - Expenditures made by the master and paid for with his own funds or obtained on his personal credit for the purchase of necessities (*infra*) for the ship. A maritime lien is granted for such disbursements, but both the disbursements and the lien are virtually extinct today, because modern means of communication obviate the need for them, and because masters no longer wish to bind their own credit to obtain necessities for the ship. See Tetley, M.L.C., 2 Ed., 1998 at pp. 417-438.

"Most significant connection" - The principle of the conflict of laws according to which the "proper" (i.e. applicable) law of a contract or tort is the law which, on policy grounds, appears to have the most significant connection with the chain of acts and consequences in the particular case at hand. This connection is assessed by consideration of the "connecting factors", or "contacts" (*supra*), linking the legal situation concerned with the different jurisdictions involved. The term was used by J.H.C. Morris in his renowned essays, "Torts in the Conflict of Laws" (1949) 12 *Modern Law Rev.* 248 and "The Proper Law of a Tort" (1951) 64 *Harv. L. Rev.* 881. In contract conflicts, the corresponding term generally used in the United Kingdom and British Commonwealth countries today is "closest and most real connection".

See, e.g., Dicey and Morris, *The Conflict of Laws*, 11 Ed., 1987 at Rule 180. In tort, the term "most significant relationship" has the same meaning. See, e.g., Dicey and Morris, *ibid.* 12 Ed., 1993 at Rule 202. See Tetley, *Int'l. C. of L.*, 1994 at pp. 10-12.

"Most significant relationship" - The principle of the conflict of laws requiring that the "proper" (applicable) law be that of the state having the closest and most real connection with the facts of the case concerned. The term was derived from "most significant connection" as first used by J.H.C. Morris (*supra*) and was introduced into American private international law by Willis M. Reese, the principal author of the Restatement (Second) of the Conflict of Laws, adopted by the American Law Institute in 1969, where it figures prominently. See, e.g. sect. 145 re tort and sect. 188 re contract. See Tetley, *Int'l. C. of L.*, 1994 at pp. 12-13.

Multimodal Carriage [Fr.: "transport multimodal"] [Span.: "transporte multimodal"] [Ital.: "trasporto multimodale"] [Gr.: "Multimodaler Transport"] - Multimodal carriage is the transport of goods by two or more carriers (*supra*) using two or more types of carriage (i.e. truck, rail, sea and air). The Convention on International Multimodal Transport of Goods, 1980 (the Multimodal Convention 1980 (*infra*)) was adopted by the United Nations, but is not in force.

Multimodal Convention 1980 - The United Nations Convention on International Multimodal Transport of Goods, adopted at Geneva on May 24, 1980 (not yet in force). See text in Tetley, *M.C.C.*, 3 Ed., 1988, Appendix A at pp. 1166-1189. See also IMO (*supra*).

Multimodal or combined transport bill of lading - See "Bills of Lading & Related Documents" (*supra*).

Named (nominate) bill of lading - See "Bills of Lading & Related Documents" (*supra*).

Nautical assessors [Fr.: "assesseurs"] [Span.: "asesores náuticos"] [Ital.: "consulenti tecnici nautici"] [Gr.: "Sachverständiger für Schiffsfragen"] - Court-appointed experts (usually on matters of navigation and seamanship) who sit with the judge on the bench during the trial of maritime disputes and give their opinions to the judge, at his request, on matters relating to their field of expertise. Traditionally, nautical assessors have not been subject to examination or cross-examination by the parties to the suit, nor has the judge been required to disclose to the parties the information or opinions provided to him by them. In Canada, however, these traditional rules have been departed from on grounds of respect for natural justice. (*infra*) and expert witnesses may now also be called by the parties, even if they testify on matters within the expertise of the nautical assessors. See *Porto Seguro Companhia de Seguros Gerais v. Belcan S.A.* [1997] 3 S.C.R. 1278, (1997) 153 D.L.R.(4th) 577, (1997) 220 N.R. 321 (Supr. Ct. of Can.). See also "Trinity House" (*infra*).

Necessaries - Goods or materials (and in some cases services) provided to the ship for its operation or maintenance. The specific classes of goods, materials and services which qualify as necessaries vary to some extent from jurisdiction to jurisdiction, but in general necessaries include such items as bunkers, supplies, repairs, towage and stevedoring. In the United States, a maritime lien (*supra*) is granted for necessaries

under 46 U.S. Code sects. 31301(4) and 31342, whereas in the United Kingdom, Canada, and other British Commonwealth jurisdiction, necessities confer only at most a statutory right in rem (*infra*). In France, necessities confer a maritime lien ("privilège maritime") only if they are ordered away by the master within the scope of his authority away from the vessel's home port, for the preservation of the ship or the completion of the voyage. See Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 545-618; Tetley, *Int'l. M. & A. L.*, 2003 at p. 483.

Net tonnage - See "Tons & Tonnage" (*infra*).

New Jason clause - See "Jason clause/New Jason clause" (*supra*).

New York Convention 1958 - The "Convention on the Recognition and Enforcement of Foreign Arbitral Awards" was signed on June 10, 1958 in New York: 21 U.S.T. 2517, 330 U.N.T.S. 3. This convention deals with the recognition of foreign arbitral awards (*supra*) and the enforcement of arbitration clauses (*supra*). See Tetley, *Int'l. C. of L.*, 1994 at pp. 392-393.

No cure no pay - The historic common law principle of salvage (*infra*) which prohibited the payment of any salvage reward where the salvage operations had been unsuccessful. "No cure no pay" contrasts with the historic civilian concept of "assistance" (*supra*), which permitted the payment of salvage remuneration even if no successful result was achieved. See the Salvage Convention 1910 (*infra*) art. 2 and the Salvage Convention 1989 (*infra*) art. 13. See Tetley, *M.L.C.*, 2 Ed., 1998 at p. 338, 339; Tetley, *Int'l. M. & A. L.*, 2003 at pp. 324-325.

Non-separation agreement - An agreement between a carrier and a cargo owner following a general average act (*supra*) which permits the cargo owner to have his goods discharged at the port of refuge and forwarded to destination by the carrier in another ship, thus terminating the common maritime adventure, in return for cargo contributing to future general average loss (*supra*), according to values stated in the agreement, as if the common adventure were continued. See also Bigham clause (*supra*).

Notice of abandonment - In marine insurance, a notice given by the insured to the insurer whereby the insured indicates that he wishes to treat a "constructive total loss" (*supra*) as an "actual total loss" (*supra*) and to abandon the subject-matter insured to the insurer. See the U.K.'s Marine Insurance Act, 1906, sects. 61, 62 and 63. See Tetley, *Int'l. M. & A. L.*, 2003 at pp. 612-613.

Notify Party - A person identified in the bill of lading (*supra*) as the party to be notified by the carrier (*supra*) when the goods arrive at their destination. (Tetley, *M.C.C.*, 3 Ed., 1988 at pp. 199, 206). In France, the "notify party" is frequently regarded as the "destinataire réel" (real consignee (*supra*)) of the goods.

NVOCC (Non-vessel-operating common carrier) - A common carrier that does not operate the vessel by which the ocean transportation is provided, and is a shipper (*infra*) in its relationship with an ocean common carrier. See Tetley, *M.C.C.*, 3 Ed., 1988 at pp. 697-698, citing definition enacted at sect. 3(17) of the U.S. Shipping Act of 1984 (46 U.S. Code App. sect. 1702(17)). The "non-vessel operating common

carrier" and the ocean freight forwarder (*infra*) were combined in the new category of ocean transportation intermediary (*infra*) by the Ocean Shipping Reform Act of 1998, Act of October 14, 1998, Public Law no. 105-258, Title I, sect. 102, 112 Stat. 1902. See 46 U.S.C. Appx. 1702(17)(A) and (B). *Nota bene*: Although "NVOCC", under the above legislation, stands for "non-vessel-operating common carrier", the acronym is also sometimes (erroneously) taken to mean "non-vessel-owning common carrier" (emphasis added). See, for example, American Maritime Cases (AMC, *supra*), which, in its collection of reported decisions from 1923 to the fourth quarter of 2001 on CD-ROM, includes 72 decisions where NVOCC is shown as standing for "non-vessel-operating common carrier" and 11 decisions where the acronym is explained as standing for "non-vessel-owning common carrier". See also freight forwarder (*supra*).

