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**ANALYSING THE LEGAL VIABILITY OF ARBITRATION IN LINER
BILLS OF LADING**

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Table of Contents

1. Introduction.....	3
1.1 Purpose.....	5
1.2 Method.....	6
1.3 Delimitation	6
2. Liner Bills of Lading.....	7
2.1 Introduction.....	7
2.2 Challenges to the enforcement of the Exclusive Jurisdiction Clause	8
2.3 Stay of Proceedings Under <i>Forum Non-Conveniens</i>	9
2.4 Restriction of Foreign Exclusive Jurisdiction Clause under National Laws	10
2.5 Importance of Certainty in Standard Contracts	13
3. Arbitration for Liner Bills of Lading	15
3.1 Introduction.....	15
3.2 Does the incorporation of and consent to the arbitration clause in a liner B/L create a legal issue of validity?.....	15
3.3 Enforcement of Arbitration Clause in a Liner Bill of Lading under Different Jurisdictions	19
4. The Binding Effect of the Arbitration Clause Against Third-Party Holders of Liner Bills of Lading.....	23
4.1 Introduction.....	23
4.2 The UK Jurisdiction.....	24
4.3 The EU Jurisdiction	29
5. Role of Anti-Suit Injunction	33
5.1 Introduction.....	33
5.2 Anti-suit Injunction under English Law	34
5.3 The Effectiveness and Recognition of Anti-Suit Injunction in the Enforcement of an Arbitration Agreement.....	36
6. The Way Forward - Key Considerations for the Construction of an Arbitration Clause in Liner Bill of Lading	42
6.1 Introduction.....	42
6.2 Arbitration Act, 2025	43
6.3 Construction of the Arbitration Clause	44
6.4 Institutional Arbitration for Resolving Liner Disputes.....	46
7. Conclusion	49
8. Bibliography	52

1. Introduction

Liner carriage is fundamentally distinct from charter carriage, both in terms of operational as well as contractual framework. In liner carriage, the primary focus is on transporting containerised cargo where the carrier operates regular, scheduled services between multiple ports.¹ The terms of carriage of these containers between the shipper, third-party holder and carrier are governed by a Bill of Lading. In cases of charter carriage, the ship owner or the charterer, based on the terms of the charterparty, issues a B/L.² These B/Ls are evidenced by the contract of carriage, i.e. the charterparty. By contrast, in a liner B/L, the terms of carriage are expressly printed on the reverse side, essentially meaning the contract of carriage is contained in the liner B/L.³ These terms and conditions of carriage regulate the rights and obligations of the parties to the liner B/L.

Unlike the B/L used with charterparties, where disputes are resolved through arbitration, the majority of liner carriers rely on resolving disputes before national courts by incorporating an exclusive jurisdiction clause in the liner B/L, conferring jurisdiction on a specific court. Despite the widespread and well-established practice of arbitration in charterparty B/Ls, the mechanism for the resolution of disputes in liner B/Ls remains static.⁴

Although there isn't a well-founded reason as to why the liner industry has yet to make the shift in its dispute resolution mechanism, the author is of the opinion that litigation *prima facie*

¹ D.Y. Dimitrakiev, O. D. Kostadinov & T.D. Koritarov, 'A Comparative Analysis of Voyage Charter Parties and Liner Bills of Lading in Maritime Trade' (2025) 19 the International Journal on Marine Navigation and Safety of Sea Transportation 483. 483 – 484

² Homburg Houtimport B.V. v. Agrosin Private Ltd. and Others ("The Starsin") [2003] 1 Lloyd's Rep 571

³ Melis Özdel, 'Incorporation of Charterparty Clauses into Bills of Lading' (PhD Thesis, University of Southampton, 2009) <<https://eprints.soton.ac.uk/210841/>> accessed date 09 September 2025, 227

