

Maritime Law Glossary

Source: McGill University Glossary of Maritime Law

Legend: Meaning

supra above, esp. when used in referring to parts of a text

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writ a) a formal order under seal, issued in the name of a sovereign, government, court, or other competent authority, enjoining the officer or other person to whom it is issued or addressed to do or refrain from some specified act;) b) (in early English law) any formal document in letter form, under seal, and in the sovereign's name.

Maritime Law Glossary

N-Z

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

National Union of Marine, Aviation and Shipping Transport Officers (NUMAST) A British trade union, headquartered in London, representing shipmasters, officers, cadets and other staff serving in the UK and international fleets and ashore in maritime- related industries. NUMAST is affiliated with the TUC (Trades Union Congress), and the International Transport Workers' Federation (ITF). Website: <http://www.numast.org/welcome.asp>; e-mail: enquiries@numast.org.

Nautical assessors 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, 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).

Nautical Institute London, England. Website: <http://www.nautinst.org>. Email: sec@nautinst.org.

Nautical mile The maritime measurement for distance, being 6080 feet, as opposed to 5280 feet, being a land mile. Also known as a knot (*supra*).

Nauticalcampus London, England. Website: <http://www.nauticalcampus.org> Email: info@nauticalcampus.org.

Negotiorum gestio A civil law term, meaning management of the business of another. Under this principle, a party who voluntarily takes care of the affairs of another person, without any express or implied authority from that person, may claim reimbursement of his necessary and useful expenses, whether he has been successful or not. *Negotiorum gestio* is therefore the likely origin of the concept of salvage (*infra*) in maritime law. See the French Civil Code, arts. 1372-1375; the Québec Civil Code, art. 1482-1490; Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 10 and 330; *Int'l M. & A. L.*, 2003 at pp. 323-324.

Nemo iudex in causa sua "No one may be judge in his own case", referring to the principle of natural justice that an adjudicator should be disinterested and unbiased See *Porto Seguro Companhia de Seguros Gerais v. Belcan S.A.* [1996] 2 F.C. 751 at p. 778, (1996) 195 N.R. 241 at p. 271 (Fed. Ct. of App. of Canada).

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.

New Zealand Maritime Law A website of New Zealand maritime case law and legislation, maintained by Prof. Paul Myburgh of the University of Auckland, New Zealand. Website: <http://www.maritimelaw.orcon.net.nz/>.

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).

Non-vessel-operating common carrier See NVOCC, *infra*.

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.*, 4 Ed., 2008 at pp. 463, 485, 496-498). In France, the "notify party" is frequently regarded as the "destinataire réel" (real consignee (supra)) of the goods.

Novus actus interveniens A harmful act or omission which occurs subsequent to an initial wrongful act or omission of a tortfeasor and which breaks the chain of causation between that initial act or omission and the ensuing damage. See Restatement Second of the Law of Torts, 1965, sect. 441; *Letnik v. Toronto* 82 N.R. 261, 1993 AMC 768 (Fed. C.A.). A novus actus intervenies may take three forms: 1) a natural event independent of human agency; 2) an act or omission by a third party; or 3) the conduct of the plaintiff himself. See *Reeves v. Commissioner of Police of the Metropolis* [1999] Q.B. 169 (C.A.); *Clerk & Lindsell on Torts*, 18 Ed., 2000 at paras. 2-36 to 2-59.

NUMAST See National Union of Marine, Aviation and Shipping Transport Officers, *supra*.

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.*, 4 Ed., 2008 at pp. 1705-1707, citing definition enacted at sect. 3(17) of the U.S. Shipping Act of 1984 (46 U.S. Code Appx. 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. Code Appx. 1702(17)(A) and (B). China has also legislated on NVOCC's by virtue of the "Regulations of the People's Republic of China on International Maritime Transport", promulgated by Decree No. 335 by the State Council of the P.R.C. on December 11, 2001. *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).

NYPE/NYPE '93 See time charterparty (supra).

obiter dictum ("a saying by the way"), referring to a finding of law in a decision where that finding was based on issues not properly before the court. It is an opinion expressed by a court upon a question of law which is not necessary to the decision of the case before it. The opposite of "obiter dictum" is "ratio decidendi" (see *infra*).

Obligatory forum court statute In the conflict of laws, an obligatory forum court statute is a national statute or international convention which is compulsorily applicable whenever any case on the subject of that statute or convention is heard in the courts of the State in question. Most legal authors do not distinguish obligatory forum court statutes from public order (*infra*) or mandatory rules (*supra*) of the forum, but such statutes are distinguishable from both those concepts, in that they are obligatorily applied by the forum court, whenever a case involving their subject matter is tried in such a court, rather than because of any connecting factor (contact) linking the case to the law of that forum (State). An example of this type of statute is the United Kingdom's Merchant Shipping Act 1995, U.K. 1995 c. 21, at sect. 185(1) and Schedule 7 Part I art. 15, which provisions give effect in the U.K. to the Limitation Convention 1976 (*supra*) and require the Convention to be applied whenever limitation proceedings are instituted before the courts of any State party to the Convention, thereby making the Convention compulsorily applicable to any such proceedings taken in any U.K. court. Obligatory forum court statutes are rare. They have no place in any system of international law and can be overcome in jurisdictions which have adopted the principle of forum non conveniens (*supra*). See Tetley, *Int'l. C. of L.*, 1994 at pp. 102-103, 131-132, 561; Tetley, *Int'l. M. & A. L.*, 2003 at p. 314.

