



International Trade, Bills of Lading, Charterparties and Arbitration

Day 12

Admiralty: Procedure

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<https://g.page/ArunKasi/review>

ADMIRALTY

Procedure: Territorial Limit

- Territorial Sea Act 2012
 - Sec 3: Territorial limit - 12 nautical miles from the baseline (the limit to arrest)
- Baselines of Maritime Zones Act 2006
 - Sec 5: Baseline measured from low water zone (other types of measurement also stated)

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Procedure: ROC 2012

- Order 70
- Forms 146 – 157
 - 146: Writ in Action in Rem
 - 147: Warrant of Arrest
 - 148: Praecipe for Warrant of Arrest
 - 149: Praecipe for Caveat against Arrest (caveat valid for 6 months)
 - 150: Praecipe for Service of Writ in Rem by Sheriff
 - 151: Release

ADMIRALTY

Procedure: ROC 2012

- Forms 146 – 157 [Cont.]
 - 152: Praecipe for Issue of Release
 - 153: Praecipe for Caveat against Release and Payment (caveat valid for 6 months)
 - 154: Praecipe for Withdrawal of Caveat
 - 155: Bail Bond
 - 156: Praecipe for Commission for Appraisement and Sale
 - 157: Commission for Appraisement and Sale
 - 2: Writ - add: [Admiralty Action in Personam](#)

ADMIRALTY

Procedure: Admiralty Writs

- Can issue Writ in Rem and Writ in Personam for same cause, but separately – can't join in one
- Any Writ (whether in rem, in personam – whether issued simultaneously or at different times) must be issued within time limit
- Once Writ in Rem is issued, plaintiff becomes a secured creditor – insolvency?
- Writ in Rem
 - Against *'the owners and all other persons interested in the ship or vessel (ship name) registered in the port of ____, (country)'*
 - A defendant filing appearance will identify himself by name
 - If no appearance within 14 days, plaintiff may apply (by notice of application) for default judgment – court will give JID for sale of the ship only if satisfied of the case

ADMIRALTY

Procedure: Admiralty Writs

- Writ in Rem – no such thing as service out of jurisdiction
- Writ in Personam – can be served out of jurisdiction subject to Ord 70 r 3 / Ord 11 / Sec 23 CJA 1964
- In Writ in Rem, if defendant enters appearance, it is treated both as writ in rem and writ in personam – judgment can be given and executed for more than the value of the ship
- In Writ in Rem, if defendant does not enter appearance, jurisdiction limited against ship only – any execution limited to proceeds of the ship
- A defendant does not lose the right to challenge the jurisdiction of the court by filing an appearance (Ord 70 r 2(5))

ADMIRALTY

Procedure: Collision and Pollution Claims

- Collision claims – preliminary acts
- Pollution claims – against the pollution fund (Merchant Shipping (Oil Pollution) Act 1994)
 - CLC 1969 (as amended by 1992 Protocol)
 - Fund Convention 1971 (as amended by 1992 Protocol)

ADMIRALTY

Procedure: Arrest

- Arrest - as of right
- If stayed in favour of arbitration or foreign exclusive jurisdiction clause,
 - arrest / security can be maintained (O 70 r 12(11)-(13))
- Perform 'caveat against arrest' search
 - If there is a caveat against arrest, can still issue arrest warrant, but may become liable in damages for wrongful arrest unless got sufficient reason to arrest despite caveat (O 70 r 6)
- File these documents:
 - Writ in Rem (Form 146)
 - SOC can be filed within 14 days after appearance.
 - Praecipe for Service of Writ (150)

ADMIRALTY

Procedure: Arrest

- File these documents (cont.)
 - Warrant of Arrest (Form 147) [validity: 12 months]
 - Wages-claim (under (o)) / possession claim (under (a) or (b)) **against foreign ship** – must give pre-notice to consulate office in Malaysia or get court's leave (O 70 r 4((4))
 - Affidavit in Support of Warrant of Arrest
 - Praecipe for Warrant of Arrest (Form 148)
 - Undertaking as to Sheriff's Expenses

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Procedure: Arrest

- Pay Deposit for Arrest Expenses (RM15,000) in Peninsular Malaysia. For East Malaysia, including Labuan, there is no deposit, but the expenses are secured by the solicitor's undertaking.
- Sheriff writes necessary letters to port, etc.
- Sheriff goes to ship to serve Warrant of Arrest (i.e. arrest) and usually also the Writ in Rem
 - Service may be effected **24/7**
 - Affix the warrant / writ on the ship's **mast / superstructure**
 - Ord 70 r 10(1A) [2020 amendment]: Registrar may, in **exceptional circumstances**, permit affixing on the **hull** and send a **copy by electronic means** to appropriate person
- Plaintiff's **lawyers' representative follows**
- Post arrest, Sheriff may apply for directions (Ombudsman order) (Ord 70 r 11)