⁴ Michael F. Sturley, 'Overruling Sky Reefer in the International Arena: A Preliminary Assessment of Forum Selection and Arbitration Clauses in the New UNCITRAL Transport Law Convention' (2006) 37 JMLC 1 <https://docs.rwu.edu/law_ma_jmlc/vol37/iss1/2/> accessed date 09 September 2025, 16-17

appears to be a well-structured way to resolve disputes before a forum having an established practice, such as the English Jurisdiction. However, given that the parties to the B/L are operating from different jurisdictions, where national laws limit the enforcement of foreign exclusive jurisdictional clauses and allow circumvention,⁵ third-party holders often try to breach the forum clause by bringing disputes before their national courts, contrary to the agreed contractual forum. Furthermore, as liner B/Ls are a contract of adhesion, the shipper and the consignee are not in a position to negotiate the terms of carriage. Consequently, the courts, wherever necessary, will allow the parties to plead *forum non-conveniens*. However, the use of such defences as an abuse of power by the third-party holder of the B/L is evident. As rightly stated by Colman J in *Advent Capital Plc v Ellinas Imports-Exports Ltd*, ‘In recent years the Commercial Court has increasingly been called upon to resolve complex jurisdictional issues which have arisen even in the face of binding law and jurisdiction clauses. Such disputes arise because of the apparent inability of the parties even to attempt to apply common sense to the choice of venue for the resolution of their disputes’.⁶ Thus, it may be inferred that the result leads to a battle of jurisdictions, multiplicity of suits, and additional legal costs.

Disputes under liner B/Ls are of small sums⁷ compared to the high-value disputes arising under the charterparty arrangement. Additionally, the shipper and the consignee are not always able to ship goods in a Full Container Load and instead often use a Less than Container Load arrangement⁸. Therefore, litigation of disputes arising under liner B/L, which often involve damage to the cargo, short delivery, mis-delivery, or delay claims, raises a question of how

⁵ William Tetley QC, ‘Jurisdiction and Forum Non Conveniens in the Carriage of Goods by Sea’ in Martin (ed) *Jurisdiction and Forum Selection in International Maritime Disputes* (Kluwer Law International 2005) 188. (William Tetley QC)

⁶ *Advent Capital Plc v Ellinas Imports-Exports Ltd* [2005] 2 Lloyd’s Rep 608, 610

⁷ Jagan, ‘Arbitration for Liner Bills of Lading’ (NAU Newsletter, November 2023)

<<https://nau.com.sg/arbitration-for-liner-bills-of-lading/>> accessed on 07 September 2025

⁸ Mustafa Yilmaz, ‘The impact of containerisation on carrier liability’ [2025] LMCLQ 506. 512

efficient the exclusive jurisdiction clause is and whether it offers the certainty that Merchants demand from the dispute resolution system.

In the face of these challenges in relation to the exclusive jurisdiction clause, this dissertation analyses whether arbitration is a legally viable solution as an alternative dispute resolution mechanism for liner B/Ls. Arbitration as a forum offers neutrality, with cost-effective and speedy disposal of disputes. However, due to the lack of uniformity in national laws in relation to the binding effect of the arbitration clause on the third-party holder of the liner B/L, the enforceability of the arbitration clause is in question. This brings us to the central question of this dissertation: whether arbitration is a viable solution for the resolution of disputes arising under liner B/Ls.⁹

The author would like to observe that direct academic discussion on arbitration for liner B/Ls is scarce. Therefore, the author aims to use the established legal position of arbitration in the charterparty B/L to analyse and answer the question in this dissertation.

1.1 Purpose

The purpose of the dissertation is to analyse the legal viability of arbitration for liner B/Ls. After carefully considering the arbitrability of disputes, the enforcement of the arbitration clause in different jurisdictions, the binding nature of the arbitration clause to third-party holders, and the role of anti-suit injunction in preserving arbitration in liner B/Ls, this dissertation will answer whether arbitration can solve the issues that surface due to the exclusive jurisdiction clause.