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. Code 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. Code Appx. 1702(17).

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

Ordonnance de la Marine An important piece of French maritime legislation, dating from 1681, codifying much of the French maritime law and practice. The best text concerning the Ordonnance de la Marine is the commentary written in 1760 by René-Josué Valin, who, at the time, was the King's advocate at the admiralty's headquarters in Larochele, France. See Tetley, M.L.C., 2 Ed., 1998 at pp. 18, 24-25.

Ospar Convention 1992 The Convention for the Protection of the Marine Environment of the North East Atlantic, adopted at Paris, September 22, 1992 and in force March 25, 1998. This Convention is the mechanism by which Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom, cooperate for the protection of the marine environment of the North East Atlantic. The Ospam Commission is based in London (Email: secretariat@ospar.org; website: <http://www.ospar.org/>).

P. & I. Insurance 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.

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

Particular Average 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.

Pennsylvania Rule An almost irrebuttable presumption of causation in ship collisions (*supra*) in American maritime law, established by the United States Supreme Court's decision in *The Pennsylvania*, 86 U.S. (19 Wall.) 125 at p. 136 (1874), whereby when a ship, at the time of the collision, is in violation of a statutory rule, that violation is deemed to be at least a contributory cause of the collision. The presumption may only be rebutted by proof that the violation could not have been a cause of the collision. See Tetley, *Int'l C. of L.*, 1994 at pp. 472, 484, 601-602; Tetley, "The Pennsylvania Rule - An Anachronism?" (1982) 13 *JMLC* 127; Tetley, *Int'l. M. & A. L.*, 2003 at pp. 242-244.

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.*, 4 Ed., 2008 at p. 1051, Chap. 18. See also Tetley, *Int'l M. & A. L.*, 2003 at pp. 85 and 593.

Personification theory A theory of maritime liens (*supra*), particularly popular in the United States, which understands such liens as rights against a ship, treated as being a person. See Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 53-55.

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.

PLATO The Pollution Liability Agreement among Tanker Owners. An agreement proposed following the adoption of the 1984 Protocol to the Civil Liability Convention 1969 (*supra*), which was intended to increase, on a voluntary basis, the compensation payable by independent tanker owners in respect of marine oil pollution damage and to amend CRISTAL (*supra*), but which never came into force.

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. 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 Appx. 81-124, recodified in 1994 as 49 U.S. Code sect. 80101-80116. 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., 4 Ed., 2008 at pp. 2729-2741.)

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 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 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 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 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.*, 4 Ed., 2008, at pp. 14-15, 75; Tetley, *Int'l. M. & A. L.*, 2003, Chap. 4, at pp.119-178.

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

pro hac vice "For this occasion". See *Baumwoll Manufactur von Carl Scheibler v. Furness* [1893] A.C. 8 at p. 16 (H.L.). where it was held that the demise charterer of a ship is regarded as the vessel's owner "pro hac vice" during the term of the charterparty.

Procedural theory A theory of maritime liens (*supra*), particularly popular in England, which holds that maritime liens are the "children of procedure" and in particular of the writ in rem(*infra*), rather than substantive rights in the property of another. See Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 53-55.

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.

Prudent mariner doctrine A term derived from a warning printed on close area navigation charts published by the National Oceanic and Atmospheric Administration of the United States, which reads as follows: "The prudent mariner will not rely solely on any single aid to navigation, particularly on floating aids."

Public order/public policy 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 recognize or 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 civil law 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. Québec 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.*, 4 Ed., 2008 at pp. 801-808.

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-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 for example, *Vision Air Flight Serv. v. M/V Nat'l Pride*, 155 F.3d 1165, 1999 AMC 1168 (9 Cir. 1998), and *SPM Corp. v. M/V Ming Moon*, 965 F.2d 1297, 1992 AMC 2409 (3 Cir. 1992). See Tetley, *M.C.C.*, 4 Ed., 2008 at pp. 240-243, 265-273; Tetley, *Int'l. M. & A. L.*, 2003 at pp. 92-93.

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.

ratio decidendi ("Reason for deciding"), which refers to a finding of law in a decision, where the finding was based on the issues properly before the court. It is legal reasoning essential to the decision which the court has to take to decide the case. For the opposite of "ratio decidendi", see "obiter dictum" (supra).

