SECTION 1 INTRODUCTION TO SHIPPING LAW

25.1.1 The shipping law of Singapore broadly covers the areas of carriage of goods by sea, admiralty law, and merchant shipping legislation. So far as carriage of goods by sea is concerned, Singapore law is largely similar to English law. Common law principles and two statutes, namely the Carriage of Goods by Sea Act and the Bills of Lading Act, form the body of the law on carriage by sea. The primary legislation on admiralty law and jurisdiction is the High Court (Admiralty Jurisdiction) Act of Singapore, which is modelled after the UK Administration of Justice 1956. The merchant shipping law of Singapore is embodied in the Merchant Shipping Act, which is a piece of legislation that covers somewhat diverse areas such as the powers of the port authorities, registration of mortgages, limitation of liability, registration of ships, and rights of crew. There is also legislation covering specific areas such as pollution at sea.

25.1.2 This introduction to the shipping law of Singapore is intended to give an overview to the reader of the various areas grouped under the rubric of shipping law. For more detailed discussion, the reader is referred to the following texts written on the area: for Carriage of Goods by Sea, see Professor Tan Lee Meng's book, The Law in Singapore on Carriage of Goods by Sea, 1994, 2nd Edn; for Admiralty law, see Toh Kian Sing, Admiralty Law and Practice, 2007, 2nd Edn.

SECTION 2 CARRIAGE OF GOODS BY SEA

25.2.1 A contract for the carriage of goods usually assumes one of two forms: a charterparty or a bill of lading.

SECTION 3 CARRIAGE OF GOODS BY SEA: CHARTERPARTIES

25.3.1 A charterparty is a contract whereby an entire ship, or some principal part of it, may be used by the charterer for a voyage or series of voyages or for a period of time. The three main categories of charterparty are a) time charterparty; b) voyage charterparty; and c) demise charterparty. Such a contract may be entered into orally or in writing. The relief of rectification of a contract of carriage which is in writing is available in appropriate circumstances (*The An Ji Jiang [2003] 4 SLR(R) 348*).

A. Time charterparty

(1) The master and crew of the vessel perform services for a specified period in consideration of the payment of hire

25.3.2 A time charterparty is a contract in which the master and crew of the vessel perform services during a specified period in consideration of the payment of hire (*Cascade Shipping Inc v Eka Jaya Agencies (Pte) Ltd [1993] 1 SLR(R) 187*). Under a time charterparty, the shipowner retains possession of the vessel and the master and crew are employed by him. However, the charterer is entitled to determine how the vessel is to be employed, within the agreed trading limits stipulated in the charter. The charterer is also obliged to supply bunkers to the vessel unless the time charter provides otherwise. In a time charterparty, the risk of any delay rests with the time charterer. The charterparty usually sets out certain events, the occurrence of any one of which renders the vessel off-hire i.e. that the charterer ceases to be responsible for the payment of hire during that period. Such events include breakdown of the ship's machinery, insufficiency of crew, strikes etc.

(2) The charterer has the obligation to nominate a safe port

25.3.3 A charterer has the obligation to nominate a safe port (The Evia (No.2) [1982] 2 Lloyd's Rep 307). If an unsafe port is nominated, a shipowner is entitled to ask the charterer to re-nominate another port. If the charterer refuses, the shipowner may terminate the charterparty or he may send the vessel to the nominated unsafe port but reserve his right to claim damages.

(3) The duration of a time charterparty is usually subject to an express or implied margin or tolerance of time on either side of the agreed redelivery date and the vessel must be in the same condition, excepting wear and tear

25.3.4 The duration of a time charterparty is usually subject to an express or implied margin or tolerance of time on either side of the agreed redelivery date. This arises from the presumption that a definite date for the termination of a time charter should be regarded as an approximate date only (The London Explorer [1971] 1 Lloyd's Rep 523). The charterer is obliged to re-deliver the vessel to the shipowner in the same good order and condition, fair wear and tear excepted, as the vessel was in at the time of delivery to the charterer. The re-delivery must take place by the final terminal date of the charterparty, taking into account any express or implied margin or tolerance of time for redelivery.

B. Voyage Charterparty

(1) A contract to carry specified goods on a defined voyage

25.3.5 A voyage charterparty is essentially a contract to carry specified goods on a defined voyage or series of voyages. Like a time charterparty, the shipowner retains possession of the vessel and employs the master and crew.

(2) The shipowner is remunerated by the payment of freight for goods delivered at the discharge port

25.3.6 The shipowner is remunerated by the payment of freight, which is usually calculated by reference to the quantity of cargo shipped or by a lump sum. There is a rule against the deduction of freight for damage to or loss of cargo (Ocean Projects Inc v Ultratech Pte Ltd [1994] 2 SLR(R) 245). In the absence of any provision entitling the shipowner to advance freight, freight is only earned when the shipowner has carried the goods to the discharge port and is in a position to deliver them to the charterer. Under the common law, a shipowner is entitled to exercise a possessory lien for unpaid freight.