⁹ Jagan and Ashwin Shanker, 'Why arbitration for container liner disputes may not be the best fit?' (NAU Newsletter, October 2024) <<https://nau.com.sg/why-arbitration-for-container-liner-disputes-may-not-be-the-best-fit/>> accessed date 07 September 2025.

1.2 Method

The method used in the dissertation is the traditional doctrinal method. The author analyses various court cases and scholars' writings to answer the question.

1.3 Delimitation

The dissertation excludes the comparison of disputes under charterparty bills of lading and liner bills of lading. The author, however, uses the well-established practice of arbitration in charterparty bills of lading to uncover how disputes under liner B/L can be arbitrated. The discussion is limited to the exclusive jurisdiction of the English Courts and how London-seated arbitration would develop in liner B/L. The dissertation does not discuss the Hague-Visby rules.

2. Liner Bills of Lading

2.1 Introduction

An arbitration clause is commonly found expressly incorporated in the Bills of Lading (hereinafter, “B/L”) used with the charter parties¹⁰. These B/Ls are also referred to as short-form bills that incorporate all the terms and conditions of the charterparty and may also reproduce some of the important long-form clauses. Contrary to this, a liner B/L is often referred to as a long-form bill because all the terms and conditions of carriage are expressly printed on the reverse side of the bill¹¹. According to shipping industry practice, these liner B/L primarily contain an exclusive jurisdiction clause (hereinafter, “EJC”) and the law governing the contract. Major liner carriers like Mediterranean Shipping Company (MSC)¹² and Maersk¹³ issue B/Ls that contain an EJC where the parties to the contract agree to bring any suit before the High Court of London, and English law applies unless the carriage is to or from the United States of America. In that case, the exclusive jurisdiction lies with the Southern District Court of New York and U.S. law will apply. CMA-CGM’s¹⁴ B/L are governed by French law, and the Tribunal de Commerce de Marseille has the exclusive jurisdiction over any and all disputes between the parties to the bill of lading. Similarly, BIMCO’s CONLINE 2016 Liner B/L¹⁵ also contains an EJC. Despite arbitration being the preferred mechanism of dispute resolution throughout the maritime sector, it is quite evident that the liner industry is yet to make that shift.

¹⁰ CONLINEBILL 2016

¹¹ *Modern Liner Contracts: A Special Report*, Lloyds of London, 1984. 75

¹² MSC Bill of Lading <www.msc.com/-/media/files/legal-files/bill-of-lading.pdf> accessed date 31 July 2025.

¹³ Maersk Terms of Carriage <<https://terms.maersk.com/carriage>> accessed 31 July 2025

¹⁴ <www.cma-cgm.com/assets/public/page-complex-documents/BILL%20OF%20LADING%20CMA%20CGM%20Terms%20and%20Conditons%2007_2021.pdf> accessed date 31 July 2025

¹⁵ CONLINEBILL 2016 <<https://www.bimco.org/contractual-affairs/bimco-contracts/contracts/conlinebill-2016/>> accessed date 31 July 2025

The enforcement of EJC in a liner B/L comes with its own challenges when parties to the B/L operate from different jurisdictions. This chapter will discuss these challenges and the abuse of process exercised by the parties to circumvent the EJC to bring the dispute before its national courts. Further, the chapter evaluates whether arbitration in liner B/Ls can be validly incorporated and enforced in various jurisdictions.

2.2 Challenges to the enforcement of the Exclusive Jurisdiction Clause

The shipper, in an international commercial sale under the CIF¹⁶ (Cost, insurance and Freight) contract, is under the obligation to negotiate a contract of carriage with the carrier and arrange for transportation.¹⁷ However, in the case of a standard long-form bill, i.e., the liner B/L, the shipper's scope of negotiating the terms of the carriage is limited. The terms of the B/L, although one-sided, bind the consignee.¹⁸ If a B/L is governed by English law, the bill is subject to the Carriage of Goods by Sea Act, 1992 (hereinafter, "COGSA, 1992")¹⁹ and the consignee, pursuant to sections 2 and 3 of COGSA 1992²⁰, acquires all the rights and liabilities under the contract of carriage. English Courts have been strictly interpreting the EJC while maintaining party autonomy, unless the party commencing an action in breach of the EJC can establish strong grounds that the forum agreed upon is not appropriate. Despite this being the position, cargo claimants have found a way to circumvent the EJC.