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

Recognition of foreign judgments In the conflict of laws, the rules and principles applied by courts in order to determine whether or not to recognize and enforce a judgment rendered by a foreign court or an arbitral award rendered by a foreign arbitral tribunal.

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

Reinsurance See marine reinsurance (supra).

renvoi In the conflict of laws, the French term *renvoi* refers to the application of the conflict rules of one state by the court or tribunal of another state, in order to solve a conflict of laws problem. *renvoi* developed in the nineteenth century, as a reaction to the territorial theory, in an effort to secure greater uniformity and equity in conflicts decisions. Single *renvoi* (a.k.a. partial, imperfect, or receptive *renvoi* or *renvoi simpliciter*) is the referral by the forum court to the conflict rules of a foreign state, but not to that state's *renvoi* rules. This may result in a reference back to the forum's domestic law ("remission") or a reference to the domestic law of a third state ("transmission"). Double *renvoi* (a.k.a. perfect, total, true or integral *renvoi*, total reference, or the foreign court principle) is the referral by the forum court to the conflict rules, including the *renvoi* rules) of a foreign state. Thus the forum court applies the law specified by the foreign conflicts rules, including the foreign *renvoi* rules, in an effort to render the decision which the foreign court would render if it were seized of the case. Double *renvoi* appears to be limited to England. *renvoi* has been subjected to criticism by legal authors and is increasingly excluded in international conflict of laws conventions (e.g. the Rome Convention 1980, infra, at art. 15) and should be rejected. See Tetley, *Int'l. C. of L.*, 1994 at pp. 69-93

Replevin An action for the repossession of personal property wrongfully taken or held by the defendant, where the plaintiff gives security for and holds the property until the court decides who owns it. See *Hual AS v. Expert Concrete, Inc.* 2002 AMC 741 (N.Y. Supr. Ct. 2001).

res ipsa loquitur ("The thing speaks for itself"), referring to the presumption that damages caused by an inanimate object, without human intervention, result from some fault or negligence on the part of the owner or possessor of the object in whose custody it was at the time it caused the harm. The doctrine applies in cases where the damage would not ordinarily occur in the absence of fault or negligence, and where there is no evidence as to how or why the harmful occurrence took place. See *Scott v. London and St. Katherine Docks Co.* (1865) 3 H. & C. 596 at p. 596, 159 E.R. 665 at p. 667; *Hellenius v. Lees* [1972] S.C.R. 165 at p. 172; *Jackson v. Millar* [1976] 1 S.C.R. 225 at p. 235. The principle was shot through the heart by the Supreme Court of Canada in *Fontaine v. B.C. (Official Administrator)* [1998] 1 S.C.R. 424 at p. 435, where Major, J. said: "It would appear that the law would be better served if the maxim was treated as expired and no longer used as a separate component in negligence actions. After all, it was nothing more than an attempt to deal with circumstantial evidence. That evidence is more sensibly dealt with by the trier of fact,..." The decision has been followed in a number of countries in the world.

res judicata ("The thing having been adjudged"), referring to the principle that once a court of competent jurisdiction has rendered a final and conclusive decision in a dispute, the same cause of

action may not normally be tried again. In the conflict of laws, by virtue of *res judicata*, a court is estopped from retrying a case which has been the object of a final and conclusive judgment by a competent court or in another jurisdiction. See Tetley, *M.C.C.*, 4 Ed., 2008 at pp. 1964-1965; Tetley, *Int'l C. of L.*, 1994 at pp. 831-832.

res perit domino ("The thing perishes for the owner"), referring to the principle that risk in the goods pass with ownership. See *Martineau v. Kitching* (1872) 7 Q.B. 436 at pp. 453-454; Tetley, *M.C.C.*, 4 Ed., 2008 at p. 424.

respondentia ("Nantissement à la grosse sur facultés") - The hypothecation of the ship's cargo by the master while away from the vessel's home port, as security for a loan to pay for goods or services needed to preserve the ship or complete the voyage. *Respondentia*, although still secured by a maritime lien (*supra*) in the U.K. and British Commonwealth countries, is obsolete, in view of the emergence of modern means of communications. See Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 9, 17 and 419; Tetley, *Int'l. M. & A. L.*, 2003 at p. 594 footnote 91.

responder immunity Responder immunity - A term used to express the limited immunity from civil liability given to "responders" to an environmental accident whose actions taken or not taken result in worsening the environmental consequences, as long as their conduct was in accord with certain principles and as long as the worsening of the consequences was not due to gross negligence or wilful misconduct.