Ocean freight forwarder - A person who dispatches shipments from the United States via a common carrier, books or otherwise arranges space for those shipments on behalf of shippers and processes the documentation or performs related activities incident to those shipments. See the U.S. Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998, Act of October 14, 1998, Public Law no. 105-258, Title I, sect. 102, 112 Stat. 1902, 46 U.S.C. Appx. 1702(17)(A)(i) and (ii). See also freight forwarder (*supra*), NVOCC (*supra*) and ocean transportation intermediary (*infra*).

Ocean through bill of lading - See "Bills of Lading & Related Documents" (*supra*).

Ocean transportation intermediary - A term which in the United States includes both the NVOCC (*supra*) and the ocean freight forwarder (*supra*). See the United States Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998, Act of October 14, 1998, Public Law no. 105-258, Title I, sect. 102, 112 Stat. 1902, 46 U.S.C. Appx. 1702(17).

Oil Companies International Marine Forum (OCIMF) - Website: <http://www.ocimf.com/>.

OPRC 1990 - The International Convention on Oil Pollution Preparedness, Response and Co-operation, adopted at London, November 30, 1990, and in force May 13, 1995. See IMO (*supra*).

Order bill of lading - See "Bills of Lading & Related Documents" (*supra*).

P. & I. Insurance [Fr.: "assurance de protection et d'indemnisation"] [Span.: "seguro de protección y de indemnización"] [Ital.: "assicurazione di protezione e indennizzo"] [Gr.: "Reederhaftpflicht"] - Protection and Indemnity Insurance is mutual insurance which covers shipowners' liability to third parties for damage to their ship or cargo, as well as statutory liabilities such as pollution and wreck removal, but does not cover direct losses to the shipowner's own ship or cargo. Four classes of coverage are included in P. & I.; (i) Protection, which covers a shipowner for claims paid in regard to liability for loss of life, personal injury, damage to fixed or floating objects, wreck removal and one-fault collision (*supra*) in liability; (ii) Indemnity, which reimburses the shipowner for indemnity given to owners of damaged or lost cargo; (iii) War risks; (iv) Freight War Risks.

The bulk of this coverage is provided by: P. & I. Clubs (Protection and Indemnity Clubs) [Fr.: "mutuelles de protection et d'indemnisation"] [Span.: "clubs de protección e indemnización"] [Gr.: "Reedervereinigung für die Versicherung von Schiffsrisiken"]. These have been formed by shipowners to provide financial protection against the extent of liabilities to which they may be subjected. As a result of the "homogeneity" of risks faced by shipowners, P. & I. Clubs operate on a mutual basis where risks are placed in the same portfolio; annual premiums are paid into a common fund according to the degree of exposure to risks,⁽¹⁾ and losses are indemnified out of this common fund. See Tetley, *Int'l. M. & A. L.*, 2003 at pp. 591-592.

1 "... each member is rated for annual contributions in accordance with the hazards he wishes to cover, the deductibles chosen, and the individual risk exposure he represents ... This basic rate, which also includes the member's share of expenditures for the running of the association and for reinsurance premiums, is multiplied by the tonnage entered for the 'policy year' and produces the 'advance call'. After a 'policy year' ends, ... a balance is struck between the income derived from the 'advance call' and the expenditure for claims (paid and outstanding) and management, reinsurance and representatives fees. Excess expenditure over income is collected from members by 'supplementary calls' (one or more) in proportion to their 'advance calls'. If income exceeds expenditure ... a return is made on the same basis."

In other words, the members of the Club share each other's liabilities; the insurer also being the assured. At present, there are less than twenty P. & I. Clubs in operation. The major Clubs have joined the International Group of Protection and Indemnity Clubs (*supra*), forming a pool for reinsurance purposes, as well as giving attention to problems of general concern to members. The major Clubs are in the United Kingdom, Scandinavia, Japan and the United States of America. The International Group Clubs are:

The American Steamship Owners Mutual Protection and Indemnity Association, Inc. [<http://www.american-club.com/>]. E-mail: <mailto:paradise@american-club.nett>.
Assuranceforeningen Skuld (Gjensidig) [<http://www.skuld.com/>]. E-mail: osl@skuld.com.

Britannia Steam Ship Insurance Association Ltd. [<http://www.britanniapandi.com/>].

Gard Services AS, [<http://www.gard.no/>]. E-mail: companymail@gard.no.

Japan Ship Owners' Mutual Protection & Indemnity Association [<http://www.piclub.or.jp/>].

Liverpool and London Steamship Protection & Indemnity Association Limited, c/o Liverpool and London P. & I. Management Limited, Royal Liver Building (1st Floor), Pier Head, Liverpool L3 1HU, England. Tel.: +44 151 236-3777; fax: +44 151 236-0053..

London Steam-Ship Owners' Mutual Insurance Association Limited [<http://www.lssso.com/>]. E-mail: comms@a-bilbrough.co.uk.

North of England P. & I. Association [<http://www.nepia.com/>]. E-mail: general@nepia.com.

Shipowners' Mutual Protection and Indemnity Association. [<http://www.shipownersclub.com>]

Standard Steamship Owners' Protection & Indemnity Association Limited [<http://www.standard-club.com/>].

Steamship Mutual Underwriting Association Limited [<http://www.ssmua.com/>].

Sveriges Angfartygs Assurans Forening (The Swedish Club), P.O. Box 171, S-401, 22 Göteborg, Sweden. Tel.: (46) 31-638400; fax: (46) 31-156711.

United Kingdom Mutual Steam-Ship Assurance Association Limited [<http://www.ukpandi.com/>]. E-mail: john.mcphail@thomasmiller.com.

West of England Ship Owners Mutual Insurance Services Limited [<http://www.westpandi.com/>]. E-mail: mail@westpandi.com.

Paris MOU - Paris Memorandum of Understanding. See Port State Control.

Particular Average [Fr.: "avarie particulière"] [Span.: "avería particular"] [Gr.: "Besondere Havarie"] - A marine insurance term meaning a partial and not total loss suffered by an insured. ("Particular" means percentage and "average" means loss.) See Marine Insurance Act, 1906 (U.K.) sect. 64. See Tetley, *Int'l. M. & A. L.*, 2003 at pp. 609-610.

Penal Jurisdiction Convention 1952 - The International Convention for the Unification of Certain Rules Relating to Penal Jurisdiction in Matters of Collision or Other Incidents of Navigation, adopted at Brussels on May 10, 1952 and in force as of November 20, 1955. See CMI (supra).

Peril of the sea - "Peril of the sea is some catastrophic force or event that would not be expected in the area of the voyage, at that time of year and that could not be reasonably guarded against." See Tetley, *M.C.C.*, 3 Ed., 1988 at p. 432; *M.C.C.*, 4 Ed., 200?, Chap. 18. In this website see <http://tetley.law.mcgill.ca/maritime/ch18.pdf>. See also Tetley, *Int'l M. & A. L.*, 2003 at pp. 85 and 593.

Permanent International Association of Navigation Congresses - See International Navigation Association (PIANC-AIPCN) (supra).

"Place of machinery" or "centre of gravity" - is the contact introduced by Robert Merkin in respect of insurance law, being "the law of the place in which the process of the formation of the agreement primarily took place.". See Tetley, *Int'l C. of L.*, 1994 at p. 357-358.

Pleasure craft [Fr.: "embarcation de plaisance"] [Span.: "embarcación de recreo"] [Ital.: "natante da diporto"] [Gr.: "Vergnügungsschiff"] - A term used to designate any

class of vessel designed for recreational purposes (e.g. yachts, row-boats, motor boats, etc.).

Plimsoll line (Plimsoll mark) - A mark painted on the side of merchant vessels showing the various draught levels to which the ship may be loaded, usually including tropical fresh water, fresh water, tropical sea water, summer sea water, winter sea water and (for vessels under 100 meters in length) winter North Atlantic Ocean water. The Plimsoll line is accompanied by a circle bisected by a horizontal line, indicating the summer freeboard of the ship and letters signifying the name of the ship's classification society (e.g. L R for Lloyd's Register). The Plimsoll line is named for Samuel Plimsoll (1824-1898), an English Member of Parliament who fought for improved safety of British merchant ships. See also "Load lines" (supra).