Various legal remedies are available to the parties to battle the EJC and to exercise other measures to counter the terms of the B/L. These measures, when used in good faith, are proving to be protective for the parties to the B/L. However, ill-use of such measures is adding fuel to

¹⁶ International Chamber of Commerce, *Incoterms*® 2020: ICC Rules for the Use of Domestic and International Trade Terms (ICC Publication No 723E, ICC 2019) rule c.i.f (CIF)

¹⁷ Andrea Lista, *International Commercial Sale: The Sale of Goods on Shipment Terms* (Routledge 2018) 52

¹⁸ Toh Kian Sing, 'Jurisdiction Clause in Bill of Lading – Cargo Claimant's Perspective' [1995] LMCLQ 183

¹⁹ Carriage of Goods by Sea, 1992 (COGSA, 1992)

²⁰ COGSA 1992, s 2,3

uncertainty, causing unnecessary delays and resulting in a string of litigation across various jurisdictions.

2.3 Stay of Proceedings Under *Forum Non-Conveniens*

Forum non-conveniens is a common law doctrine, where the court, having constituted the jurisdiction under the contract, determines, on a stay application by the defendant, whether a more appropriate forum is available than that agreed upon under the contract.²¹ Scotland is regarded as the birthplace of this principle.²² Considering that Scottish law and English law are similar,²³ Lord Kinnear concluded in the Scottish case *Sim v Robinow*²⁴, that unless a court hearing the stay application under *forum non conveniens* is satisfied that another forum is available which is more suitable in the interest of all parties, the stay can never be sustained. This principle was then adapted under English law, and the 2-limb test laid down by the court in *The Spiliada*²⁵ still remains the landmark decision. Notwithstanding the court's strict burden when considering a *forum non-conveniens* defence, this legal principle is being used by parties as a delaying tactic that unnecessarily increases legal costs and results in a string of litigation for cargo claims that are generally of lesser sums.

In *Mediterranean Shipping Company S.A. (MSC) V Interglobal Technologies Limited*²⁶, the carriage contract was under a standard long form liner B/L (non-negotiable). Pursuant to clause 10.3 of the B/L, the High Court of London had the exclusive jurisdiction to hear all disputes, and English Law applied to the contract. A dispute arose in relation to the breach of the contract

²¹ William Tetley QC (n5) 199.

²² Ardavan Arzandeh, *Forum (Non) Conveniens in England: Past Present and Future* (1st edn, Bloomsbury Publishing 2018) 27

²³ *The Abidin Daver* (1984) 1 Lloyd's Rep 339

²⁴ *Sim v Robinow* (1892) 19 R 665

²⁵ *Spiliada Maritime Corporation v Cansulex Ltd. (The Spiliada)* 1 Lloyd's Rep 1

²⁶ *Msc Mediterranean Shipping Company S.A. V Interglobal Technologies Limited* [2025] EWHC 1464 (Comm) (MSC case)

of carriage. Interglobal, under section 20 of the Nigerian Admiralty Jurisdiction Act 1991, commenced a proceeding before the Nigerian court claiming USD 32,000 for container demurrage, USD 35 million for loss of reputation and punitive damages, and the arrest of the vessel, MSC Tasmania. As the Nigerian proceedings were in breach of the exclusive jurisdiction clause, MSC filed for an anti-anti-suit injunction after Interglobal failed to comply with the interim anti-suit injunction that was previously obtained. Interglobal contended on various grounds for setting aside the interim anti-suit, one such ground being *forum non-conveniens*. It is submitted that although Justice Bryan, relying on the Unicredit Bank²⁷ case, reasoned that based on the principle of *pacta sunt servanda* the jurisdiction of the contractual forum must not be ousted based on the defence of *forum non-conveniens*, it is pertinent to note that a simple case of a contractual dispute having a claim amount of USD 32,000 took a sharp turn that resulted in a multiplicity of suits due to one of the parties trying to circumvent the EJC by way of using *forum non-conveniens* as one of their defences.