ADMIRALTY

Procedure: Security

- Undertaking from P&I Club (to lift an arrest / prevent an arrest)
 - International Group (13 P&I Clubs)
 - American Steamship Owners Mutual Protection and Indemnity Association, Inc
 - The Britannia Steam Ship Insurance Association Limited / The Britannia Steam Ship Insurance Association Europe
 - Gard P&I (Bermuda) Ltd / Assuranceforeningen Gard
 - The Japan Ship Owners' Mutual Protection & Indemnity Association
 - The London Steam-Ship Owners' Mutual Insurance Association Limited
 - The North of England Protecting & Indemnity Association Limited / The North of England P&I Designated Activity Company (North EU)
 - The Shipowners' Mutual Protection & Indemnity Association (Luxembourg)

ADMIRALTY

Procedure: Security

- Undertaking from P&I Club (International Group?) [cont.]
 - International Group (13 P&I Clubs) [cont.]
 - Assuranceforeningen Skuld / Skuld Mutual Protection and Indemnity Association (Bermuda) Ltd
 - The Standard Club Ltd / The Standard Club UK Ltd / The Standard Club Ireland Designated Activity Company (Standard Ireland) /The Standard Club Asia Ltd. (reinsured subsidiary)
 - The Steamship Mutual Underwriting Association (Bermuda) Limited / The Steamship Mutual Underwriting Association Ltd / The Steamship Mutual Underwriting Association (Europe) Limited
 - Sveriges Ångfartygs Assurans Förening / The Swedish Club
 - United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd / United Kingdom Mutual Steam Ship Assurance Association (Europe) Ltd /UK P&I Club N.V. (UKNV)
 - The West of England Ship Owners Mutual Insurance Association (Luxembourg)

ADMIRALTY

Procedure: Security

- Bank Guarantee
- Pay money into court
- Bail Bond (Form 155 – straight executable in the event of default)
 - executed before a commissioner for oaths.
 - Now, therefore, we ofand hereby jointly and severally submit ourselves to the jurisdiction of the said Court and consent that if they, the abovementioned defendants ... do not pay what may be adjudged against them in this action, with costs, or do not pay any sum due to be paid by them in consequence of any admission of liability therein or under any agreement by which this action is settled before judgment and which is filed in the said Court, **execution may issue against us**, our executors or administrators, movable property, for the amount unpaid or an amount of ringgit whichever is the less.
- If there is a **dispute as to sufficiency of security**, any party may apply to court for determination.
- The security will be determined based on the best arguable case.

ADMIRALTY

Procedure: Release

- Party requesting release files Praecipe for Issue of Release (Form 152)
 - Plaintiff may request the release (before appearance), e.g. sufficient security is furnished
- Court issues Release form (Form 151)
 - All **parties must consent** for release unless court otherwise orders
 - If there are **caveats against release and payment**, then also **consent of all the caveators** needed unless court otherwise orders
 - Party requesting release must give **notice to all caveators** for withdrawal (Form 154)
 - Party requesting release pays **expenses (if any) of maintaining** the ship as directed by Sheriff or gives an undertaking as may be required by the Sheriff
 - If disputed, party requesting release applies to court for determination

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Procedure: Post Release

- Post Release
 - Shipowner may apply for stay
 - But arrest / security will normally be maintained
 - Grounds for stay
 - Arbitration
 - Foreign exclusive jurisdiction clause
 - Forum of convenience: foreign court is the right forum
 - If no stay, action proceeds in the court

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Procedure: Appraisal and Sale

- If the ship is not released and the court decides the case against the ship/shipowner, then the following happen
- A party may request for appraisal and sales by filing Praecipe for Commission for Appraisement and Sale (Form 156)
- Court issues order to Sheriff (Form 157: Commission for Appraisement and Sale)
- Upon appraisement and sale, Sheriff deposits proceeds (in RM or foreign currency) on one day call interest bearing account
- Court taxes Sheriff's expenses (parties, if interested, will be heard)

ADMIRALTY

Procedure: Appraisal and Sale

- Parties may make (and object) application as to foreign currency long term deposit
- An order for sale can also be made as an interim measure, where necessary such as to save the value of the ship that will otherwise deteriorate or to mitigate against cost of maintaining (see O 29 r 4)