Poincaré gold franc (p.g.f.) - One p.g.f. is 65.6 milligrams of gold of millesimal fineness 900. It was first defined by the French Law of June 25, 1928 and named after Raymond Poincaré, the French Prime Minister who stabilized the currency of France. The p.g.f. is worth approximately 13 cents Cdn. or 10 cents U.S. approximately.

Pomerene Act - The American Bills of Lading Act of 1916, 49 U.S. Code App. 81-124, recodified in 1994 as 49 U.S. Code sect. 80101 et seq. It controls bills of lading covering common carriage between the United States and foreign countries and inside the country. (See text: Tetley, M.C.C., 3 Ed., 1988 at pp. 1210-1222.)

Port State Control - Port State Control is the system whereby the authorities of a State responsible for marine safety are empowered to inspect vessels entering its ports, even if they do not fly the flag of that State, in order to identify ships not complying with applicable norms, especially with respect to safety. Port State Control is typically governed by an international agreement, such as the Paris Memorandum of Understanding (Paris MOU) of July 1, 1982 (binding most European countries and a few others, including Canada) or the Tokyo MOU of December 2, 1993, in force April 1994 (binding many States in the Asia-Pacific region and also including Canada). Other Port State Control MOU's exist for various other regions of the world, including the Caribbean, the Mediterranean, Latin America, West Africa and the Indian Ocean. These MOU's typically confer powers of detention on the port states party to them in respect of vessels inspected and found wanting in their compliance with national or international standards, such as the I.S.M. Code. See also A.J. Rodriguez & M.C. Hubbard, "The International Safety Management (ISM) Code: A New Level of Uniformity" (1999) 73 Tul. L. Rev. 1585 at pp. 1615-1616, concerning the Vancouver Declaration of 1998 on enforcement of the Code by signatories of the Tokyo and Paris MOU's and also outlining enforcement measures taken by the European Union. The United States, although not party to any Port State Control MOU, nevertheless vigorously enforces the I.S.M. Code through the U.S. Coast Guard by boardings, inspections, detentions and denial of port entry. See Matthew Marshall, "Port State Detentions –what message for insurers?", an unpublished lecture delivered to the Insurance Institute of London, January 12, 1999 at p. 9 (on file with the author); Rodriguez & Hubbard, supra at pp.1613-1615.

Possessory liens - At common law, the right of a bailee to retain property in his possession belonging to another until certain claims of the bailee in possession are satisfied. The common carrier thus had a possessory lien for freight (supra), which

was strictly possessory and was lost when the cargo was delivered unconditionally. This lien was recognized by English admiralty law, as well as the possessory liens of salvors and repairmen. Possessory liens are also recognized in the United States. The civil law equivalent of the possessory lien is the right of retention ("droit de rétention") [Span.: "derecho de retención"] [Ital.: "diritto di ritenzione"]. See Tetley, M.L.C., 2 Ed., 1998 at pp. 363, 646-649, 749-754, 759-770; Tetley, Int'l. M. & A. L., 2003 at pp. 167-168, 495-498.

Preferred maritime lien - A category of maritime lien (supra) under the American Commercial Instruments and Maritime Liens Act (46 U.S. Code sect. 31301(5)), including (contract) maritime liens arising before the filing of a preferred mortgage (infra) on the ship; as well as liens for damage, wages of stevedores employed directly, crew wages, general average (supra) and salvage (infra). (Preferred maritime liens rank after expenses and fees allowed by the court (custodia legis) (supra) and court costs, and before preferred mortgage liens (infra). See 46 U.S. Code sect. 31326(1); Tetley, M.L.C., 2 Ed., 1998 at pp. 873-875 (re ranking); Tetley, Int'l. M. & A. L., 2003 at pp. 483-484.

Preferred mortgage - A ship mortgage (infra) on the whole of a vessel, filed in the U.S. in substantial compliance with the requirements of 46 U.S. Code sect 31322 et seq.

Preferred mortgage lien - A lien on a ship on which a preferred mortgage (supra) has been filed. they rank after preferred maritime liens (supra), by virtue of 46 U.S. Code sect. 31326(1). See Tetley, M.L.C., 2 Ed., 1998 at 512-515.

"prima facie" - ("at first sight") a rule whereby a particular fact constitutes evidence of a state of affairs, unless contradicted by other stronger, admissible evidence. See, e.g., the Hague and Hague/Visby Rules (supra) art. 3(4), under which the issue of a clean bill of lading (supra) is prima facie evidence of the receipt by the carrier (supra) of the goods as described in the bill, and the similar provisions of the Hamburg Rules (supra) art. 16(3) and of the Pomerene Act (supra), old sect. 22 (49 U.S. Code sect. 102, now 49 U.S. Code sect. 80113(a)). See also The Atlas [1996] 1 Lloyd's Rep. 642.

Private carriage - Carriage of particular goods of one shipper (infra) under a special contract, usually by charterparty, as opposed to the common (public) carriage (supra) of goods of the public in general, on advertised, "liner" routes, usually under bills of lading or waybills. See Tetley, M.C.C., 3 Ed., 1988, at pp. 9-10, 35; Tetley, Int'l. M. & A. L., 2003, Chap. 4, at pp.119-178.

Privity or knowledge - See "actual fault or privity",supra.

Proper law - The principle of the conflict of laws according to which the law applicable to a given legal situation should be the law having the closest and most real connection to the case. The term "proper law of the contract" was first used by Westlake in A Treatise on Private International Law, with principal reference to its practice in England, 2 Ed., 1880, sect. 201 at p. 237, who defined it as "the law of the country with which the contract has its most real connection". The term was taken up by Morris and Cheshire in their essay "The Proper Law of a Contract in the Conflict

of Laws" (1940) 56 L.Q.R. 320 and was later used by Morris in his essays "Torts in the Conflict of Laws" (1949) 12 Modern L. Rev. 248 and "The Proper Law of a Tort" (1951) 64 Harv. L. Rev. 881. The "proper law" is arguably the most important concept in contemporary conflict of law legislation, both national and international. See Tetley, Int'l. C. of L., 1994 at pp. 10-11.

Properly applicable law - The law which has the closest and most real connection (or most significant relationship) with the contract or tort, based upon the connecting factors (contacts).

The properly applicable law may be identified by the application to any conflict of laws problem of a consistent methodology (*supra*), such as that proposed in Tetley, Int'l C. of L., 1994 at pp. 35-43, 41-42.

Proportionate fault - The rule for apportioning damages in tort/delict, whereby each party whose fault or negligence has contributed to the total loss or damage is held liable for that loss or damage in a proportion corresponding to that party's fault or negligence. Proportionate fault is the system of apportionment of damages recognized historically by the civil law and later codified in the various civil codes. At common law, however, proportionate (comparative) fault only replaced the old common law contributory negligence (*supra*) rule (which precluded any recovery by a plaintiff whose fault or negligence had contributed to his loss or damage in even the slightest degree) when the United Kingdom enacted the Law Reform (Contributory Negligence) Act, 1945, 8 & 9 Geo. 6, c. 28, although several Canadian common law provinces had enacted similar legislation some twenty years earlier. In maritime law, proportionate fault replaced the traditional equally divided damages (*supra*) rule of apportionment for ship collision when the United Kingdom, Canada and other British Commonwealth countries enacted national statutes giving effect to the Collision Convention 1910 (*supra*). In the United States, proportionate fault in ship collisions was imposed by the U.S. Supreme Court's decision in *United States v. Reliable Transfer Co.* 421 U.S. 397, 1975 AMC 541, [1975] 2 Lloyd's Rep. 286 (1975). In Canadian maritime law, proportionate fault replaced contributory negligence in respect of maritime torts other than ship collisions pursuant to the Supreme Court of Canada's decision in *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.* [1997] 3 S.C.R. 1210, (1997) 153 D.L.R.(4th) 385. See Tetley, Int'l. C. of L., 1994 at pp. 478-489; Tetley, M.L.C., 2 Ed., 1998 at pp. 49-50; Tetley, Int'l. M. & A. L., 2003 at pp. 222, 228-241.