Restatement Second of the Conflict of Laws The Restatement (Second) of the Conflict of Laws, adopted by the American Law Institute at Washington, D.C., on May 23, 1969.

restitutio in integrum A latin term for "restoration in full", referring to the civilian principle, also recognized at common law and frequently applied in admiralty law, requiring that the successful plaintiff be fully compensated by the final judgment of the court for all the losses and damages which the breach of contract or the commission of the tort or delict caused him. It requires that the victim of the breach of contract or the tort/delict be placed in the same position he was in before the harmful event occurred. In admiralty law, the principle has notably been applied to permit the awarding of damages for pure economic loss, the granting of judgments in foreign currency and the ordering of pre-judgment interest as an integral part of damages from the date of the casualty. See Tetley, *M.C.C.*, 4 Ed., 2008 at p. 751, Tetley, *Int'l C. of L.*, 1994 at pp. 719-721, 736-737, 741, 743, 752; Tetley, *Int'l. M. & A. L.*, 2003 at pp. 97-98, 255.

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).

Rio Rules 1977 The draft "International Convention for the Unification of Certain Rules Concerning Civil Jurisdiction, Choice of Law and Recognition and Enforcement of Judgments in Matters of Collision", approved by the CMI Conference at Rio de Janeiro on September 30, 1977, but which is not in force. For a commentary and the text of the Rio Rules 1977, see [1978] LMCLQ 14.

Rôles of Oléron 12th century codification of maritime law which defined the duties and responsibilities of masters, crews, shipowners and merchants. See Tetley, M.L.C., 2 Ed., 1998 at pp. 13-18; Tetley, Int'l M. & A. L., 2003 at pp. 12-16.

Roman law The law of ancient Rome, which is the source of the civil law. The term "Roman law" is sometimes applied loosely to refer to civil law generally.

Roman-Dutch law The uncodified civil law of South Africa, which has been strongly influenced by common law.

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.

Rotterdam Rules United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (The Rotterdam Rules) [.pdf]. The text of the Convention was adopted on 11 December 2008 during the sixty-third session of the United Nations General Assembly by resolution A/RES/63/122. The Convention shall be open for signature by all States at Rotterdam, the Netherlands, on 23 September 2009, and thereafter at the Headquarters of the United Nations in New York. The Convention will enter into force on the first day of the month following the expiration of one year after the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession. For criticisms of the Rotterdam Rules please see <http://www.mcgill.ca/maritimelaw/rotterdamrules/>.

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.

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

S.C.R. Supreme Court Reports. The official bilingual reports of the Supreme Court of Canada published by Public Works and Government Services, Ottawa, ON, Canada, K1A 0S9. Web site: <http://www.lexum.umontreal.ca/csc-scc/en/index.html>. An example of the citation is [1970] S.C.R. 123.

S.D.R. (1) 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.

S.D.R. (2) The value of the S.D.R., as established by the IMF with effect from January 1, 2001, is equal to the market value of fixed amounts of four currencies, the U.S. dollar 45%, the euro 29%, the Japanese yen 15% and the British pound sterling 11%. (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 criteria selection of currencies for inclusion in the S.D.R. valuation basket are: 1) the currencies of those member countries of the IMF which are the largest exporters of goods and services (including exports by a monetary union that includes IMF members); and 2) currencies which are "freely usable" in accordance with Article XXX(f) of the IMF's Articles of Agreement, being ones which the IMF's Executive Board determines are in fact widely used to make payments for international transactions and are widely traded in the principal foreign exchange markets. The weights assigned to the currencies in the S.D.R. basket continue to be based on the value of the exports of goods and services and the amount of reserves denominated in the respective currencies which are held by other members of the IMF. The basket composition is reviewed every five years to ensure that it reflects the relative importance of currencies in the world's trading and financial systems.

S.D.R. (3) As at March 2007, the S.D.R. was worth approx. \$1.77 Cdn., or approx. \$1.50 U.S., or approx £0.77 (pound sterling), or approx. €1.14(euro) (supra) .

S.M.A. The Society of Maritime Arbitrators, New York. Email: 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.

Safe Containers Convention 1972 The International Convention for Safe Containers, adopted by the IMO (supra) on December 2, 1972, which came into force September 6, 1977.

Safety of Life at Sea (SOLAS) Convention 1974 International Convention for the Safety of Life at Sea, amended 1974, in force May 25, 1980, as amended. Adopted by the 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 Appx. 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 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 of the Supplemental Rules for Certain Admiralty and Maritime Claims (infra) 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 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 by the IMO (supra) at London on April 28, 1989 and in force as of July 14, 1996. See 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.

SAMSA The Society of Accredited Marine Surveyors, Inc., Jacksonville, Florida. Website: <http://www.marinesurvey.org/>; email: SAMSHQ@aol.com.

Sanderson order See Bullock order, supra.

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.

Scots law The uncodified civil law of Scotland, which has been strongly influenced by English common law and United Kingdom statutes.

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

Search and Rescue (SAR) Convention 1979 The International Convention on Maritime Search and Rescue, adopted by the IMO (supra) on April 27, 1979, which came into force June 22, 1985, as subsequently amended by a revised technical annex on May 18, 1998, which came into force January 1, 2006, and a group of amendments relating to persons in distress at sea, adopted on May 20, 2004, which came into force on July 1, 2006.