ADMIRALTY

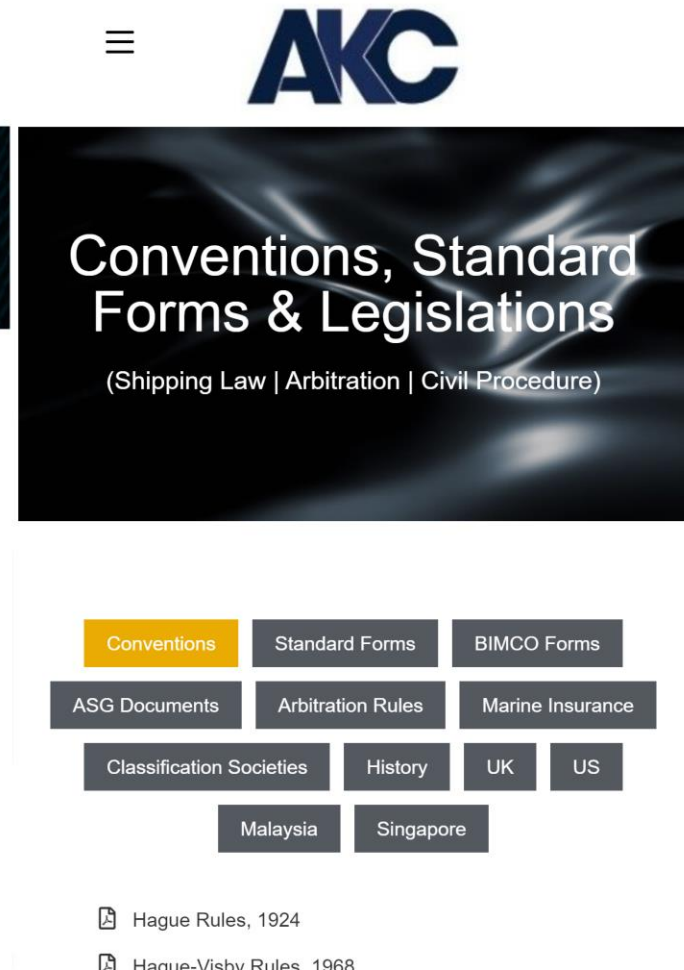
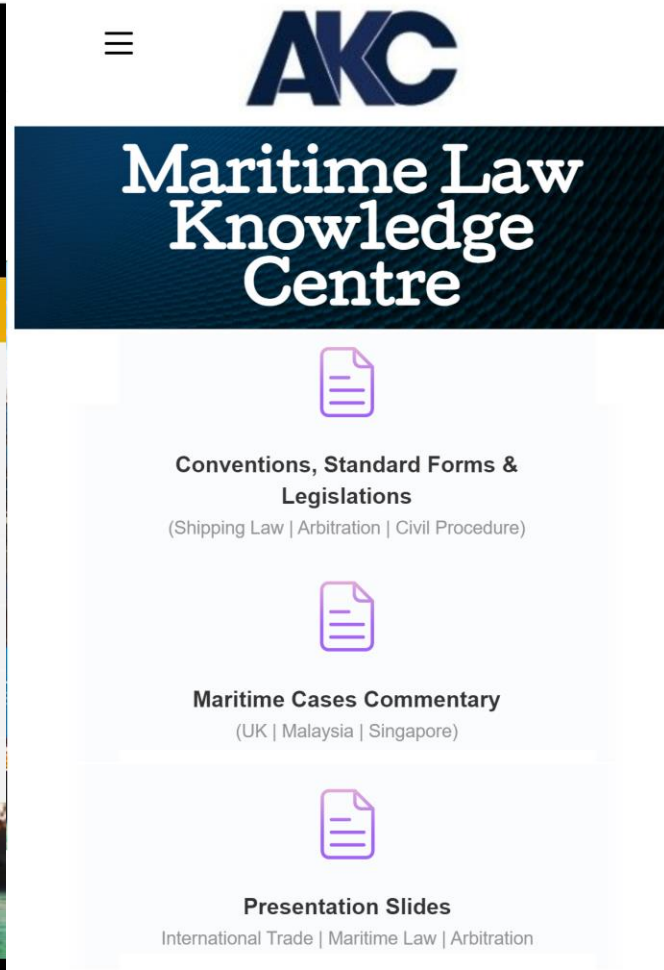
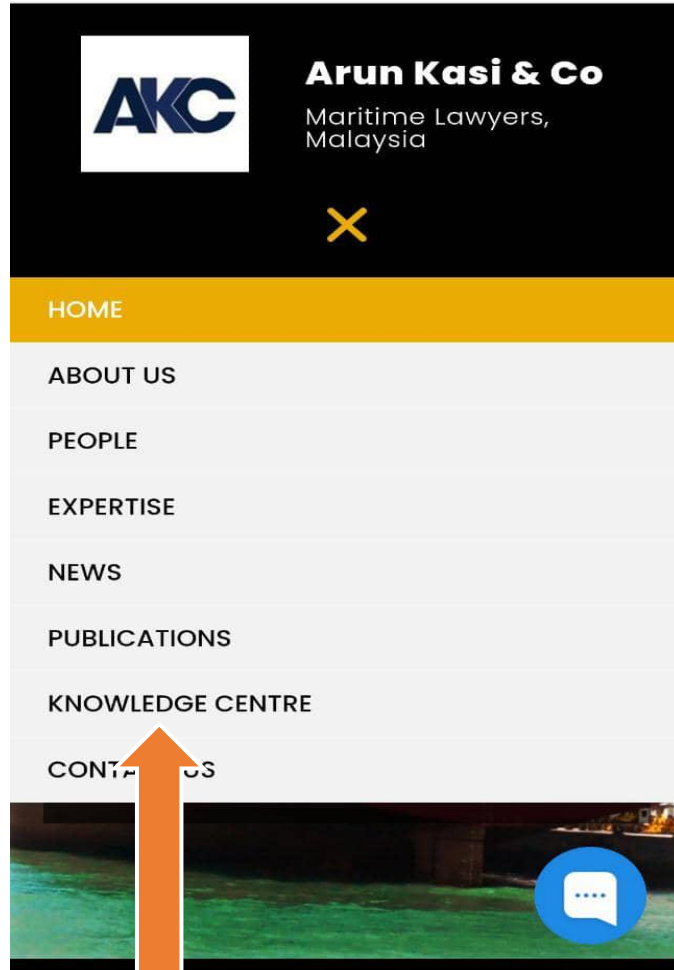
Procedure: Priority