Public order / public policy [Fr.: "ordre public"] [Span.: "orden público"] [Ital.: "ordine pubblico"] [Gr.: "öffentliche Sicherheit und Ordnung"] - In domestic law, public order (a civil law term) refers to domestic rules and legal principles reflecting lofty standards of morality and social conduct in a civilized society, while public policy (a common law term) refers to fundamental principles of natural justice found in a state's constitution, bill of rights, laws, regulations, precedents and accepted customs. See Tetley, Int'l C. of L., 1994 at p. 100. In the conflict of laws, international public order/public policy refers to the general principle whereby courts may refuse to enforce contracts or foreign judgments or foreign arbitral awards which they deem to be repugnant to the forum's essential principles of morality and justice, or, in some cases, to the basic policies and interests of the forum State. In the United States, the concept of public policy in conflicts theory and practice has been subsumed, at least partially, by the American theory of interest analysis and quest for equity.

International public order/public policy is found in both the codes and jurisprudence of civilian jurisdictions and the case law of common law jurisdictions. It is also to be found in international conflict of laws conventions and instruments, such as the Rome Convention 1980 (*infra*) at art. 16, the Brussels Convention 1968 (*supra*) and Lugano Convention 1988 (*supra*) at art. 27(1), the New York Convention 1958 (*supra*) at art. V(2)(b) and the UNCITRAL Model Law 1985 (*infra*) at art. 36(1)(b)(ii), as well as in national statutes giving effect to them. See Tetley, *Int'l C. of L.*, 1994 at pp. 95-133 and 821-861.

Punitive damages - Damages awarded in addition to normal damages for bad faith or excessively improper acts of the defendant in contract or tort or even during a court action. They are usually granted by statute and at times excluded by statute (Hague/Visby Rules at art. 4(5)(b)). They are only now appearing in modern civilian jurisdictions (e.g. Quebec Civil Code 1994, at art. 1621 c.c.q.) See Tetley, *M.L.C.*, 2 Ed., 1998 at p. 238 and Tetley, *M.C.C.*, 3 Ed., 1988 at pp. 339-342.

Quasi-deviation - An American term for certain types of breach of a contract of carriage of goods by sea, analogous to unreasonable geographic deviation, notably overcarriage, non-delivery and delayed delivery. Where intentional, these breaches have been held by U.S. courts as depriving the carrier (*supra*) of the benefit of the package limitation under COGSA (see *supra*), and should result in the loss of all the carrier's exemptions and limitations of liability. See Tetley, *M.C.C.*, 3 Ed., 1988 at pp. 102-103, 116-121; Tetley, *Int'l. M. & A. L.*, 2003 at pp. 92-93.

Quasi in rem jurisdiction - An American term referring to jurisdiction (*supra*) exercised by way of the attachment (*supra*) over the chattels of a defendant who cannot be found within the district. See Supplemental Rules B and E of the Supplemental Rules for Certain Admiralty and Maritime Claims (*infra*). See also Tetley, *Int'l. C. of L.*, 1994 at pp. 795-796, 830; Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 940, 954; Tetley, *Int'l. M. & A. L.*, 2003 at pp. 408-409.

Quasi-maritime liens - A term used to describe claims for pilotage, general average contributions and dock charges in Canada, which claims, under sects. 2(1) and 22(2)(l), (q), and (s), read with sects. 43(2) and (3), of the Federal Court Act, R.S.C., 1985, c. F-7, follow the ship into whose hands it passes (like traditional maritime liens (*supra*)), but which (unlike maritime liens) rank after rather than before ship mortgages. See Tetley, *M.L.C.*, 2 Ed, 1998 at pp. 94, 452, 457 and 736-737; Tetley, *Int'l. M. & A. L.*, 2003 at p. 436.

Received for shipment bill of lading - See "Bills of Lading & Related Documents" (*supra*).

Register tonnage - See "Tons & Tonnage" (*infra*).

Reinsurance - See marine reinsurance (*supra*).

Reward - See salvage reward (*infra*).

Rhodian Law - An unwritten body of sea law, purportedly administered on the Island of Rhodes, dating from approximately 800 B.C., some fragmentary portions of which

were recorded in the sixth century A.D in the Digest of Justinian, especially in Book XV, Title 2, "De lege Rhodia de jactu", concerning general average (supra). See Tetley, M.L.C., 2 Ed., 1998 at pp. 7-8; Tetley, Int'l. M. & A. L., 2003 at pp. 9-12; Tetley, "The General Maritime Law - The Lex Maritima" (1994) 20 Syracuse J. Int. L. & Comm. 105-145 at p. 109; reprinted in [1996] ETL 469-506 at p. 473. See also "Byzantine/Rhodian Sea-Law" (supra).

Rome Convention, 1980 - The "Convention on the Law Applicable to Contractual Obligations" (E.E.C. 80/934) opened for signature at Rome on June 19, 1980, and in force April 1, 1991, is one of the most important conventions of private international law. It establishes uniform conflict of law rules for contract applicable in all countries of the European Union (supra). (See text: Tetley, Int'l. C. of L., 1994 at pp. 1032-1045, with a brief commentary at pp. 1045-1048.)

RO-RO ("roulage" or "transroulage") - Roll On-Roll Off is the method of ship carriage whereby the cargo is driven directly on board ship and at destination driven directly off.

Rules of the Road - A term often used to refer to the Collision Regulations 1972 (supra).

Rules for Electronic Bills of Lading - These are CMI rules concerning the use of bills of lading sent by Electronic Data Interchange (EDI). They were adopted in Paris, June 29, 1990. (See text: (1991) 22 JMLC 620-625.

Safety of Life at Sea (SOLAS) Convention - International Convention for the Safety of Life at Sea, amended 1974, in force May 25, 1980. See IMO (supra).

"Said to contain" - Words which may be inserted in the bill of lading (supra) by the carrier (supra), in accordance with sect. 21 of the Pomerene Act of 1916 (supra) (49 U.S. Code App. sect. 101; recodified in 1994 as 49 U.S. Code sect. 80113(b), (c) and (d)), to indicate that package freight is loaded by a shipper (infra) and is supposed to contain goods of a certain kind or quantity or in a certain condition. If true, these words relieve the carrier issuing the bill of lading from liability, although the goods are not of the kind or quantity or in the condition they were said to be by the consignor.

"saisie conservatoire" [Span.: "embargo preventivo"] [Ital.: sequestro conservativo"] [Gr.: "Sicherungsbeschlagnahme"] - The civil law procedure, known in English as the "conservatory attachment", whereby, on motion by a plaintiff, at the beginning of or during a suit, specified assets of the defendant (real or personal, moveable or immovable) may be seized by the court, as security for the plaintiff's claim. See Decree no. 67-967 of Oct. 27, 1967 as amended (France) and arts. 733-739 Code of Civil Procedure (C.C.P.) re "seizure before judgment" (Québec). The American "attachment" (supra) under the general maritime law (supra) and Supplemental Rule B (infra) of the Supplemental Rules for Certain Admiralty and Maritime Claims is the equivalent of the "saisie conservatoire". See Tetley, M.L.C., 2 Ed., 1998 at pp. 962-971; Tetley, Int'l. M. & A. L., 2003 at p. 406.

Salvage [Fr.: "assistance" or "assistance en mer"] [Span.: "salvamento"] [Ital.: "assistenza e salvataggio"] [Gr.: "Bergung"] - The salvor has a claim of salvage reward if he has successfully and voluntarily salvaged maritime property in danger. The civil law term is "assistance" (supra) permitting the salvor to be rewarded whether the salvage was successful or not. "Sauvetage" (supra) is used in France for wreck salvage [Ital.: "ricupero"]. See Chap. 9 in Tetley, M.L.C., 2 Ed., 1998 at pp. 329-382; Tetley, Int'l. M. & A. L., 2003, Chap. 8, at pp. 317-359.

