



RPC

Introduction to litigation in Hong Kong

1) Hong Kong

- “one country, two systems”
- common law
- Separate from PRC law



2) Separate Admiralty division of the High Court

3) Deals with claims under High Court Ordinance, Section 12A (Admiralty Jurisdiction)

Admiralty Claims

- Most common claims:
- Claim to possession/ownership
- Mortgage
- Damage done to or by a ship
- Loss of Life or Personal Injury
- Cargo claims
- Charterparty disputes
- Crew wages
- Claims regarding repair and construction of a ship



- General average
- Towage
- Salvage
- Goods or Materials supplied to a ship
- Enforcement of “maritime” Arbitration Awards
- NOT : MOA, general contractual disputes, insurance premiums

TYPES OF ACTION

In Rem / In Personam?

1. In rem action against the Res – i.e. the Vessel – allows a potential arrest
2. In personam against a company or individual e.g. NVOCC
3. In personam writs can under certain circumstances be served outside the jurisdiction
4. In rem writs cannot be served outside the jurisdiction and require the vessel's physical presence in Hong Kong to allow service, with a few notable exceptions e.g. fund established



WHAT HAPPENS IF THE VESSEL IS NOT PHYSICALLY PRESENT IN HONG KONG?



Why issue an in rem writ and put the vessel on shipwatch?

1. Protect change in ownership unless maritime lien arises
2. Protect time bar – subject to jurisdiction issues
3. Vessel can be placed on (free) shipwatch – arrest can occur later

Maritime Liens: Does the claim survive a change of ownership

1. Damage done by ship
2. Salvage
3. Seamen's wages
4. Bottomry and respondentia
5. Master's wages and disbursements

BILL OF SALE

I, (name:) _____
of (address:) _____ (city:) _____
(state:) _____, hereby certify that I am the lawful owner of this vehicle:
Year _____ Make _____ Model _____
VIN# _____
and have the authority to sell it. I hereby acknowledge the receipt of \$ _____
(spell out) _____
in the form of _____ from (Buyer's name:) _____
of (address:) _____ (city:) _____
(state:) _____, as full payment for the purchase of the said vehicle, which is sold "AS IS".
I hereby state that the mileage of the vehicle at the time of sale is _____
I do hereby grant, sell and transfer full ownership of this vehicle to the buyer. I certify that this vehicle, at the time of sale, is free from all encumbrances, taxes, fees and liens except as those specified on the Title or listed below; and that, I (Seller) will defend and be held fully responsible for such lawful claims and demands with respect to the vehicle, if any.
Buyer accepts full liability for the vehicle, damages, and any third party liability incurred from the vehicle use from the date of sale.
If applicable, Seller agrees to make arrangements for the reasonable delivery of vehicle title from lien holder to buyer immediately.

Signature of Seller _____ Date _____
Signature of Buyer _____ Date _____

All other claims do not survive a change in ownership and require a statutory lien to be created

Statutory Liens: Non-Maritime Liens

e.g. : Cargo Claim



Time Bars

Limitation of Liability

1. By convention e.g. Hague Visby Rules – 12 months
2. Contractual e.g. 9 month
3. By Statute – 6 years
4. Collision claims – 2 years



HOW DO I GET MY ARREST WARRANT?



Example II

Shipper
GENERAL FOODSTUFFS LTD HONG KONG

LINER BILL OF LADING

BL No. 1

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Reference No.

Consignee

TO ORDER

Notify address

WORLDWIDE PRODUCE LTD JAPAN

CARRIER:

FAR EAST BULKERS LTD

Pre-carriage by*	Place of receipt, by pre-carrier*		
Vessel	Port of loading		
"GRAIN MAIDEN"	HONG KONG		
Port of discharge	Place of delivery, by re-carrier*		
YOKOHAMA JAPAN			
Marks and Nos.	Number and kind of packages, description of goods	Gross weight	Measurement
	GRADE 'A' WHEAT		50,000 MTS

Particulars furnished by the Merchant

Freight details, charges etc.	SHIPPED on board in apparent good order and condition, weight, measure, marks, numbers, quality, contents and value unknown, for carriage to the Port of Discharge or so near thereto as the Vessel may safely get and lie always afloat, to be delivered in the like good order and condition at the aforesaid Port unto Consignees or their Assigns, they paying freight as indicated to the left plus other charges incurred in accordance with the provisions contained in this Bill of Lading. In accepting this Bill of Lading the Merchant expressly accepts and agrees to all its stipulations on both pages, whether written, printed, stamped or otherwise incorporated, as fully as if they were all signed by the Merchant. One original Bill of Lading must be surrendered duly endorsed in exchange for the goods or delivery order. IN WITNESS whereof the Master of the said Vessel has signed the number of original Bills of Lading stated below, all of this tenor and date, one of which being accomplished, the others to stand void.
Daily demurrage rate (additional Clause A)	

* Applicable only when document used as a Through Bill of Lading

Freight payable at

Place and date of issue

Hong Kong 18/3/2015

Number of original B/L

Signature

FOR AND ON BEHALF OF FAR EAST BULKERS LTD

Reverse Side

Jurisdiction

Any dispute arising under this Bill of Lading shall be decided in the country where the carrier has his principal place of business, and the law of such country shall apply except as provided elsewhere herein