- i. The Sheriff's charges and expenses
 - ii. Costs incurred by parties in relation to the sale
 - iii. Maritime lien holders' claims
 - iv. Mortgage and other others
 - v. Other claims that give an in rem right

 - vi. Shipowner
- Port authorities exercising statutory right of detention and sale may rank at higher level
 - Lien holder (e.g. repairer) right?
 - Priorities within a group and within a sub-group?

International Trade, Maritime Law and Arbitration Web Reference

arunkasico.com -> Knowledge Centre -> Conventions ...



Carriage of Goods by Sea

Further Reading

[Arun Kasi, *The Law of Carriage of Goods by Sea*, Singapore, Springer, 2021](#)

Arun Kasi

The Law of Carriage of Goods by Sea

 Springer

PART I: INTRODUCTION AND INTERNATIONAL TRADE

1. Introduction and Legal Framework
2. Shipping Documents
3. International Trade

PART II: BILLS OF LADING

4. Obligations of Carrier under Rules: Legal Bases
5. Third Parties: Protection and Action for
6. Proof of Damages: Presumptions and Estoppels
7. Implied Terms and Exclusion Clauses.
8. Hague & Hague-Visby Rules: Application
9. Hague & Hague-Visby Rules: Carriers' Obligations and Defences
10. Hague & Hague-Visby Rules: Carriers' Liability and Time Limitations
11. Shippers' Obligation for Dangerous Cargo

PART III: CHARTERPARTIES

12. Charterparty: Introduction
13. Voyage Charter: Freight and Lien
14. Voyage Charter: Laytime and Demurrage
15. Time Charter: Orders and Indemnity
16. Time Charter: Withdrawal, Off-Hire and Redelivery
17. Time Charter: Apportionment of Cargo-Claims Liability

Carriage of Goods by Sea

Further Reading

Arun Kasi

The Law of Carriage of Goods by Sea

 Springer

Availability

Malaysia

- Kinokuniya

UK

- Wildy
- Foyles
- Waterstone
- Blackwells
- John Smith's
- Browns Books

USA

- Barnes & Noble
- Books A Million
- Walmart
- The Last Bookstore
- Schuler Books
- Bookscouter
- Joseph Beth
- Bluemanatee
- Literatibookstore
- Powells
- Bookshop.org
- Kinokuniya

Canada

- Indigo

New Zealand

- Mightyape

Australia

- Dymocks
- Booktopia
- Kinokuniya

Germany

- Hugendubel
- Weltbild
- Thalia
- Langer Blomqvist
- Buchkatalog
- Umbreit
- Stephanus Buchhandlung

France

- Galignani

Brussels

- Standard Boekhandel
- Club

Sweden

- Adlibris
- AkademiBokHandeln
- Bokus

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- Books.com.tw

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- Kinokuniya

S. Korea

- Aladin

India

- Books Wagon