Salvage Convention 1910 - The International Convention for the Unification of Certain Rules of Law Relating to Assistance and Salvage at Sea, adopted at Brussels on September 23, 1910 and in force as of March 1, 1913. See also the Protocol, adopted at Brussels on May 27, 1967 and in force as of August 15, 1977. See CMI (supra); Tetley, M.L.C., 2 Ed., 1998 at pp. 332-333; Tetley, Int'l. M. & A. L., 2003 at p. 326.

Salvage Convention 1989 - The International Convention on Salvage, adopted at London on April 28, 1989 and in force as of July 14, 1996. See IMO (supra); Tetley, M.L.C., 2 Ed., 1998 at pp. 332-333; Tetley, Int'l. M. & A. L., 2003 at pp. 326-327.

Salvage reward -The compensation which is payable to a salvor, pursuant to a salvage award (supra). See the Salvage Convention 1989 (supra), arts. 12 and 13. See Tetley, Int'l. M. & A. L., 2003 at pp. 338-352.

SCOPIC Clause - The "Special Compensation P. & I. Club Clause" ("SCOPIC Clause") refers to the agreement, which first became effective August 1, 1999, between members of the International Salvage Union (I.S.U.) (supra), the International Group of P. & I. Clubs (supra), and certain property underwriters, providing a mechanism for remunerating salvors on the basis of a fixed tariff of daily rates for tugs, equipment and personnel used, rather than by arbitration on the basis provided by arts. 13 and 14 of the Salvage Convention 1989 (supra). The SCOPIC Clause, slightly reworded, is now an optional clause which may be incorporated by the salvor into LOF 2000, (Lloyd's Standard Form of Salvage Agreement, in effect September 1, 2000) (supra), whereby the salvor may request guaranteed remuneration thereafter, instead of a "no cure/no pay" (supra) salvage reward. See Tetley, Int'l. M & A. L., 2003 at pp. 342-345.

S.D.R. [Fr.: "D.T.S.- Droits de tirage spéciaux"] [Span.: "Derechos especiales de giro"] [Ital.: "D.S.P., diritti speciali di prelievo"] [Gr.: "Sonderziehungsrechte"] - Special Drawing Rights are an international value used to provide a regular comparative evaluation by the International Monetary Fund of the currency of member nations. Value of a national currency will rise in S.D.R.s as the value of the national currency rises on the world market. S.D.R.s therefore are a fair evaluation of the comparison of national currencies one with another and as such useful as a valuation for limitation in an international convention. If S.D.R.s adjust to the rise and fall of the currency of a single nation as compared with other nations, they do not adjust to world inflation and as a result, the limitation of liability in S.D.R.s in various conventions has fallen as all currencies have inflated. In this respect, S.D.R.s are unsatisfactory. Gold does adjust to world inflation over very long periods of time, but in the short run suffers violent fluctuations in value. Gold has also been controlled in

price by many countries at various times. Both S.D.R.s and gold suffer from the reluctance of many nations to comply with a market evaluation of their currency.

The value of the S.D.R. is equal to the market value of fixed amounts of four currencies, the U.S. dollar 42%, the euro 32%, the British pound 13% and the Japanese yen 13% (Up to December 31, 1980, there were 16 currencies in the basket). If any of the component currencies weaken, the assumption is that other component currencies will strengthen, thus moderating fluctuations in the S.D.R.'s value.

The S.D.R. is worth approximately \$2.00 Cdn., or \$1.46 U.S. or .94 sterling. See Tetley, M.C.C., 3 Ed., 1988 at pp. 879 note 12 and 891.

Sea Waybill - See "Bills of Lading & Related Documents" (supra).

Search Order - See "Anton Piller Order", (supra).

Seaworthiness [Fr.: "navigabilité"] [Span.: "navegabilidad"] [Ital.: "navigabilità"] [Gr.: "Seetüchtigkeit"] - A basic theme in maritime law, referring to the obligation of shipowners and carriers (supra) to provide a vessel and crew fit to confront the perils of the sea. In the carriage of goods by sea, under art. 3(1) of the Hague and Hague/Visby Rules (supra), the carrier must exercise "due diligence" before and at the beginning of the voyage " (a) to make the ship seaworthy; (b) to properly man, equip and supply the ship; and (c) to make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation". Although less demanding than the absolute duty of seaworthiness of the former common law, which applied at all times and at all stages of the voyage, the due diligence obligation has been held to be an overriding obligation on the carrier (see *Maxine Footwear Co., Ltd. v. Canadian Government Merchant Marine* [1959] A.C. 589 at pp. 602-603 (P.C.)). The carrier has the obligation of proving that due diligence has been exercised. The exercise of due diligence is only material if lack of seaworthiness was the proximate cause of the loss or damage to the goods carried (see *Eisenerz G.m.b.H. v. Federal Commerce & Navigation Co. (The Oak Hill)* [1974] S.C.R. 1225, [1975] 1 Lloyd's Rep. 105 (Supr. Ct. of Can.)). Moreover, the due diligence obligation may not be delegated (see *Riverstone Meat Co. Pty. Ltd. v. Lancashire Shipping Co. (The Muncaster Castle)* [1961] A.C. 807, [1961] 1 Lloyd's Rep. 57, 1961 AMC 1357 (H.L.)). Where the contractors act carefully and competently, however, the carrier has been held to have fulfilled its obligation of due diligence (see *Union of India v. N.V. Reederij Amsterdam (The Amstelslot)* [1963] 2 Lloyd's Rep. 223 (H.L.)). Under the Hamburg Rules (supra), art. 5(1), the due diligence obligation is not mentioned expressly, nor is seaworthiness. Nevertheless, the obligation of the carrier under that provision to prove that he, his servants and his agents took all measures which could reasonably be required to avoid the occurrence and its consequences, would seem to impose a due diligence obligation at all times and all stages of the voyage. See Tetley, M.C.C., 3 Ed., 1988 at pp. 369-396; Tetley, *Int'l. M. & A. L.*, 2003 at pp. 52-53.

Seaworthiness is also a requirement of charterparties, and is also found in public law, in legislation governing seamen's employment contracts and steamship inspection (e.g. *Canada Shipping Act, 2001*, S.C. 2001, c. 26, sects. 85(1) and (2) and 222(1)). It also is found in marine insurance (e.g. the U.K.'s *Marine Insurance Act, 1906*, 7 Edw.

VII, c. 41, sect. 39; see text in Tetley, *Int'l M. & A. L.*, 2003, Appendix "O" at pp. 825-859). See also Canada's Marine Insurance Act, S.C. 1993, c. 21, sect. 37), as well as in general average (supra). See Tetley, *Int'l. M. & A. L.*, 2003 at pp. 162-163 (charterparties), 599-601 (marine insurance), 52-53 (general average).

Ship mortgage [Fr.: "hypothèque maritime"] [Span.: "hipoteca marítima"] [Ital.: "ipoteca navale"] [Gr.: "Schiffshypothek"] - Security on a ship and its appurtenances by the shipowner as security for a loan. It is derived from the English common law chattel mortgage and is similar to the "hypothèque maritime" of the civil law. Ship mortgages in common law jurisdictions may be either legal or equitable mortgages. See Chap. 14 in Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 473-532; Tetley, *Int'l. M. & A. L.*, 2003, Chap. 12, at pp. 469-514..

Shipped bill of lading - See "Bills of Lading & Related Documents" (supra).

Shipper - The party who contracts with a carrier (supra) for the carriage of goods. See Tetley, *M.C.C.*, 3 Ed., 1988 at pp. 177-213.

"Shipper's weight, load and count" - Words which may be inserted in a bill of lading (supra) by a carrier (supra), under sect. 21 of the Pomerene Act of 1916 (supra) (49 U.S. Code App. sect. 101, recodified in 1994 as 49 U.S. Code sect. 80113(b), (c) and (d)) to indicate that the goods were loaded by the shipper (supra) and that the description of them in the bill of lading was also made by him. If such statement is true, the carrier is not liable for loss or damages resulting from improper loading, non-receipt or misdescription of the goods described in the bill. The words are treated as null and void, however, if the carrier in fact loaded the goods, or if he was requested by the shipper in writing and afforded a reasonable opportunity to weigh the bulk freight (supra) at weighing facilities maintained by the shipper. See Tetley, *M.C.C.*, 3 Ed., 1988 at pp. 285-286, 498, 644, 650.