EXAMPLE CARGO CLAIM

1. CLAIM: SEA WATER INGRESS – US\$1 MILLION
2. CARRYING VESSEL: “GRAIN MAIDEN”
3. OWNER: GRAIN BULKERS LIMITED, HONG KONG
4. TIME CHARTERER AND NAMED CARRIER:
FAR EAST BULKERS LTD HONG KONG,
OWNERS OF “FAR EAST BULKER”
5. SHIPPER & SELLER: GENERAL FOODSTUFFS LTD
6. RECEIVER, BUYER & CLAIMANT: WORLDWIDE PRODUCE LTD, JAPAN



REQUIREMENTS

	<u>GRAIN BULKERS LTD</u>	<u>FAR EAST BULKERS LTD</u>
ORDER 75 Rule 5 Affidavit requires the following:	OWNER (TORT / BAILMENT)	CARRIER / CHARTERER (CONTRACT)
Nature of Claim	SEA WATER DAMAGE	SEA WATER DAMAGE
Claim Not Satisfied	\$1 M (not paid)	\$1 M (not paid)
Name of the Ship in respect of which the claim arises	GRAIN MAIDEN	GRAIN MAIDEN
Name of the person liable on a claim in <u>personam</u> (the relevant person)	GRAIN BULKERS LIMITED (IN TORT / BAILMENT)	FAR EAST BULKERS LTD (IN CONTRACT AS CARRIERS)
The relevant person at the time of the incident was the (i) owner or (ii) the charterer of or in possession or in control, of the ship in connection with which the claim arose	Registered owner of "GRAIN MAIDEN" At time of incident	Time Charterer of "GRAIN MAIDEN" At time of incident
At the time the writ was issued the relevant person was either the beneficial owner or the charterer by demise of the ship to be arrested	Still Owner of "GRAIN MAIDEN" At time of writ	Still Owner of "FAR EAST BULKER" At time of writ

Example 2

EXAMPLE 2

CODE NAME: "CONGENBILL", EDITION 1994		BILL OF LADING		Page 2
Shipper		TO BE USED WITH CHARTER-PARTIES		
GENERAL FOODSTUFFS LTD HONG KONG		B/L No.		
Consignee		Reference No.		
"TO ORDER"		CARRIER:		
Notify address		FAR EAST BULKERS LTD		
WORLDWIDE PRODUCE LTD JAPAN				
Vessel	Port of loading			
"GRAIN MAIDEN"	HONG KONG			
Port of discharge				
YOKOHAMA, JAPAN				
Shipper's description of goods		Gross weight		
GRADE 'A' WHEAT		50,0002 MTS		
(of which on deck at Shipper's risk; the Carrier not being responsible for loss or damage howsoever arising)				
Freight payable as per CHARTER-PARTY dated		SHIPPED on the Port of Loading in apparent good order and condition on board the Vessel for carriage to the Port of Discharge or to near thereto as she may safely get the goods specified above.		
FREIGHT ADVANCE Received on account of freight		Weight, measure, quality, quantity, condition, contents and value Unknown		
Time used for loading days hours.		In WITNESS whereof the Master or Agent of the said Vessel has signed the number of Bills of Lading indicated below all of this tenor and date, any one of which being accomplished the others shall be void.		
		FOR CONDITIONS OF CARRIAGE SEE OVERLEAF		
Freight payable at		Place and date of issue		
Number of original B/Ls		Signature		
		FOR AND ON BEHALF OF FAR EAST BULKERS LIMITED		

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ARBITRATION CLAUSES

- 1) All terms and conditions, liberties and exceptions of the Charter Party, dated as overleaf, including the Law of Arbitration Clause, are herewith incorporated
- 2) Hong Kong law would recognise the incorporation of the charterparty/fixture note including the Arbitration clause and stay the matter to the correct forum (Mandatory)
- 3) BUT.....the vessel can still be arrested in Hong Kong to obtain security for domestic or foreign arbitration proceedings



Provision of Security

1. “MOSCHANTHY” [1971] 1 Lloyd’s Report 37
2. Full value of claim plus interest and costs
3. Other considerations are:
 - (i) Value of vessel
 - (ii) Mortgage over vessel
 - (iii) Residual equity



Types of Security

1. Bail bond
2. Cash
3. Bank Guarantee
4. Letter of Undertaking



Tonnage Limitations

1. Tonnage Limitation 1996 applies in Hong Kong, but not the new limits
2. In a major casualty shipowner can limit his overall liability
3. Charterers and operators can also take advantage of the fund



PRIORITIES

What if the Defendants cannot put up security?

- Vessel can be sold – pendente lite
- Application by way of Notice of Motion and Affidavit
- Public sale by auction
- Monies paid into Court
- Distribution of monies subject to “priorities” hearing

- 1) Bailiff’s costs
- 2) Producer of the fund – solicitor’s costs
- 3) Maritime Liens
- 4) Mortgagees
- 5) Statutory rights of action



Arrest

- Court fees

- (i) Writ – USD135

- (ii) Arrest fees – USD150



- Lawyer's fees – on average USD3,000 to USD5,000
- No counter security provision
- Very quick procedure
- Releasing party – usually Defendant, must pay Bailiff's fees

SUMMARY OF ARREST IN HONG KONG

- Quick and economical
- 24 hour access to the Admiralty Judge and Bailiff
- Disclosure requirements not onerous
- Copy documents acceptable
- No counter-security



SUMMARY OF ARREST IN HONG KONG

- No Power of Attorney required
- Free shipwatch
- Acceptable security: payment into Court or Bail Bond; other forms (Club LOU, bank guarantee) by negotiation only
- Damages for wrongful arrest uncommon
- Judicial auction available



Q&A