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

Seaworthiness 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., 4 Ed., 2008 at pp. 875-950; 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).

Senate COGSA '99 A bill to repeal and replace U.S.COGSA, 1936 (*supra*), introduced (in a sixth draft) in the U.S. Senate on September 24, 1999, but not yet adopted. For the text, see [here](#). See also Tetley, "Reform of Carriage of Goods - The UNCITRAL Draft and Senate COGSA '99" (2003) 28 Tul. Mar. L.J. 1-44, also available: Reform of Carriage of Goods -- The UNCITRAL Draft and Senate COGSA '99 [.pdf]. See also further comments by Tetley at [here](#) and by the Canadian Maritime Law Association [here](#).

Ship mortgage 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..

Shiparrested.com A website providing information on the arrest of ships in many different jurisdictions around the world. Website: <http://www.shiparrested.com/> Email: info@shiparrested.com;

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., 4 Ed., 2008 at pp. 445-519.

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 Appx. 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., 4 Ed., 2008 at pp. 687-688, 1191, 1545, 1158, 1563.

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 UNCTAD 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.

Shipping Federation of Canada Website: <http://www.shipfed.ca/>. Email: info@shipfed.ca.

Shipping Law Unit A specialized institute within the University of Cape Town, South Africa, providing teaching and research facilities in regard to private maritime law. Website: <http://www.uctshiplaw.com/shipping.htm>. See also Institute of Marine and Environmental Law" and "University of Cape Town".

Ships' Ballast Water and Sediments Convention 2004 The International Convention for the Control and Management of Ships' Ballast Water and Sediments, adopted by the IMO (supra) on February 13, 2004, not yet in force.

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 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). South Africa's Admiralty Jurisdiction Regulation Act 1983 (No. 105 of 1983), sect. 3(6) and (9), providing for the arrest of "associated ships" provides a particularly liberal form of sister-ship arrest. 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; also available on-line at: <http://www.mcgill.ca/maritimelaw/maritime-admiralty/arrest/>.

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

Southampton See "Institute of Maritime Law".

Special compensation 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.

Special legislative rights Rights which governments in most countries of the world have given themselves by national legislation to detain, seize and sell ships, and (often) to be preferred to other creditors on the proceeds of sale, in respect of claims for harbour, dock and canal dues; wreck removal; or pollution. Special legislative rights also increasingly include a governmental power of forfeiture of ships and/or other property for offences against national legislation on matters such as drug trafficking, fisheries control, customs, immigration, the arms trade and piracy. See Tetley, *M.L.C.*, 2 Ed., 1998 at pp. 65-71; Tetley, *Int'l. M. & A. L.*, 2003 at pp. 475-478.

Standards of Training, Certification and Watchkeeping for Seafarers (STCW) Convention 1978 The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, adopted by the IMO (supra) on July 7, 1978, which came into force on April 28, 1984, as amended.

stare decisis ("To stand by decisions"), referring to the common law principle which obliges an inferior court to follow the clear findings in law of a superior court of the same jurisdiction. Supreme courts and inferior courts may also hold themselves bound by their own decisions. Nota bene: "Stare decisis" is an abbreviation of the full Latin maxim, "stare decisis et non quieta movere", meaning "stand by decisions and do not disturb the calm". See *Telstra Corp. Ltd. v. Telstra* (2000) 102 FCR 595 at p. 605 (Fed. Ct. Aust.).

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 uncoded)* (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.

Stem See Subject stem (infra).

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.

Sua sponte A Latin term meaning "of one's own accord". The term is frequently used to refer to the right of a court to consider a legal issue "of its own motion", even if none of the parties have raised or addressed the issue in their written or oral pleadings. See, for example, *U.S. Express Lines, Ltd. v. Higgins* 281 F.3d 383 at pp. 388-389, 2002 AMC 823 at p. 827 (3 Cir. 2002), referring to "... the duty of federal courts to examine their subject matter jurisdiction at all stages of the litigation sua sponte if the parties fail to raise the issue."

Subject stem In fixing a voyage charterparty (*supra*), "subject stem" (or "sub. stem") means that the charter is conditional upon the charterer obtaining cargo for the agreed loading period. "Stem" is an abbreviation of "subject to enough merchandise". Both the charterer and the shipowner are relieved of their obligations if the cargo cannot be obtained. See *Kokusai Kisen Kabushiki v. Johnson* (1921) 8 Ll. L. Rep. 434. See also J. Cooke, J.D. Kimball, T. Young, D. Martowski, A. Taylor, & L. Lambert, *Voyage Charters*, 2 Ed., LLP, London, 2001 at para. 1.23; P. Brodie, *Dictionary of Shipping Terms*, 4 Ed., LLP, London, 2003 at p. 223.

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.*, 4 Ed., 2008 at pp. 200-221). Superseding clauses in contracts generally the U.S. are also sometimes called "integration clauses" or "merger clauses".