Shipping Conferences - Various shipowners who operate liner, rather than tramp, services have formed associations in various trades, and various areas of the world. These associations, or conferences, fix freight (supra) rates to prevent unfair price cutting and to ensure reasonable profits. Some nations consider such conferences and their price fixing to be monopolistic and unfair as well as being oppressive, because the conference presumably restricts the development of fleets of emerging nations. For this reason, the Convention on a Code of Conduct for Liner Conferences was adopted by UNCITRAL in 1974. Other nations feel that ocean carriage is already so competitive and risky that some international rules and rate fixing is needed to prevent unfair undercutting and other improper practices.

Ship's delivery order - See "Bills of Lading & Related Documents" (supra).

Short form bill of lading - See "Bills of Lading & Related Documents" (supra).

Sister-ship arrest [Fr.: "saisie conservatoire de navires apparentés (navires jumeaux)"] [Span.: "detención (inmovilización) de buques hermanos"] [Ital.: "sequestro di nave sorella appartenente allo stesso armatore"] [Gr.: "Ersatzbeschlagnahme"] - A procedure whereby a ship, which is not the ship to which the claim relates, but which is beneficially owned (or, in the U.K., the shares of which

are beneficially owned) at the time the action in rem is brought by the party who was personally liable on the claim when it arose, may be arrested in an action in rem as security for the claim. See the U.K.'s Supreme Court Act 1981 (U.K. 1981 c. 54) sect. 21(4)(b)(ii); Canada's Federal Court Act (R.S.C. 1985 c. F-7) sect. 43(8). Sister-ship arrest is really a form of attachment (*supra*), and therefore is not needed in the U.S. or civil law countries, where the attachment and *saisie conservatoire* (*supra*) exist. See also the International Convention for the Unification of Certain Rules Relating to the Arrest of Seagoing Ships, adopted at Brussels May 10, 1952 (the Arrest Convention 1952, *supra*) art. 3 (1) and (4). See Chap. 27 in Tetley, M.L.C., 2 Ed., 1998 at pp. 1029-1046; Tetley, Int'l. M. & A. L., 2003 at pp. 419, 421. The principle of sister-ship arrest was enunciated in order to counter what are deemed as evasions of responsibility by shipowners and managers who operate large fleets in one-ship companies. These evasions are often seen to be magnified by the use of flags of convenience. "Piercing" and "lifting" the corporate veil (*supra*) has been permitted more and more by legislation and even by the courts after the principle was refused with authority by the House of Lords in *Salomon v. Salomon* [1897] A.C. 22. See Tetley, Int'l C. of L., 1994 at pp. 41, 159 and 219-224. On the other hand, liens against one particular ship should not be transferable as liens *per se* against another ship, ranking ahead of creditors of the second ship. See in general, Tetley, M.L.C., 2 Ed., 1998, Chap. 27, and in particular pp. 1030-1046, 1171 and 1183. The Arrest Convention 1999, *supra*, at art. 3(2) permits arrest of ships under common legal (i.e. registered) ownership, but not common beneficial ownership. See in general Tetley, "Arrest, Attachment, and Related Maritime Law Procedures" (1999) 73 Tul. L. Rev. 1895 at pp. 1911-1912, 1924-1925, 1935, 1943 and 1969.

S.M.A. - The Society of Maritime Arbitrators, New York. E-mail: info@smay.org; website: <http://www.smay.org/>. See M.M. Cohen, "Current Law and Practice of Maritime Arbitration in New York", DMF 1996.589, with French translation, DMF 1996.605.

Special compensation [Fr.: "indemnité spéciale"] [Span.: "compensación especial"] [Ital.: "indennità (compenso) speciale"] [Gr.: "Besondere Aufwandsentschädigung"] - Compensation payable under art. 14 of the International Convention on Salvage, 1989, adopted at London, April 28, 1989 (the Salvage Convention 1989 (*supra*), in respect of salvage operations carried out in respect of a vessel which by itself or its cargo threatened damage to the environment. This special compensation covers the salvor's expenses, defined at art. 14(3) as "the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1(h), (i) and (j)." Special compensation is only payable if the salvor failed to earn a salvage reward under art. 13 of the Convention at least equivalent to special compensation as defined (art. 14(1)). It is payable, however, regardless of whether or not the salvor succeeded in salvaging any of the ship or cargo. Where the salvor's exertions to prevent or minimise damage to the environment were successful, the amount of the special compensation may be increased by up to 30% of his expenses, with the tribunal also having the right to grant an increase up to 100% where it deems it fair and just to do so, bearing in mind the relevant criteria in art. 13(1) (art. 14(2)). The total special compensation is paid only to the extent that it exceeds a salvage reward payable under art. 13 (art. 14(4)). See Tetley, Int'l. M. & A. L., 2003 at pp. 341-342.

Special Drawing Rights - see S.D.R., supra.

Statutory law - The law found in legislation other than civil codes. Statutory law is basic to both the civil law (supra) and the common law (supra). In common law jurisdictions, most rules are found in the jurisprudence and statutes complete them. In civil law jurisdictions, the important principles are stated in codes, while statutes complete them. See Tetley, " Mixed Jurisdictions: Common Law vs. Civil Law (Codified and Uncodified) - Part I" 1999-4 Uniform Law Review 591-619 at p. 597.

Statutory right in rem - In the U.K. and British Commonwealth countries, a right to arrest a ship in an action in rem as security for a maritime claim, usually in respect of a contract for necessaries (supra) provided to the vessel (e.g. repairs, towage, bunkers, stevedoring). Unlike a maritime lien (supra), a statutory right in rem arises only when the writ in rem is issued (as in the U.K.) or when the ship is arrested (as in Canada), rather than when the claim arises, and is expunged by the conventional sale of the ship. It ranks after maritime liens and is sometimes referred to as a "statutory lien". See Tetley, M.L.C., 2 Ed., 1998 at pp. 555, 577; Tetley, Int'l. M. & A. L., 2003 at pp. 189-190, 491.

Stay - A procedure whereby a court does not dismiss an action or dismisses it conditionally on grounds of forum non conveniens (supra). See Arctic Explorer, 590 F. Supp. 1346 at p. 1361, 1984 AMC 2413 at p. 2434 (S.D. Tex. 1984); but retains jurisdiction (supra) and calls on the plaintiff to take suit in the more convenient forum. The conditions are usually that the defendant agree to appear in the foreign court within a certain delay, accept jurisdiction there and agree to any final judgment. See Tetley, Int'l C. of L., 1994 at pp. 529, 802-803 and 819; Tetley, Int'l. M. & A. L., 2003 at pp. 312-313..

Straight bill of lading - See "Bills of Lading & Related Documents" (supra).

Strict liability - Liability without regard to mens rea (the guilty mind) or scienter (knowledge). For example, strict liability may result in damages being awarded in the United States in marine pollution cases.

Subrogation - A legal fiction whereby a creditor (the "subrogor") is deemed to have assigned his rights and claims against his debtor to a third person (the "subrogee") when he receives payment of the debt in question from that third person. The civil law distinguishes "legal subrogation" (occurring by the sole operation of the law upon payment by the third person) from "conventional subrogation" (occurring by the express assignment (supra) of the creditor's rights at the time he receives payment from the third person). At common law, subrogation may be legal, contractual or by judicial consent. Subrogation to maritime liens is expressly permitted by the Maritime Liens and Mortgages Conventions 1967 (supra) (art. 9) and 1993 (supra) (art. 10). (See Tetley, M.L.C., 2 Ed., 1998, at pp. 1211-1240; Tetley, Int'l. M. & A. L., 2003 at pp. 615-616).

"Sue and labour" clause - A clause in a marine insurance policy which permits the assured to recover from the insurer any expenses incurred by the assured in order to minimize or avert a loss to the insured property, for which loss the insurer would have

been liable under the policy. See E.R. Hardy Ivamy, *Marine Insurance*, 4 Ed., Butterworths, London, 1985 (supra) at pp. 442-452; L.J. Buglass (supra), *Marine Insurance and General Average in the United States*, 3 Ed., 1991 at pp. 354-362; U.K. >Marine Insurance Act, 1906, U.K. 6 Edw. 7, c. 41, sect. 78. See Tetley, *Int'l. M. & A. L.*, 2003 at pp. 614-615.