The author further argues that while courts give careful consideration to such defences and evaluate whether the defences raised are not merely an abuse of process, invoking a legal provision cannot be denied by the court without giving a fair opportunity to the party. It is only when the courts decide to dismiss the application as an abuse of process that the party breaching the EJC is restrained from further pursuing the suit.

2.4 Restriction of Foreign Exclusive Jurisdiction Clause under National Laws

A similar situation arises when there is a conflict of laws in disputes related to contracts involving B/Ls. In cases where a national law restricts the recognition of an EJC that ousts the

²⁷ *UniCredit Bank GmbH v RusChemAlliance LLC* [2024] 3 WLR 659

jurisdiction of its domestic court, if one of the parties to the B/L files a suit before its domestic court, bound by the statutes, the court will be reluctant to surrender its jurisdiction in favour of the forum exclusively agreed under the contract. Under European Law, Article 17 of the Brussels Convention, 1968²⁸ provided a framework for written jurisdiction agreements, including jurisdiction clauses mentioned in bills of lading. The Regulation of the Council of the European Union (EC Regulation 44/2001)(hereinafter, “Brussels I Regulation”)²⁹ was then introduced in place of the Brussels Convention 1968, and the rules of jurisdiction were stated under Article 23 of the regulation.³⁰ The Judgment of the Court of 19th June 1984 in *Tilly Russ and Ernest Russ v NV Haven- & Vervoerbedrijf Nova and NV Goeminne Hout*³¹ decided that the jurisdiction clause present in the bill of lading satisfies the requirement of Article 17 of the Brussels Convention 1968³², provided that the contract between the shipper and the carrier is valid. Further, subject to national law, the third party, being the holder of the bill of lading, acquires the shipper’s rights and obligations, thereby bound by the terms and conditions of the bill of lading. Furthermore, the European Court of Justice in *Coreck Maritime GmbH v Handelsveem BV*³³ reiterated that the jurisdiction clause is enforceable only when the third party acquires the rights and obligations subject to national law, and there is an express agreement between the shipper and the carrier. In the author’s view, this decision protects the third parties, given that they are not in the position to negotiate the terms of carriage. However, considering how B/Ls are transferable documents, express agreement between the third parties and the carrier is unattainable. Therefore, the practical implication of this decision is

²⁸ Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters [1986] OJ L 299/31. (Brussels Regulation)

²⁹ Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2001] OJ L 12/16. (Brussels I Regulation)

³⁰ William Tetley QC (n5) 194

³¹ Case 71/83 *Partenreederei ms Tilly Russ and Ernest Russ v NV Haven- & Vervoerbedrijf Nova and NV Goeminne Hout* [1984] ECR 2417

³² Brussels Regulation (n28)

³³ Case C-387/98 *Coreck Maritime GmbH v Handelsveem BV and Others* [2000] ECR I-9337 (Coreck Maritime)

unachievable, and in turn, the decision allows the third parties to breach the EJC while bringing the dispute before their national courts.