Supplemental Rules - The Supplemental Rules for Certain Admiralty and Maritime Claims, adopted in 1966 as part of the Federal Rules of Civil Procedure in the United States. The Supplemental Rules are

lettered rules (e.g. Rule B re maritime attachment (*supra*) and Rule C re ship arrest (*supra*)). See text in Federal Rules of Civil Procedure, Rules 60 - End, United States Code Service (1987). See Tetley, *Int'l. M. & A. L.*, 2003 at pp. 429-431.

Suppression of Unlawful Acts (SUA) Convention 1988 - The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, adopted by the IMO (*supra*) on March 10, 1988, which came into force March 1, 1992. The SUA Convention 1988 was amended by a Protocol adopted at London, on October 14, 2005, which is not yet in force. The SUA Convention 1988, arts. 1 to 16, as revised by the 2005 Protocol, together with arts. 17 to 24 of the Protocol and its Annex, constitute the "Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 2005 (2005 SUA Convention).

Swedish Maritime Code 1994 - It is the Swedish ratification of the Nordic Maritime Code (in force Oct. 1, 1994) enacted by Denmark, Finland, Norway and Sweden. It is published in Swedish with translation in English by Juristförlaget Stockholm 1995. (See Tiberg, [1995] LMCLQ 527.) See also the 2 Ed., updated to June 30, 2000, published by Jure AB, Stockholm, 2001.

T.E.U. Twenty-foot Equivalent Unit. The basic forty-foot container is 2 T.E.U.

Tacit acceptance procedure- A procedure for amending limits of liability under various maritime law conventions and protocols drafted by the International Maritime Organization (IMO), (*supra*), without the need to convoke a diplomatic conference to adopt the amendment by protocol. By virtue of this more expeditious procedure, any proposal to amend liability limits under a given convention or protocol, at the request of at least one-quarter of the Contracting States to the convention or protocol concerned, is first circulated by the Secretary General of the IMO to all such States. Any amendment so proposed and circulated is then submitted to the Legal Committee of the IMO for consideration at least six months after the date of its circulation. All Contracting States to the convention or protocol concerned are entitled to participate in the consideration of the proposed amendment at the Legal Committee, even if they are not Member States of the IMO. Amendments may then be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, including those Contracting States not belonging to the IMO, provided that at least one-half of all the Contracting States are present at the time of voting. The amendment is then notified by the IMO to all Contracting States and is deemed to have been accepted eighteen (18) months after the date of such notification, unless within that period not less than one-quarter of the States that were Contracting States at the time of the adoption of the amendment by the Legal Committee have communicated to the IMO that they do not accept the amendment. In that case, the amendment is rejected and without effect. An amendment which is deemed to have been accepted, however, enters into force eighteen (18) months after its acceptance. All Contracting States of the convention or protocol concerned are then bound by the amendment unless they denounce the convention or protocol at least six months before the amendment enters into force. States which become Contracting States of the convention or protocol concerned during the eighteen- month period following the adoption of the amendment by the Legal Committee of the IMO are then bound by the amendment if it enters into force. States that become

Contracting States to the convention or protocol concerned more than 18 months after its adoption by the Legal Committee of the IMO are bound by the amendment that has been accepted. The tacit amendment procedure also often provides for certain restrictions on the frequency with which amendments to liability limits may be proposed (e.g. not less than five years after the entry into force of a previous amendment) and for certain restrictions on the percentage increases in such limits. This "tacit acceptance procedure" is a feature of the CLC Convention 1992 (supra) (art. 15), the Fund Convention 1992 (supra) (art. 33), the Hazardous and Noxious Substances Convention 1996 (supra) (art. 48), as well as of the Protocol of 1990 to the Athens Passenger Convention 1974 (supra) (art. VIII), the Protocol of 2002 to the Athens Passenger Convention 1974 (supra) (art. 23) and the Protocol of 2003 to the Fund Convention 1992 establishing the International Supplementary Fund for Compensation for Oil Pollution Damage (supra).

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.

The Company of Master Mariners of Canada Website: <http://www.mastermariners.ca/>. Email: shipmaster@shaw.ca.

The National Association of Marine Surveyors Chesapeake, Virginia. Website: <http://www.nams-cms.org/>; email: NationalOffice@nams-cms.org id="necessaries" name="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 31301(4) and 31342, whereas in the United Kingdom, Canada, and other British Commonwealth jurisdiction, necessaries confer only at most a statutory right in rem (infra). In France, necessaries 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.

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.

Tokyo Rules The CMI's proposed multimodal convention, adopted at Tokyo, 1969 (not in force).

Tonnage contract A contract for the carriage of a certain quantity of goods, usually measured in tons, during a period of time, by ships or other means, usually to be designated later. The contract often begins inland and is multimodal in nature. The tonnage contract therefore constitutes a promise to conclude a number of contracts, either of carriage or charterparty, for the transportation of the goods to be shipped. Another term for tonnage contract is "volume contract". In English-speaking countries, the tonnage contract is sometimes referred to as a "contract of affreightment" (COA). See also space charter, *supra*.