Superseding clause (a.k.a. supersession clause, in the U.K.) - A clause in a bill of lading (supra) providing that the bill of lading itself supersedes all agreements or freight (supra) engagements for the shipment of the goods, and also that all the terms of the bill of lading, whether written, typed, stamped or printed, are binding on the shipper (supra), consignee (supra), owner of the goods and holder of the bill, as if the bill were signed by them, any local customs or privileges to the contrary notwithstanding (see Tetley, *M.C.C.*, 3 Ed., 1988 at pp. 88-98).

Terminal Operators Convention 1991 - The United Nations Convention on the Liability of Operators of Transport Terminals in International Trade, adopted at Vienna, April 19, 1991, not yet in force.

T.E.U. ("E.V.P. - équivalent vingt pieds") - Twenty-foot Equivalent Unit. The basic forty-foot container is 2 T.E.U.

Third party benefit - See Himalaya clause (supra).

Through bill of lading - See "Bills of Lading & Related Documents" (supra).

Through carriage - Through carriage is the transport of goods by two or more carriers (supra) usually of the same type (i.e. either land, or sea or air).

Time charterparty - See charterparty (supra).

Tokyo MOU - Tokyo Memorandum of Understanding. See Port State Control.

Tonnage for purposes of shipowners' limitation of liability - See "Tons & Tonnage" (infra).

Tons - See "Tons & Tonnage" (infra).

Tons & Tonnage

- 1) **Tons** [Fr.: "tonnes"] [Span.: "toneladas"] [Ital.: "tonnellate"] [Gr.: "Tonnen"]:
Short ton (American) 2000 lbs.
Long ton (English) 2240 lbs.
Metric ton (1000 kg.) 2204.6 lbs.
- 2) **Gross tonnage** [Fr.: "tonnage brut"] [Span.: "tonelaje bruto"] [Ital.: "stazza lorda"] [Gr.: "Bruttotonnagehalt"] is the actual carrying capacity of the ship's hull below the upper deck, in cubic feet, divided by 100.
- 3) **Gross register tonnage (g.r.t.)** [Fr.: "jauge brute"] [Span.: "tonelaje (toneladas) de registro bruto"] [Ital.: "stazza lorda registrata"] [Gr.:

"Bruttoregistertonnengehalt"] - The volumetric cargo capacity of the ship according to its certificate of registry.

- 4) **Net tonnage** [Fr.: "tonnage net" or "jauge nette"] [Span.: "tonelaje neto"] [Ital.: "stazza neta"] [Gr.: "Nettotonnengehalt"] is gross tonnage less the number of cubic feet reserved for crew's quarters, ships stores, bunkers, engine room space, etc.
- 5) **Deadweight cargo capacity** [Fr.: "port en lourd utile" or "portée en lourd utile"] [Span.: "capacidad de carga de peso muerto"] [Ital.: "portata lorda utile"] [Gr.: "Ladefähigkeit eines Schiffes (Nettoladefähigkeit)"] - In a voyage charterparty (supra), the vessel's deadweight tonnage, from which bunkers, fresh water and "constant" (e.g. galley supplies, paint, lubricating, oil, etc.) are deducted, to determine the ship's actual cargo carrying capacity.
- 6) **Deadweight tonnage** [Fr.: "portée en lourd" or "port en lourd"] [Span.: "tonelaje de peso muerto"] [Ital.: "portata lorda"] [Gr.: "Ladefähigkeit eines Schiffes (Bruttoladefähigkeit)"] is the actual cargo carrying capacity of the ships, when she is fully loaded with cargo so that the hull is immersed in water up to her Plimsoll marks (supra).
- 7) **Displacement tonnage** is a term usually used in warships to measure the weight of the water displaced by the ship when she is fully loaded with all her crew, bunkers, stores and equipment and armament on board.
- 8) **Register tonnage** [Fr.: "jauge au registre"] [Span.: "tonelaje de registro"] [Ital.: "stazza registrata"] [Gr.: "Registertonnengehalt"] is the gross tonnage and/or the net tonnage, as entered on a ship's certificate of registry. A register ton is 100 cu. ft.
- 9) **Tonnage for purposes of shipowners' limitation of liability** - Under the Limitation Convention 1976 (supra), art. 6(5), tonnage for purposes of limitation of liability for maritime claims is the tonnage as measured in accordance with the tonnage measurement rules of the International Convention on the Tonnage Measurement of Ships, 1969. See also Canada's Marine Liability Act, S.C. 2001 c. 6, sects. 28(2) and 30(2), providing a similar rule on tonnage measurement in respect of the limitation of liability of ships having a gross tonnage of less than under 300 tons, as well as for the limitation of liability of owners of docks, canals and ports. See also the Merchant Shipping Act 1995, U.K. 1995 c. 21, sect. 185 and Schedule 7, Part II, para. 5(2) and (3).

Total loss [Fr.: "perte totale"] [Span.: "pérdida total"] [Ital.: "perdita totale"] [Gr.: "Totalschaden"] - "an actual total loss of the vessel or such damage to the vessel that the cost of saving and repairing her would exceed her market value at the time of the collision." (Lisbon Rules 1987, supra).

TOVALOP - Tanker Owners' Voluntary Agreement concerning Liability for Oil Pollution. An agreement subscribed by most of the world's tanker operators whereby the Owners agree to reimburse Governments for oil pollution clean-up costs. Each member insures his potential liability under the agreement. This agreement was in

effect until February 20, 1997 but was not renewed after that date. (see also reference to CRISTAL, supra).

Towage [Fr.: "remorquage"] [Span.: "remolque"] [Ital.: "rimorchio"] [Gr.: "Schleppen"] is a contract whereby one ship moves another. Towage, as opposed to salvage (supra), is a service contract, which does not involve a marine peril, and the consideration is an hourly or daily rate or a lump sum, rather than a salvage reward (supra) based on the peril, the work accomplished and the value of the object salvaged. See Tetley, *Int'l M. & A. L.*, 2003 at p. 186. See also dominant mind (supra).

"Uberrimae fidei" - "utmost good faith", referring to the basic principle of insurance, requiring the assured and his broker to disclose and truly represent every material circumstance to the underwriter before acceptance of the risk. A breach of "utmost good faith" entitles the underwriter to avoid the contract. See the Marine Insurance Act, 1906 (U.K.) sect. 17. See Tetley, *Int'l. M. & A. L.*, 2003 at pp. 595-598.

U.L.C.C. - Ultra large crude carrier.

UNCID Rules - The "Uniform Rules of Conduct for Interchange of Data by Teletransmission, 1987" were adopted by the ICC Executive Board in Paris, September 22, 1987. (See text: (1992) 16 *Tul.Mar.L.J.* 372.)

UNCITRAL - The United Nations Commission on International Trade Law was established by a United Nations General Assembly Resolution in 1966. The aim of UNCITRAL is to harmonize and unify international trade law. It was instrumental in the preparation of the Hamburg Rules, 1978 (supra), and prepared the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade, 1991. In addition, UNCITRAL has been active in the area of international commercial arbitration and has prepared the UNCITRAL Model Law on International Commercial Arbitration, 1985 (infra), the UNCITRAL Arbitration Rules, the UNCITRAL Conciliation Rules, and the UNCITRAL Notes on Organizing Arbitral Proceedings. E-mail: uncitral@uncitral.org; web site: <http://www.uncitral.org/>.

UNCITRAL Model Law, 1985 - The "United Nations Commission on International Trade Law Model Law on International Commercial Arbitration" was adopted June 21, 1985. (Text can be found in: Report of the United Nations Commission on International Trade Law, 18th Session, 3-21 June 1985, Supplement no 17 (A/40/17) of the Official Records of the Fortieth Session of the General Assembly, United Nations, New York, 1985.)