(3) The shipowner must ensure the seaworthiness of the vessel at the commencement of the voyage, unless otherwise expressly agreed

25.3.7 A shipowner must ensure that the vessel is seaworthy at the commencement of the voyage (McIver & Co Ltd v Tate Steamers Ltd [1903] 1 KB 362). At common law, this obligation is an absolute one; it may be mirrored or modified by the express terms of the charter (*The Asia Star [2007] 3 SLR(R) 1*). Any provision which excludes or restricts the shipowner's liability to provide a seaworthy vessel must be "express, pertinent and apposite" (*Sunlight Mercantile Pte Ltd v Ever Luck Shipping [2004] 1 SLR(R) 171*).

(4) The risk of delay lies with the shipowner for the voyage, but with the charterer for loading and discharge operations

25.3.8 The risk of any transit delays in the voyage charterparty lies with the shipowner. For loading and discharge operations, however, the incidence of risk of delay is reversed and placed on the charterer instead through a laytime and demurrage provision. Laytime begins when the vessel is an arrived vessel i.e. when she has reached her contractual destination and is in all respects ready to receive or discharge the cargo and has tendered a notice of readiness (*Paragon Shipping Pte Ltd v Freight Connect (S) Pte Ltd [2014] 4 SLR 574*; The Johanna Oldendorff [1974] AC 479). A notice of readiness must only be tendered when the vessel is ready to load or discharge; a premature notice is ineffective and will not cause laytime to start running (notice of readiness *The Asia Star [2007] 3 SLR(R) 1*). The voyage charterer is obliged to load or discharge the cargo within the period of laytime stipulated in the charterparty or, if not so stipulated, within a reasonable time. Where the charterer fails to load the cargo within the period of laytime

stipulated or within a reasonable time, as the case may be, the shipowner is entitled to either demurrage (which is a form of liquidated damages, if expressly provided) or to damages for detention of the vessel..

C. Demise or Bareboat Charterparty

(1) A contract for the hire of the ship as a chattel

25.3.9 A demise charterparty is a contract for the hire of the ship as a chattel. The charterer becomes for the purposes of the world at large (except the shipowner himself) the owner of the ship for the duration of the charter. The master and crew are the demise charterer's employees. Whether a charterparty operates by demise is a question of construction to be determined by reference to the language of the charterparty (*Pan United Shipping Pte Ltd v Cendrawasih Shipping Pte Ltd [2004] SGHC 32*). Indicia of a bareboat charter include whether the master is the employee of the charterer and whether the charterer (himself or through his agent) has full physical possession of the vessel.

(2) The charterer operates the vessel for the duration of the charter as he pleases subject to any specific restrictions in the charterparty and pays charterhire periodically

25.3.10 A demise charterer operates the vessel for the duration of the charter as he pleases, subject to any trading or cargo restrictions specified in the charterparty. Like a time charterparty, he pays charterhire on a periodic basis. Demise charterparties are sometimes entered into as a form of long or medium term financing arrangements (see, for example, Mark Davis, Bareboat Charters, 2005, 5th Edn at chapters 33-35).

SECTION 4 CARRIAGE OF GOODS BY SEA: BILLS OF LADING

25.4.1 Broadly speaking, a bill of lading is a document signed by the carrier, or by the master or other agent on behalf of the carrier, stating that certain specified goods have been shipped on board a particular ship and setting out the terms on which the goods would be carried by the ship. A bill of lading serves three functions. It contains or evidences the contract of carriage, serves as a receipt for the goods carried, and is a document of title.

A. Bill of lading as Evidence of the Contract

(1) Where goods are shipped by the charterer, a bill of lading does not displace the charterparty as the contractual document

25.4.2 Whether a bill of lading is evidence of the contract of carriage depends on whether it is the charterer who holds the bill of lading. Where the goods are shipped by the charterer, the bill of lading does not displace the charterparty as the document governing the contractual relationship between the shipowner and the charterer (The Dunelmia [1970] 1 QB 289).

(2) Where the shipper is not the charterer, the bill of lading evidences the contract of carriage

25.4.3 Where the shipper or the holder of the bill of lading at the material time is not the charterer, the bill of lading either evidences or contains the contract of carriage. As a general rule, the shipper is entitled to hold the shipowner responsible for his goods, and to claim delivery of them on the terms of the bill of lading. The shipowner cannot therefore rely on the terms in the charterparty which are not incorporated in the bill of lading. As between the shipper and shipowner, the bill of lading evidences the contract of carriage but may be supplemented or contradicted by any relevant contract(s) that came into existence prior to its issue. However, as between the shipowner and a consignee or indorsee of the bill of lading, the bill of lading contains the contract of carriage.

(3) The terms of a bill of lading may be supplemented or superseded by the Hague or Hague Visby Rules

25.4.4 The terms of the bill of lading may be supplemented or superseded by the provisions of the Hague or Hague Visby Rules. Singapore is a signatory to the Hague Visby Rules which are reproduced in the Singapore Carriage of Goods by Sea Act. These Rules have mandatory application under the said Act. The application of these Rules is explained below.