Does the above decision create an exception for the third parties to circumvent the EJC in a B/L? In the joined cases C-345/22 to C-347/22³⁴, the Spanish Appeal Court referred a dispute to the Court of Justice of the European Union for considering the interpretation of Article 25 under the Recast Regulation³⁵. The issue before the court was whether the EJC clause in a bill of lading binds the third-party holder in an event where the third party has filed a suit before a non-contractual forum, wherein the national law refuses to recognise the jurisdiction clause unless expressly agreed by the third-party holder and the carrier. Given that all three cases before the court were combined due to the issues being similar, we shall only consider the facts of the main proceeding, Case C-345/22. A bill of lading dated 9th April 2018 was issued by Maersk Line Peru to Aquafrost, the shipper. Overseas Atlantic Fish SL was the named consignee in the bill of lading, and the High Court of London had the exclusive jurisdiction. The cargo arrived in a damaged condition at the discharged port. Allianz, the insurer of the consignee, commenced an action in subrogation against Maersk before the Spanish court. Pursuant to the jurisdiction clause in the bill of lading, Maersk objected to the jurisdiction of the Spanish court, however, Allianz's action was upheld, since under Spanish law, the third-party holder acquires the rights and obligations of the shipper subject to the jurisdiction clause expressly agreed between the holder of the bill and the carrier. On an appeal filed by Maersk, the Spanish court referred the dispute to the Court of Justice of the European Union wherein the court, relying upon precedents,³⁶ came to the conclusion that the interpretation of Article

³⁴ Joined Cases C-345/22 to C-347/22 *Maersk A/S v Allianz Seguros y Reaseguros SA and Mapfre España Compañía de Seguros y Reaseguros SA v MACS Maritime Carrier Shipping GmbH & Co* ECLI:EU:C: 2024:349. (Maersk Case)

³⁵ Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2012] OJ L 351/20. (Recast Regulation)

³⁶ See *Coreck Maritime (n33)* and Case C-543/10 *Refcomp SpA v Axa Corporate Solutions Assurance SA and Others* ECLI:EU:C: 2013:62.

25(1) of the Recast Regulation in relation to the jurisdiction clause could not be done in accordance with the forum mentioned in the clause. The court further clarified that the Spanish court was to consider whether the clause was enforceable against the third party, subject to it acquiring the rights and obligations of the shipper, and the national substantive law. Therefore, since the enforceability of an EJC against the third party is subject to national laws, under European jurisdiction, the third parties will have the option to circumvent the EJC and commence a proceeding before the national court. To Summarise, considering the setting in which the liner B/Ls are used, the EJC can prove to create uncertainty for the parties to the B/L.

2.5 Importance of Certainty in Standard Contracts

English commercial law has been deeply rooted towards certainty,³⁷ and any non-contractual action is discouraged by the courts unless that action is proved not to cause detriment to the parties to the contract.³⁸ In *Vallejo v Wheeler*³⁹, Lord Mansfield stated that, ‘in all mercantile transactions the great object should be certainty....: because speculators in trade then know which ground to go upon’. This influenced a plethora of judgments of the English Courts that reiterate the importance of certainty in a commercial contract. In terms of EJC in a B/L, the English Courts have been strict in the interpretation of contracts and have reminded the party breaching the jurisdiction clause that, unless strong grounds are established to persuade the court to stay the proceeding, the terms of the contract are binding.⁴⁰ However, the misuse of *forum non-conveniens*, restriction under national law in enforcing the jurisdiction clause and commencing a suit in breach of the EJC are some of the ways to either circumvent the EJC or exercise tactics as abuse of process. This causes the dispute resolution clause to be uncertain

³⁷ *Golden Straight Corporation v Nippon YKK (The “Golden Victory”)* [2007] UKHL 12 [1]

³⁸ *RTI Ltd v MUR Shipping BV* [2024] UKSC 18

³⁹ *Vallejo v Wheller* (1774) 1 Cowp 143, 1 ER 1012, 1017 (Lord Mansfield).

⁴⁰ MSC (n26)

and unpredictable. Lord Briggs in his lecture⁴¹ emphasised the *desiderata* of a prudent merchant, expectations from the dispute resolution system and the enforcement system to bring clarity and certainty in legal rules. The enforcement of EJC in a liner bill of lading in cases of cargo claims depends on the third-party holder of the bill of lading. Therefore, the interpretation of the EJC, despite the contractual forum agreed between the parties, can be done in such a way so as to undermine the clause, and the third-party holder can bring the dispute before its national court. The circumvention of the EJC questions the certainty and efficacy of the clause.