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

Tonnage Measurement of Ships Convention 1969 See "Tons & Tonnage" (*infra*).

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

Tons & Tonnage 1) Tons: Short ton (American) 2000 lbs, Long ton (English) 2240 lbs, Metric ton (1000 kg.) 2204.6 lbs; 2) Gross tonnage 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.): The volumetric cargo capacity of the ship according to its certificate of registry; 4) Net tonnage 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: 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 is the actual cargo carrying capacity of the ship, 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 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, adopted by IMO on June 23, 1969, which came into force on July 18, 1982. 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 "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 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. There are various standard-form towage contracts, including, for example, the "International Ocean Towage Agreement (Lump Sum)" (Code Name: "TOWCON") and the "International Ocean Towage Agreement (Daily Hire)" (Code Name: "TOWHIRE") of BIMCO (supra). See Tetley, Int'l M. & A. L., 2003 at p. 186. See also dominant mind (supra).

Trade Winds A leading international shipping newspaper, published weekly by TradeWinds A/S. Web site: <http://www.tradewinds.no/>.

Traffic Separation Scheme (T.S.S.) A method of regulating the flow of vessel traffic moving in different directions. The term is defined by the International Maritime Organization (IMO) in its Resolution A/284 of November 20, 1973, as "a scheme which separates traffic proceeding in opposite or nearly opposite directions, by the use of a separation zone or line, traffic lanes, or by other means." Today, traffic separation schemes are often part of Vessel Traffic Services (V.T.S.), infra, in ports or restricted coastal areas. See Tetley, Int'l M. & A. L., 2003 at p. 237. See also Russell MacWilliam & Darryl Cooke, "VTS: lifting the fog of legal liability" [2006] LMCLQ 362-389.

Trinity House The Corporation of Trinity House, established as a guild of mariners by King Henry VIII of England in 1517, in the Parish of Deptford Strond, in the County of Kent (now near the Tower of London). The Trinity House has been responsible, since the time of Queen Elizabeth I, for the erection and maintenance of lighthouses, lightships and buoys in English waters. It is also the authority for the licensing of pilots. The "Elder Brethren" of Trinity House (retired sea captains, also known as "Trinity Masters") serve as nautical assessors (supra) to the High Court, Admiralty Division.

U.L.C.C. Ultra Large Crude Carrier.

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.

UCP 500; UCP 600 See Uniform Customs and Practice for Documentary Credits (infra).

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 Model Law on International Commercial Conciliation, 2002 (infra), the UNCITRAL Arbitration Rules, the UNCITRAL Conciliation Rules, and the UNCITRAL Notes on Organizing Arbitral Proceedings. Website: <http://www.uncitral.org/>. Email: uncitral@uncitral.org.

UNCITRAL Draft Instrument on Transport Law See CMI/UNCITRAL Draft Instrument on Transport Law (supra).

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.)

UNCITRAL Model law, 2002 The "United Nations Commission on International Trade Law Model Law on International Commercial Conciliation", was adopted June 24, 2002. (Text can be found in: Report of the United Nations Commission on International Trade Law, published as Annex I to the Report of the United Nations Commission on International Trade Law on its 35th session, Supplement no 17 (A/57/17) of the Official Records of the Fifty-Seventh Session of the General Assembly, United Nations, New York, 2002).

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 the purpose of promoting 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). UNCTAD has also drafted a number of maritime transport conventions, including the Code of Conduct for Liner Conferences 1974, the Multimodal Convention 1980 (supra) and the UN Convention on the Registration of Ships 1986. UNCTAD, working in conjunction with IMO (supra), also helped prepare the Maritime Liens and Mortgages Convention 1993 (supra) and the Arrest Convention 1999 (supra). Website: <http://www.unctad.org/>. Email: info@unctad.org.

UNECE The United Nations Economic Commission for Europe. Website: <http://www.unece.org/>. Email: info.ece@unece.org.

UNIDROIT International Institute for the Unification of Private Law - UNIDROIT is an independent intergovernmental organization, based in Rome. Its purpose is to study needs and methods for modernizing, harmonizing and co-ordinating private and, in particular, commercial law as between States and groups of States. Set up in 1926 as an auxiliary organ of the League of Nations, the Institute was, following the demise of the League, re-established in 1940 on the basis of a multilateral agreement, the UNIDROIT Statute. Website: <http://www.unidroit.org/>. Email: unidroit.rome@unidroit.org.