B. Bill of Lading as a Receipt

(1) The bill of lading functions as an acknowledgement by the carrier of receipt of specified goods; fraudulent or negligent misrepresentations may be actionable in tort

25.4.5 A bill of lading also functions as an acknowledgement by the carrier of the receipt of the goods specified in it. It usually contains various representations as to the quantity and condition of the goods. If fraudulently or negligently made, such representations may form the basis of an action in tort against the carrier by third parties who suffer loss in reliance on them, in particular consignees or financial institutions who take up and pay for the shipping documents in circumstances where, if the true facts had been stated, they would have been entitled to reject them (The Saudi Crown [1986] 1 Lloyd's Rep 261).

(2) The bill of lading is prima facie evidence of the condition, marks, quantity of goods, and date of loading as between the shipper and shipowner

25.4.6 Under the common law, a bill of lading is prima facie evidence of the condition, marks, and quantity of the goods as well as the date of loading as between the shipper and the shipowner. However, as between the shipowner and the consignee or indorsee, such statements in the bill of lading cannot be rebutted by the shipowner.

25.4.7 Where the bill of lading contains a statement that the goods are 'shipped in apparent good order and condition', this only amounts to a representation of fact that the goods are shipped in apparent good order and condition insofar as external appearance of the goods is concerned (*Vaynar Suppiah & Sons v Abdul Rahim K M A [1974-1976] SLR(R) 112*; Silver v Ocean Steamship Co Ltd [1930] 1 KB 416).

25.4.8 Bills of lading are frequently claused by expressions such as 'said to contain', 'contents and quantity unknown', and 'container yard to container yard' (see, for example, The American Astronaut [1979-1980] SLR(R) 243). The expression 'said to be' has been held to be an ineffective clausing of a bill of lading (*The Thomaseverett [1992] 2 SLR(R) 492*). Through effective clausing, the shipowner can negate the statements made in the bill of lading so that in effect no representation can arise from such statements.

C. Bill of Lading as a Document of Title

(1) The bill of lading is document of title, which enables its owner to raise credit for an international sale if it is an 'order' bill

25.4.9 A bill of lading is often described as a document of title, which enables the owner of the goods in respect of which it was issued to raise credit for an international sale. However, it is pertinent to note that a bill of lading may be regarded as a document of title only if it is an 'order' bill, under which the carrier agrees to deliver the goods at the port of discharge to a named person or to his 'order or assigns'. An order bill of lading may be transferred by blank or special indorsement of the bill of lading. A bearer bill of lading, which is rare, may be transferred by physical delivery of the bill. A bill of lading validly indorsed in blank functions like a bearer bill of lading, in that it may be transferred by physical delivery (*The Dolphina [2012] 1 SLR 992*; *Bandung Shipping Pte Ltd v Keppel TatLee Bank Ltd [2003] 1 SLR(R) 295*). A straight, consigned bill of lading is not a document of title in the sense of being negotiable, but it must nevertheless be presented before the carrier can deliver the goods shipped thereunder (*APL Co Pte Ltd v Voss Peer [2002] 2 SLR(R) 1119*; The Rafaela S [2005] 2 AC 423).

(2) The bill of lading entitles its holder to the delivery of goods against presentation of the bill

25.4.10 As a document of title, the bill of lading entitles its holder to delivery of the goods against presentation of such a bill. Accordingly, a delivery to the holder of the bill of lading, even where he has not paid for the goods, discharges the shipowner from any liability, provided that such delivery was made in good faith and without notice of the holder's defect in title or competing claims for the goods. A shipowner is liable for breach of contract of carriage and/or conversion of the cargo if the goods were delivered to a person without production of the bill of lading. A carrier who delivers cargo without surrender of the bill of lading or against the production of a forged bill of lading does so at his peril (*The Cherry [2003] 1 SLR(R) 471*; *The Jian He [1999] 3 SLR(R) 432*; *The Arktis Sky [1999] 3 SLR(R) 177*). A seller who holds onto the bill of lading although having received partial payment from his buyer is not estopped from suing the carrier who delivers the cargo without production of the bill of lading (*The Pacific Vigorous [2006] 3 SLR(R) 374*).

(3) Switching of bills of lading is a dangerous practice for the shipowner, but is not untoward if meant to conceal the identity of the shipper or to split bulk cargo

25.4.11 Switching of bills of lading is a relatively common practice but is one fraught with danger to the shipowner, especially if the switching is imperfectly carried out and two sets of bills of lading are left in circulation (*BNP Paribas v Bandung Shipping Pte Ltd [2003] 3 SLR(R) 611*). There is however nothing untoward if the switch is solely to conceal the identity of the original shipper from the receiver of the goods or to split up a bulk cargo into smaller quantities (*Samsung Corp v Devon Industries Sdn Bhd [1995] 3 SLR(R) 603*).