⁴¹ Lord Briggs, 'International Commerce: Mapping the Law in a Borderless World' (Sultan Azlan Shah Law Lecture, Kuala Lumpur, Malaysia, 5 November 2019) Posted Online 5 November 2019 <https://supremecourt.uk/uploads/speech_191105_87eda10749.pdf> accessed date 31 July 2025

3. Arbitration for Liner Bills of Lading

3.1 Introduction

The preferred method of resolution of disputes in the maritime industry is predominantly international arbitration. Similarly, there exists a long-established practice of arbitration for the resolution of disputes arising under the charterparty B/Ls. In an international commercial transaction, due to the parties operating from different jurisdictions, a neutral forum with an internationally enforceable mechanism places the parties on an equal footing in the resolution of disputes.⁴² However, this is not the practice in the liner industry, as it still depends on litigation for the resolution of these international disputes.⁴³

Therefore, given the lack of enforceability of the EJC in B/Ls under certain circumstances, the point of discussion is whether arbitration in a liner bill of lading is a viable solution to streamline the dispute resolution process. This chapter analyses the lack of consent by the third party to the arbitration clause in the B/L, potential legal issues in relation to the incorporation of terms printed on the reverse side, and the enforceability of an arbitration clause in different jurisdictions. It is important to consider these points in order to determine whether an arbitration clause might pose incorporation or enforceability issues in the liner B/L.

3.2 Does the incorporation of and consent to the arbitration clause in a liner B/L create a legal issue of validity?

Firstly, the law is clear regarding the general words of incorporation in a charterparty B/L. In *Thomas & Co v. Portsea Steamship Ltd*⁴⁴ the House of Lords concluded that general words of incorporation will not give effect to the arbitration clause being incorporated in the B/L, and

⁴² Gary Born, *International arbitration: Law and Practice* (2nd edn, Wolters Kluwer 2025) 7 (Gary Born)

⁴³ *Ibid*

⁴⁴ *TW Thomas & Co Ltd v Portsea Steamship Co Ltd* [1912] A.C. 1

specific words referencing the arbitration clause shall be mentioned in the B/L. The more recent judgment of *The Channel Ranger*⁴⁵ exemplified the modern approach to the wording of incorporation that allows flexibility to construe the meaning of the words within the context of the contract.

If the above scenario is considered in the context of a long-form standard liner B/L, the terms and conditions of carriage are expressly mentioned on the reverse side of the B/L.⁴⁶ Therefore, the complexity of the incorporation by reference to an arbitration clause will not arise in a liner B/L. Under CIF⁴⁷, the shipper is under the obligation to procure the B/L from the carrier and tender it to the named consignee. Let us suppose that due to misprinting or the shipper's negligence, the consignee does not receive the reverse side of the B/L containing all the terms and conditions of carriage. In that case, the question arises whether the terms on the face of the B/L incorporate the terms mentioned on the reverse side. Scrutton⁴⁸ opines that since the incorporation of the terms has taken place when the shipper and the carrier entered into a contract and the terms are standard terms used by the carrier, an error during the printing of the bill or the consignee not receiving the terms of carriage mentioned on the reverse side of the B/L due to mischance should not affect the incorporation of all the terms and conditions of carriage, as these standard terms are readily available on the official websites of carriers as well as other third-party websites. Furthermore, the Court in *Mediterranean Shipping Company S.A. (MSC) V Interglobal Technologies Limited*⁴⁹ confirmed that the available copy of the B/L terms on MSC's website was an acceptable means to incorporate the terms on the reverse side within

⁴⁵ *Caresse Navigation Ltd V Zurich Assurances Maroc and Others (The "Channel Ranger")* [2015] 1 Lloyd's Rep 256.