UNIDROIT Principles of International Commercial Contracts 1994/2004 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 all the major legal traditions, approved by the Governing Council of UNIDROIT in 1994, and then amended in 2004 to include a number of new topics, notably the authority of agents, third party rights, set-off, assignment of rights, transfer of obligations and assignment of contracts, limitation periods and waiver. The new edition also has an expanded Preamble and new provisions on "Inconsistent Behaviour" and on "Release by Agreement" and has adapted the 1994 edition to meet the needs of electronic contracting. 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 expressly choose them as the law governing their contract or 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, when the parties have not chosen any law to govern their contract, to interpret or supplement international uniform law instruments, as well as domestic law, and as a model for national and international legislation on commercial contracts. For the English version of the original Principles of 1994, see J.M. Perillo, "UNIDROIT Principles of International Commercial Contracts: The Black Letter Text and a Review" (1994) 63 *Fordham L. Rev.* 281. For the text of the Principles 2004, see website: <http://www.unidroit.org/english/principles/contracts/main.htm>. For commentary on the Principles 2004, see M.J. Bonell, "UNIDROIT Principles 2004 - The New Edition of the Principles of International Commercial Contracts adopted by the International Institute for the Unification of Private Law", *Uniform Law Review* 2004, 5-40 and at website: link.

Uniform Customs and Practice for Documentary Credits Uniform Customs and Practice 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 1993 Revision came into effect on January 1, 1994 and is known as UCP 500 (1994). See ICC Publication No. 500 (1994). UCP 500 has been superseded by the 2007 Revision (UCP 600), adopted by the ICC's Banking Commission on October 25, 2006, which enters into force July 1, 2007. See ICC Publication No. 600 (2006). The ICC, 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 (supra), prepared by the CMI and adopted in Paris, June 29, 1990. See text in (1991) 22 *JMLC* 617-619.

United Kingdom (U.K.) Great Britain (i.e. England, Scotland and Wales) and Northern Ireland. N.B. 1) The Channel Islands and the Isle of Man are "British islands", but are not included in the term "United Kingdom", unless otherwise provided by a definition in a particular statute. 2) Also excluded from "the U.K." are British colonies and British overseas territories. See also "English law" and "Law of the United Kingdom", supra.

V.L.C.C. Very Large Crude Carrier.

V.L.C.P. Very Large Crude Partner - of a maritime law firm.

V.M.A.A. The Vancouver Maritime Arbitrators Association. Website: <http://www.vmaa.org/>;
Email: secretary@vmaa.org/.

V.T.S. See Vessel Traffic Services, 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., 4 Ed., 2008 at pp. 324-325, 741-743, 774-777, 2242-2245; Tetley, Int'l. M. & A. L., 2003 at p. 100.

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).

Vessel Traffic Services (V.T.S.) Systems facilitating safe and efficient vessel traffic movement to or from ports, or within restricted sea areas adjacent to the coasts of states, under which ship traffic is subject to the supply or exchange of information, or the giving of advice or instructions, by coastal stations. On November 27, 1997, the International Maritime Organization (IMO) adopted Resolution A.857(20), entitled "Guidelines for Vessel Traffic Services". That Resolution defines a V.T.S. as "a service implemented by a Competent Authority, designed to improve the safety and efficiency of vessel traffic and to protect the environment. The service should have the capability to interact with the traffic and to respond to traffic situations developing in the V.T.S. area." See generally Russell MacWilliam & Darryl Cooke, "VTS: lifting the fog of legal liability" [2006] LMCLQ 362-389. V.T.S. systems often operate in conjunction with Traffic Separation Schemes (T.S.S.), supra.

Visby Rules "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.)

Volume contract See tonnage contract, supra.

Vouching in The common-law procedure (not generally accepted) where a third party is given notice of a suit or arbitration and is deemed to be bound by the facts or law arrived at in the original suit or arbitration. Should there be a subsequent suit or arbitration, however, the vouchee is not a defendant. See *Ferrostaal v. American Commercial* 2002 AMC 986 at pp. 987-989 (N.D. Ill. 2002). See also Michael H. Bagot, Jr. & Dana A. Henderson, "Not Party, Not Bound? Not Necessarily: Binding Third Parties to Maritime Arbitration" (2002) 26 Tul. Mar. L.J. 413-461.

Voyage charterparty See charterparty (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/>. Email: info@wmu.se.

Wreck removal The operation of clearing navigable waters of sunken vessels or other submerged objects which threaten the safety of navigation. Wreck removal claims are frequently secured by special legislative rights (supra) of detention, sale and/or forfeiture, under national law. See Tetley, M.L.C., 2 Ed., 1998 at pp. 103-125; Tetley, *Int'l M. & A. L.*, 2003 at p. 476. Wreck removal operations are often conducted under the terms of certain standard-form contracts, including, for example, those issued by BIMCO (supra), and approved by the International Salvage Union (supra), viz., the "International Wreck Removal and Marine Services Agreement (Fixed Price - "No Cure, No Pay") (Code Name: "Wreckfixed 99")", the "International Wreck Removal and Marine Services Agreement (Lump Sum - Stage Payments)

(Code Name: "Wreckstage 99"), or the "International Wreck Removal and Marine Service Agreement (Daily Hire) (Code Name: "Wreckhire 99").

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.