D. Rights of Suit under Bills of Lading

(1) The Bills of Lading Act transfers all rights of suit for a contract of carriage, not including charterparties, to any person who lawfully becomes the holder of a bill of lading

25.4.12 Rights of suit under a bill of lading were previously governed by the 1855 Bills of Lading Act and depended on the passing of property in the goods shipped under the bill of lading by reason of the indorsement or consignment of the bill of lading. The 1855 Bills of Lading Act has been abolished and replaced in Singapore by the current Bills of Lading Act (hereinafter 'BLA'), which is in *pari material* with the UK Carriage of Goods by Sea Act 1992.

25.4.13 The BLA removes the link between contractual rights and the passing of property and allows the assertions of rights of suit against the carrier irrespective of the passing of property in the goods shipped. As such, a person who becomes a lawful holder of the bill of lading as defined by the BLA has, by virtue of becoming the holder of the bill, transferred to and vested in him all rights of suit as if he had been a party to the bill of lading (see s. 2(1) of the BLA). For the purpose of the Act, the holder of the bill of lading can be in either physical or constructive possession (through an agent, for instance) of the bill of lading (*The Cherry [2002] 1 SLR(R) 643*).

(2) A person who has the right of suit may exercise that right for another person who has an interest in relation to the goods to which bill of lading relates and sustains loss in consequence of a breach of contract

25.4.14 Where a person with any interest or right in relation to goods to which a bill of lading relates sustains loss or damage in consequence of a breach of the contract of carriage, but rights of suit in respect of the breach are vested in another person, that other person is entitled to exercise those rights for the benefit of the person who sustained the loss or damage to the same extent as they could have been exercised if they had been vested in the person for whose benefit they are exercised (see s. 2(4) of the BLA).

(3) A bill of lading is not transferrable where the goods are specified to be delivered to a named person

25.4.15 A bill of lading is not transferable where it requires the goods specified in it to be delivered to a named person, omitting any language of transferability. Such a bill is described as a straight consigned bill of lading. For the purposes of the BLA, a straight consigned bill is treated as a waybill.

(4) Where a bill of lading is indorsed by a special indorsement, the bill of lading ceases to be transferable until it is indorsed by the named indorsee

25.4.16 The indorsement of a bill of lading may be by a special indorsement, i.e. it may name the transferee to whom delivery is to be made. If no transferee is named, the indorsement is called an 'indorsement in blank' and the goods specified in the bill of lading are deliverable to the bearer, without indorsement. However, the bearer or holder of the bill of lading may, at any time, convert the indorsement in blank to a special indorsement by inserting in it the name of the person to whom delivery is to be made. In such circumstances, the bill of lading ceases to be transferable by mere delivery and requires indorsement by the indorsee named in the special indorsement before it is capable of being further transferred (*Bandung Shipping Pte Ltd v Keppel TatLee Bank Ltd [2003] 1 SLR(R) 295*). Where an order bill of lading names a consignee, there is no requirement for the bill of lading to be indorsed by the shipper or any intermediate party before the named consignee becomes holder of the bill of lading (*UCO Bank v Golden Shore Transportation Pte Ltd [2006] 1 SLR(R) 1*).

(5) A person who becomes the lawful holder of a bill of lading and demands delivery or makes a claim under the contract of carriage is also subject to the liabilities under that contract

25.4.17 Where a person becomes the lawful holder of a bill of lading under the BLA and takes or demands delivery from the carrier of any of the goods to which the bill of lading relates or makes a claim under the contract of carriage against the carrier in respect of any of those goods, that person will become subject to the same liabilities under that contract as if he had been a party to that contract (see s. 3 of the BLA).

E. Singapore Carriage of Goods by Sea Act and the Hague-Visby Rules

(1) Scope of the Hague-Visby Rules

25.4.18 Under the Carriage of Goods by Sea Act of Singapore, the Hague-Visby Rules (hereinafter 'HVR') have the force of law in Singapore (The Epar [1983-1984] SLR(R) 545; *Pacific Electric Wire & Cable Co Ltd v Neptune Orient Lines Ltd [1993] 2 SLR(R) 102*). The HVR apply to every bill of lading relating to the carriage of goods between ports in two different states if the bill of lading is issued in a contracting state of the HVR, or the carriage is from a port in a contracting state, or the contract contained in or evidenced by the bill of lading provides that the rules or legislation of any state giving effect to the HVR are to govern the carriage (see Art. X of the HVR).

(2) The HVR apply only to contracts of carriage covered by a bill of lading or any similar document of title

25.4.19 The HVR apply only to contracts of carriage covered by a bill of lading, including a straight consigned bill of lading (see The Rafaela S [2003] 3 All ER 369), or any similar document of title insofar as such a document relates to the carriage of goods by sea. The HVR apply to the period from the time when the goods are loaded on board the ship to the time they are discharged from the ship.

(3) The carrier is bound to exercise due diligence to make the vessel seaworthy before and at beginning of the voyage

25.4.20 A carrier is bound to exercise due diligence to make the ship seaworthy before and at the beginning of the voyage (see Art. III rule 1 of the HVR). The obligation under the HVR to exercise due diligence to make the ship seaworthy replaces the absolute obligation at common law to provide a seaworthy ship. Subject to the provisions conferring protection on the carrier in certain circumstances, the carrier is obliged under Art. III rule 2 of the HVR to properly and carefully load, handle, stow, carry, keep, care and discharge the goods carried.