UNCTAD - The United Nations Conference on Trade and Development was established on December 30, 1965, by a United Nations General Assembly resolution as a permanent organ of the General Assembly. It is a "policy-making" body with purpose to promote international trade especially amongst emerging nations. UNCTAD was instrumental in promoting draft conventions which were then taken over by UNCITRAL for legal drafting and adoption. An example is the Hamburg Rules, 1978 (supra). E-mail: transport.section@unctad.org; website: <http://www.unctad.org/>

UNIDROIT - International Institute for the Unification of Private Law/ Website: <http://www.unidroit.org/>.

UNIDROIT Principles of International Commercial Contracts 1994 - A major restatement of fundamental principles applicable to international commercial contracts, prepared by a working group of respected specialists in contract law and international trade law from the civil law, common law and Socialist legal traditions, and approved by the General Council of UNIDROIT in 1994. The Principles constitute a basic formulation of the modern *lex mercatoria* (supra) in respect of international commercial contracts, which may be applied if the parties to such a contract agree to subject it to the *lex mercatoria*. The Principles may also be applied when it proves impossible to establish the relevant rule of the applicable law, to interpret or supplement international uniform law instruments and as a model for national and international legislation on commercial contracts. For the English version, see J.M. Perillo, "UNIDROIT Principles of International Commercial Contracts: The Black Letter Text and a Review" (1994) 63 *Fordham L. Rev.* 281; website: <http://www.unidroit.org/english/principles/pr-main.htm>.

Uniform Customs and Practice for Documentary Credits - Uniform Customs and Practices for Documentary Credits are rules adopted by the International Chamber of Commerce (ICC) (supra), defining the rights and duties of parties to letters of credit. The most recent revision, prepared in 1993, came into effect on January 1, 1994 and is now known as UCP 500 (1994). See ICC Publication No. 500 (1994). The I.C.C., in its role at the forefront of documenting rules for existing or new practices, has developed, with effect from April 1, 2002, a supplement to the UCP 500 (eUCP), covering electronic presentations under letters of credit (ICC Publication No. 500/3). See the ICC website: <http://www.iccwbo.org/>.

Uniform Rules for Sea Waybills - Uniform rules for sea waybills (supra), prepared by the CMI and adopted in Paris, June 29, 1990. See text in (1991) 22 *JMLC* 617-619.

University of Cape Town - Faculty of Law. Website: <http://www.uctshiplaw.com/>. See also "Institute of Marine Law" and "Shipping Law Unit".

"Utmost good faith" - See "*uberrimae fidei*", supra.

V.L.C.C. - Very large crude carrier.

Valued Bill of Lading or Ad Valorem Bill of Lading - A valued bill of lading (supra), sometimes called an ad valorem bill of lading, is a bill of lading where the value of the cargo has been declared by the carrier (supra) and "inserted in the bill of lading" by art. 4(5) of the Hague Rules (supra) or art. 4(5)(a) of the Visby Rules (infra).

Vallescura Rule - The rule derived from the United States Supreme Court decision in *Schnell Co. v. S.S. Vallescura*, 293 U.S. 296, 1934 AMC 1573 (1934), whereby, when cargo loss or damage is caused by two separate causes, one for which the carrier (supra) is exempted from liability and the other for which he is not, the carrier has the burden of establishing what damage was due to the cause for which he is exempted,

on pain of being held responsible for the entire damage. The Rule, which is also applied by U.K. courts, has been codified in the Hamburg Rules (*supra*) at art. 5(7). See Tetley, M.C.C., 3 Ed., 1988 at pp. 314-316, 328-329, 916-918; Tetley, Int'l. M. & A. L., 2003 at p. 100.

Visby Rules [Fr.: "Règles de Visby"] [Span.: "Reglas de Visby"] [Ital.: "Regole di Visby"] [Gr.: "Visby-Regeln"] - "The Protocol to amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, signed at Brussels on 25th August, 1924." These amendments to the Hague Rules (*supra*), adopted in Brussels on February 23, 1968, came into force on June 23, 1977, for ten nations and since then for many more. The Visby Rules were the result of the CMI Conference of 1963 in Stockholm, Sweden, which formally adopted the Rules in the ancient town of Visby after the Conference. The Hague/Visby Rules (*supra*) are the Hague Rules as amended by the Visby Rules. (See text, Tetley, M.C.C., 3 Ed., 1988 at pp. 1111-1139).

A further "Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading signed at Brussels on August 25, 1924 as Amended by Protocol of February 23, 1968", was adopted on December 21, 1979 and entered into force on February 14, 1984. Most nations which have adopted Visby have adopted this Protocol, which is called the "Visby S.D.R. Protocol". (See text, Tetley, M.C.C., 3 Ed., 1988 at pp. 1139-1143.)

Voyage charterparty - See charterparty (*supra*).

Voyage Charterparty Laytime Interpretation Rules 1993 ("Voylayrules 93") (prepared jointly with BIMCO, FONASBA and Intercargo) (see text in John Schofield, *Laytime and Demurrage*, 4 Ed., LLP Limited, London, 2000, *supra*, Appendix). Voylayrules 93 superseded the Charterparty Laytime Definitions 1980 (see CMI, *supra*).

W.A. Cover - "W.A." means "With Average". Formerly described a cargo policy covering particular and general average (*supra*), in addition to total loss, but only in respect of the perils specified in the S.G. policy form and the attached clauses. The term is obsolete now that "A", "B" and "C" cargo clauses are in use.

Warranty - A term of a contract the breach of which will allow the offended party to claim only damages. See condition (*supra*) and indeterminate term (*supra*).

Waybill - See "Bills of Lading & Related Documents" (*supra*).

World Maritime University - A university established under the auspices of the International Maritime Organization (IMO) (*supra*) in Malmö, Sweden, offering postgraduate degrees in maritime affairs, including courses in maritime law, and short courses to practitioners. Website: <http://www.wmu.se/>.

Writ in personam - In common law jurisdictions, the writ whereby an action was traditionally instituted against a person, including a corporation, rather than against a thing. In the United Kingdom, such an action is now instituted by the issuance by the court of a "claim form". In the U.K., Admiralty claims formerly known as "claims in

personam" under the Civil Procedure Rules 1998 (S.I. 1998/3132), in force April 26, 1999, are now governed, as of March 25, 2002, by Practice Direction 61 (Admiralty Claims), paras. 12.1 to 12.6 (Other Claims) and such claims proceed in accordance with Part 58 (Commercial Court) (see para. 12.2). The relevant claim form must be in Form ADM1A (see para. 12.3). In Canada, the "action in personam" in Admiralty is now instituted by a "statement of claim" under the Federal Court Rules, 1998 (SOR 98/106), in force April 25, 1998, Part 13 (Admiralty Actions), Rules 477 and 479.

Writ in rem - In common law jurisdictions, the writ whereby an action was traditionally instituted against a thing. In the United Kingdom, under the Civil Procedure Rules 1998 (S.I. 1998/3132), in force April 26, 1999, such an action (called a "claim in rem") is now instituted by a "claim form in rem", under Practice Direction 61 (Admiralty Claims), para. 3.1 and Form ADM 1. Practice Direction 61 was promulgated pursuant to Part 61(Admiralty Claims) at Rule 61.3 of the Civil Procedure Rules 1998, as amended with effect from March 25, 2002. In Canada, the "action in rem" is now instituted by a "statement of claim" under the Federal Court Rules, 1998 (SOR 98/106), in force April 25, 1998, Part 13 (Admiralty Actions), Rules 477 and 479 and Form 477.

York-Antwerp Rules [Fr.: "Règles de York/Anvers"] [Span.: "Reglas de York/Amberes"] [Ital.: "Regole di York-Anversa"] [Gr.: "York-Antwerpener Regeln"] - The rules under which a general average sacrifice (supra) is determined and by which the payments to the party who sacrificed are calculated. The most recent Rules are the York/Antwerp Rules 1994, amended in Sydney, Australia in 1994 at a meeting of the CMI. The Rules are not imposed by a national or international statute, but by agreement of the parties, in the charterparty (supra) or the bill of lading (supra). See English text: (1995) 26 JMLC 1995, 485-502. See French text of "les Règles de York/Anvers": DMF 1996, 137. Also available on the Internet at: <http://www.jus.uio.no/lm/cmi.york.antwerp.rules.1994/doc.html>