(4) The carrier enjoys package and weight limitations in addition to the exclusions under Art. IV rule 2 of the HVR

25.4.21 A carrier enjoys package and weight limitations of 10,000 gold francs (S$1,563.65) per package and 30 gold francs (S$4.69) per kilogramme under the HVR. There is also a list of exclusions under Art. IV rule 2 of the HVR which a carrier may avail himself of, provided he satisfies the obligation of exercising due diligence to provide a seaworthy vessel.

(5) The carrier is discharged from all liability in respect of goods carried unless a suit is brought within 1 year of the delivery date, but this period may be extended if parties agree

25.4.22 The carrier is discharged from all liability whatsoever in respect of the goods unless a suit is brought within 1 year of the date of delivery or of the date when the goods should have been delivered. The 1-year period may however be extended if the parties so agree after the cause of action has arisen.

(6) The limits specified in the HVR may not be reduced further for the carrier's benefit

25.4.23 The exclusions, time limits, and limitation of liability prescribed by the HVR may not be reduced further for the carrier's benefit (Art. III rule 8 of the HVR; see also The Epar [1983-1984] SLR(R) 545).

F. Jurisdiction or Arbitration Agreements in Contracts of Carriage

(1) A jurisdiction or arbitration clause may be incorporated into a contract of carriage

25.4.24 A jurisdiction or arbitration clause may be incorporated into the contract of carriage whereby the parties agree to a specific forum for the adjudication of disputes arising out of the contract. Nonetheless, parties may be tempted to breach such jurisdiction or arbitration clauses so as to take advantage of certain time bar defences or higher limits of liability that may be available in forums other than those agreed in the contract. Where such breaches happen, the defendant can apply for a stay of the proceedings.

(2) The court will prima facie give effect to a foreign jurisdiction clause, but may refuse an application for stay where the facts and circumstances are exceptional

25.4.25 Where the contract contains a foreign jurisdiction clause, the court will *prima facie* give effect to it, but it has the discretion to refuse an application for a stay if the facts and circumstances are so exceptional as to amount to a strong cause to warrant such a refusal (*Amerco Timbers Pte Ltd v Chatsworth Timber Corp Pte Ltd [1977-1978] SLR(R) 112*; *The Jian He [1999] 3 SLR(R) 432*). The Singapore court will normally refuse a stay application if the underlying claim is one for delivery of cargo without presentation of bills of lading, for which there is usually no defence (see, for example, *The Jian He [1999] 3 SLR(R) 432*; *The Hung Vuong-2 [2000] 2 SLR(R) 11*; *Golden Shore Transportation Pte Ltd v UCO Bank [2004] 1 SLR(R) 6*). If a claim is essentially indefensible, a court may look upon a stay application as a tactical or procedural ploy and decide to retain jurisdiction instead (*The Jian He [1999] 3 SLR(R) 432*; *The Hyundai Fortune [2004] 2 SLR(R) 548*).

(3) The court retains discretion to stay proceedings in favour of domestic arbitration, but must grant stay in favour of international arbitration

25.4.26 Where there is an arbitration clause, the court will generally give effect to it. In cases governed by the Arbitration Act (generally, domestic arbitrations), the power to stay is discretionary; a stay might be refused if, for instance, the claim is clearly indisputable. However, under the International Arbitration Act of Singapore (which generally governs international arbitrations) a stay of claims failing within the arbitration clause is mandatory; the court has no discretion to refuse to stay the action. Once the court is satisfied that there is an arbitration agreement between the parties and that the proceedings instituted in court are in respect of a matter that would be subject to that agreement, the court will order a stay (*Tjong Very Sumito v Antig Investments Pte Ltd [2009] 4 SLR(R) 732*). A court is entitled to order retention of any vessel under arrest or any security furnished to facilitate release of a vessel

or provision of equivalent security for the satisfaction of any award under s. 7 of the International Arbitration Act if the action is stayed under s. 6.

SECTION 5 ADMIRALTY LAW

A. Nature of an Admiralty Action in rem

25.5.1 An admiralty action *in rem* is an action against the *res* (thing), which is usually a ship but could also include other kinds of maritime properties, like cargo and freight. A ship includes her apparel, tackle, and stores. The action *in rem* is characterised by service on and arrest of the *res*. Although the defendant to an action *in rem* is the owner of the res, the owner of the *res* will only be liable personally if he has entered an appearance in the action (*Kuo Fen Ching v Dauphin Offshore Engineering [1999] 2 SLR(R) 793*; *The Engedi [2010] 3 SLR 409*). Unless released, the *res* will in due course be judicially sold, free of all encumbrances. The proceeds of the judicial sale of the *res* are then used to satisfy the plaintiff's claim and the claims of other parties, if any, according to an established order of priorities.

25.5.2 However, frequently, this procedure does not culminate in the judicial sale of the *res* as the owner of the *res* will furnish security for the claim, after which the *res* is normally released. When the owner elects to defend the action, the action thereafter continues as a hybrid action, i.e. as both an *in rem* and *in personam* action (*The Damavand [1993] 2 SLR(R)*; The Fierbinti [1993] SGHC 319; The August 8 [1983] 2 AC 450).

25.5.3 The subject matter of the Singapore High Court's admiralty jurisdiction is set out in limbs (a) to (r) of s. 3(1) of the High Court (Admiralty Jurisdiction) Act (hereinafter 'HC(AJ)A'), which is largely similar to s. 20(2)(a)-(s) of the UK Senior Courts Act 1981.

B. Invocation of Admiralty Jurisdiction

(1) The res can only be arrested within territorial waters and port limits

25.5.4 In Singapore, a *res* can only be arrested if it comes within the territorial waters as well as port limits of Singapore, in adherence with the terms and conditions stipulated in the letter of authorisation granted by the Registrar for the arrest (*The Trade Resolve [1999] 2 SLR(R) 107*).

(2) The court's admiralty jurisdiction can be invoked in 3 situations, when vessel is either arrested or served with the writ in rem

25.5.5 As far as the invocation of admiralty jurisdiction is concerned, s. 4 of the HC(AJ)A permits an action in *rem* to be brought in 3 situations:

- an action *in rem* being brought against the ship or other property in respect of claims that come within s. 3(1)(a)-(c) and (r) of the HC(AJ)A;
- an action *in rem* being brought against ship, aircraft, or other property encumbered with a maritime lien or other charge; and
- an action *in rem* for claims that come within s. 3(1)(d)-(q) of the HC(AJ)A, which permits an action to be brought against the ship in connection with which the claim arises, provided that at the time the cause of action arose the person who would be liable in an action *in personam* ("the relevant person") owned, chartered, or was in possession or in control of that ship and is at the time of commencement of the action (i.e. issuance of the admiralty writ *in rem*) the beneficial owner or demise charterer of that ship; an action may also be brought against any ship beneficially owned (but not chartered by demise) by the relevant person. Sister ship

arrest is therefore permissible under s. 4(4) of the HC(AJ)A. Admiralty jurisdiction is invoked when the vessel is either arrested or served with the writ *in rem*, whichever occurred first (*The Fierbinti [1994] 3 SLR(R) 574*).

C. Principle of 'One Claim, One Ship': Plaintiff cannot proceed against other ships named in writ for same claim after invoking admiralty jurisdiction against one ship

25.5.6 Given that sister ship arrest is allowed under Singapore law, when a writ is issued, the practice is to name the offending ship as well as sister ships which can be proceeded against in one writ. However, after having invoked admiralty jurisdiction against one ship in respect of one claim, the plaintiff cannot proceed against any other of the ships named in the writ for the same claim, and should strike out the names of the other ships from the writ (*The Damavand [1993] 2 SLR(R) 136*; The Banco [1971] P 137). If the plaintiff's claim is severable, he can amend the writ to remove from it a part of his claim, which can then form the basis of a separate admiralty action *in rem*. However, where the exercise of this right amounts to an abuse of the process of the court, it will not be allowed (*The Damavand [1993] 2 SLR(R) 136*).

D. Procedure for Arresting Vessel

25.5.7 An admiralty action is commenced by the issuance of a writ *in rem*. An arresting party has to apply for a warrant of arrest. An affidavit must be filed in support of this application and an arresting party has the duty to make full and frank disclosure to the court of all material facts when making the application (*The Rainbow Spring [2003] 3 SLR(R) 362*; *The Inai Selasih [2006] 2 SLR(R) 181*; *The Vasiliy Golovnin [2007] 4 SLR(R) 277*). The ship is arrested when the warrant of arrest is affixed for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure (see Order 70 rule 10 of the Rules of Court). After a vessel is arrested, she comes under the custody of the Sheriff of Singapore. If an application for a warrant of arrest is challenged, the plaintiff has to identify the person who would be liable on the claim in an action *in personam*, show an arguable case that the claim is of a type or nature required by the relevant provision under the HC(AJ)A, and prove on a balance of probabilities that each of the requirements for arrest under s. 4 of the HC(AJ)A is met (*The Bunga Melati 5 [2012] 4 SLR 546*).

E. Person who wishes to prevent arrest may lodge caveat against arrest

25.5.8 A person who wishes to prevent the arrest of a ship or other property can lodge a caveat against arrest. The caveator agrees to put up bail to prevent the arrest of the vessel. Although the caveat does not guarantee that an arrest will not be made, it nevertheless acts as a deterrent to arrest because, unless the plaintiff can demonstrate that there was a good and sufficient reason for arresting despite the caveat, the court may order him to pay damages to the caveator for any loss arising out of the arrest as well as discharge the warrant of arrest.

F. Party may be liable for damages if arrest carried out mala fides or crassa neligentia

25.5.9 A party may be liable in damages if the arrest of a ship is carried out *mala fides* (in bad faith) or with *crassa neligentia* (gross negligence implying malice) (*The Kiku Pacific [1999] 2 SLR(R) 91*; *The Inai Selasih [2006] 2 SLR(R) 181*; *The Vasiliy Golovnin [2008] 4 SLR(R) 994*). Where the arrest of a vessel is prolonged in bad faith or with *crassa negligentia*, an arresting party can be liable for wrongful continuation of arrest (*The Evmar [1989] 1 SLR(R) 433*).

G. Shipowner may seek release of ship or stave off arrest by providing security

(1) Security may be furnished in the form of bail, letters of undertaking from P&I clubs, bank guarantees, or payment into court

25.5.10 A shipowner whose ship has been arrested or threatened with arrest may wish to seek the release of the ship or stave off the arrest by providing security for the plaintiff's claim. The usual forms of security are bail, letters of undertaking from a protection and indemnity (hereinafter 'P&I') club, and bank guarantees. Payment into court as a form of security in respect of the plaintiff's claim is

also available but is rarely used. Although the form and terms of security are matters for the parties to negotiate and agree upon, a Singapore court may order a plaintiff to accept a P&I club letter of undertaking instead of bail (*The Arcadia Sprit [1988] 1 SLR(R) 73*). However, a court may require the shipowner to furnish alternative forms of security if there is sufficient evidence that the club may be unable to honour the security which it offers to furnish in favour of its member shipowner (*The Arktis Fighter [2001] 2 SLR(R) 157*).

(2) Security provided should be sufficient to meet the claim

25.5.11 In determining the amount of security to be furnished, the court should be satisfied that the amount which is to be provided is sufficient to meet the plaintiff's claim, even if this occasionally leads the court to err on the side of generosity (*The Arktis Fighter [2001] 2 SLR(R) 157*). The plaintiff is entitled to security on a reasonably best arguable case, together with interest and costs (The Moschanthy [1971] 1 Lloyd's Rep 37; The Evpo Agsa [1992] SGHC 74). The amount of security furnished, however, would not normally exceed the value of the vessel arrested (*The Arktis Fighter [2001] 2 SLR(R) 157*).

H. Liens

25.5.12 There are generally three types of lien relevant to admiralty law: i) maritime lien; ii) statutory lien; and iii) possessory lien.

(1) Maritime lien

25.5.13 A maritime lien is an encumbrance or charge on the *res*, which accrues from the moment the underlying claim giving rise to it attaches, travels with the *res*, survives any change of ownership of the *res* (except one that is consequential upon a judicial sale) and is carried into effect by an action *in rem*. As a general rule, a maritime lienee enjoys a higher priority than other kinds of maritime claimants. The established categories of claims which give rise to maritime liens are salvage, damage done by a ship, master's wages, master's disbursements, and crew's wages.

(2) Statutory lien

25.5.14 A statutory lien refers to the right of a claimant to invoke the court's admiralty jurisdiction by means of an action *in rem* in respect of a claim which does not attract a maritime lien. Claims which can be enforced by way of a statutory lien are set out in s. 3(1)(a)-(r) of the HC(AJ)A. Although it is the arrest that gives a claimant his pre-judgment security, the institution of the action *in rem* starts with the issuance of the writ *in rem* and thereupon the statutory lien attaches to the ship and survives any change of ownership by remaining enforceable against a *bona fide* purchaser of the ship without notice, unless the vessel has been judicially sold.

(3) Possessory lien

25.5.15 Unlike a maritime lien, a possessory lien is only effective if the person seeking to enforce it against a chattel comes into possession of the chattel lawfully and retains uninterrupted possession of the chattel. A possessory lien is a creature of the common law. It is not accompanied by a right of sale, unlike a pledge, nor does it confer any title on the holder, unlike a mortgage. The lien usually accrues to the benefit of a party who has rendered improvement or repairs to or otherwise done work on the chattel, such as ship repairer or a salvor in respect of properties successfully salved.

25.5.16 The fact that a ship is subject to a possessory lien cannot however prevent it from being arrested. The lien is not extinguished where the vessel is arrested by a party other than the lienee, as arrest only transfers custody and not possession of the vessel to the Sheriff (*The Dwima I [1996] 1 SLR(R) 927*).

I. Relative priority between claims

(1) The rules of priority between claims are procedural and important where the sum of the claims exceeds the value of the res, and determine the order in which claims are satisfied

25.5.17 The relative priority between claims is a vital issue when the sum total of the claims exceeds the value of the *res*, as it determines the order in which these various competing claims will be satisfied out of the funds lying in court representing the proceeds of sale of the *res*. The rules of priority are characterised as procedural and are therefore governed by the *lex fori* (The Halcyon Isle [1981] AC 221).

(2) The order of priority

25.5.18 If there are various claims to the proceeds of sale of the res, the prima facie ranking of claims in order of priority is as follows:

i. Sheriff's expenses;
ii. costs of the producer of the fund;
iii. maritime liens (except for a possessory lien which accrues before the maritime lien);
iv. possessory lien;
v. mortgages; and
vi. statutory liens.

25.5.19 The *prima facie* order of priority set out above is not immutable. The courts have discretion to alter this order where there are the special circumstances that warrant it (*The Eastern Lotus [1979-1980] SLR(R) 389*).

SECTION 6 VARIOUS ASPECTS OF MERCHANT SHIPPING AND OIL POLLUTION LEGISLATION OF SINGAPORE

A. Limitation of Liability of Shipowners

(1) Limitation of liability covered by Part VIII of the Merchant Shipping Act

25.6.1 Limitation of liability of shipowners for maritime claims is dealt with statutorily under Part VIII of the Merchant Shipping Act. Such claims include those for death or personal injury, loss or damage to goods occurring on board or in connection with the operation of a ship.

(2) Limitation in Singapore is governed by the Convention on Limitation of Liability for Maritime Claims 1976

25.6.2 Prior to the Merchant Shipping (Amendment) Act 2004, the regime for limitation of liability based on tonnage of the vessel was that of the 1957 International Convention Relating to the Limitation of the Liability of Owners of Sea-going Ships (hereinafter 'the 1957 Convention'). With the amendment in 2004, Singapore ratified the Convention on Limitation of Liability for Maritime Claims 1976 (hereinafter 'the 1976 Convention'). The 1976 Convention only applies to liability arising out of an occurrence that takes place after 1 May 2005, and liability arising out of occurrences which took place before this date continues to be governed by the 1957 Convention (see, for example, *Antara Koh Pte Ltd v Eng Tou Offshore [2005] 4 SLR(R) 521*). Under the 1976 Convention, the limitation amounts are set higher than under the 1957 Convention, but it is considerably more difficult to break limitation.

B. Oil Pollution

(1) Three statutes in Singapore govern oil pollution

25.6.3 In Singapore, there are three primary statutes governing oil pollution. They are i) Merchant Shipping (Civil Liability and Compensation for Oil Pollution) Act (hereinafter 'CLC'); ii) Merchant Shipping (Civil Liability and Compensation for Bunker Oil Pollution) Act (hereinafter 'BOPA'); and iii) Prevention of Pollution of the Sea Act (hereinafter 'PPSA').

(2) The CLC governs oil pollution caused by a ship constructed or adapted for carrying oil

25.6.4 The CLC was enacted to bring into effect in Singapore the International Convention on Civil Liability for Oil Pollution Damage 1992 and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992. The CLC governs oil pollution caused by any 'ship constructed or adapted for carrying oil in bulk as cargo' (see s. 3 of the CLC).

(3) The BOPA governs oil pollution caused by the discharge or escape of bunker oil from a ship

25.6.5 The BOPA was enacted to give effect to the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001. Under the BOPA, a shipowner's liability is strict but not absolute (see s. 3 and 4 of the BOPA). A person whose claim falls within the remit of the BOPA has a right of direct action against the ship's insurers. As a necessary corollary to the above, the BOPA also provides for compulsory insurance for shipowners of ships with a size above 1,000 gross tonnes. Ships over 1,000 gross tonnes that wish to enter Singapore's port limits are required to have adequate insurance covering liability arising from pollution damage, and are required to carry certificates as evidence of that insurance (see s. 12 of the BOPA).

(4) The PPSA imposes criminal liability for the discharge of oil and other pollutants

25.6.6 The PPSA was enacted to give effect to the International Convention for the Prevention of Pollution from Ships 1973 as modified and added by the Protocol of 1978 (hereinafter 'MARPOL') and other international agreements with similar purport. Broadly speaking, the PPSA seeks to impose criminal liability for the discharge of oil and other pollutants from ships into Singapore waters. Further, s. 18 of the PPSA provides that the owner of the ship found to have discharged the pollutants is liable to the appointed authority for the costs of any measure reasonably taken by that authority to remove the discharge as well as the costs of preventing or reducing any damage caused in Singapore which results from such discharge.

25.6.7 Liability under the PPSA may be said to be strict. However, there are exceptions that apply to different classes of pollutants and polluters. For example, under s. 4(3) of the PPSA, discharge of an oily mixture is excused if: i) the oil was contained in an effluent produced by operations for the refining of oil, ii) and it was not reasonably practicable to dispose of the effluent otherwise than by discharging it into Singapore waters, and iii) all reasonably practicable steps had been taken for eliminating oil from the effluent. Further, under s. 7(2) of the PPSA, discharge of oil or pollutants from a ship is excused if it is necessary for the purpose of securing the safety of the ship or saving life at sea.

25.6.8 Apart from provisions prohibiting pollution, the PPSA also imposes positive obligations on shipowners, such as the keeping of oil or cargo record books (see PPSA s. 12 to 14). Additionally, a person who intends to export or import a noxious liquid substance in bulk is required to notify the port authority of his intention to do so (see PPSA s. 9). The PPSA also imposes a duty to report any discharge of pollutants (see PPSA s. 15 and 16).