⁴⁶ *Modern Liner Contracts* (n11), 75

⁴⁷ CIF (n16)

⁴⁸ David Foxton; Howard Bennett; Steven Berry; Christopher F. Smith; David Walsh, 'The Bill of Lading as a Contract' in Scrutton (ed), *Scrutton on Charterparties and Bills of Lading* (25th edn, Sweet & Maxwell 2024) 5-021 (Scrutton)

⁴⁹ MSC (n26) [47]-[52]

the contract of carriage, and the contrary could not be argued. The author agrees with Scrutton's proposition and the Court's position. The standard long-form B/L used by a liner carrier remains constant, including the jurisdiction clause, law governing the contract, and the forum for dispute resolution. Therefore, the absence or mischance of the terms and conditions on the reverse side of the bill should not preclude the incorporation of the terms and conditions of a liner B/L. Furthermore, carriers do include a clause in the B/L that protects them from such adversities and binds consignees to the terms of carriage.⁵⁰

Secondly, for the arbitration clause to be valid, the parties' consent is required. In other words, the parties should be aware of the arbitration clause and must provide their respective consents to arbitrate any disputes that may arise under the contract.⁵¹ However, the consent of parties in a B/L is a complex matter. The B/L is a contract that is not negotiated between the shipper and the carrier due to the unequal bargaining power between them. The terms and conditions of the contract are dictated by carriers.⁵² Furthermore, the B/L is only signed by the carrier or its agent.⁵³ Under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958⁵⁴ (hereinafter, New York Convention, 1958), Article II (2)⁵⁵ lays down the prerequisite for the recognition of an arbitration agreement. It states that the arbitration clause in a contract or a separate arbitration agreement shall be in writing and must be signed by the parties or should be contained in an exchange of letters or telegrams. From the plain

⁵⁰ The Court's wider interpretation including the clause printed on the face of the liner B/L eg - MSC's Bill of Lading states "In Accepting This Bill Of Lading The Merchant Expressly Accepts And Agrees To All The Terms And Conditions, Whether Printed, Stamped Or Otherwise Incorporated On This Side And On The Reverse Side Of This Bill Of Lading And The Terms And Conditions Of The Carrier's Applicable Tariff As If They Were All Signed By The Merchant", will uphold the incorporation of the terms on the reverse side.

⁵¹ Ozdel M, 'Enforcement of Arbitration Clauses in Bills of Lading: Where Are We Now?' (2016) 33 Journal of International Arbitration <https://discovery.ucl.ac.uk/10043088/1/Ozdel_Accepted%20manuscript%20-%20Melis%20Ozdel%20clean%20version%20JOIA.pdf> accessed 31 July 2025 (Ozdel M)

⁵² Ibid

⁵³ Yvonne Baatz, 'The Conflict of Laws' in *Southampton on Shipping Law* (Institute of Maritime Law, University of Southampton, UK 2008) 1

⁵⁴ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3 (New York Convention).

⁵⁵ Article II (2) of the New York Convention

interpretation of the provision, it can be inferred that signing of an arbitration clause is optional. Similarly, under English Law, if the seat of arbitration is in England and Wales or Northern Ireland, the Arbitration Act 1996 will apply. Pursuant to section 5(2)(a) of the Arbitration Act 1996⁵⁶, signatures of parties are not mandatory for the arbitration clause to be valid.

The above-mentioned prerequisite brings into question whether the arbitration clause in a liner B/L will be valid, given that the only party signing the B/L is the carrier. Under the maritime arbitration setting, the arbitration clause binds the cargo interest as if it has deemed to have consented to arbitrate the dispute.⁵⁷ If the law governing the B/L is English Law, COGSA 1992 will apply.⁵⁸ Therefore, according to Section 2(1) of COGSA, 1992⁵⁹, the lawful holder of the B/L acquires all the rights of suit of the shipper. Primarily, the contract is between the shipper and the carrier, and when the B/L is endorsed to or is in the possession of the lawful holder, i.e. the consignee, pursuant to the terms and conditions mentioned on the face and reverse side of the B/L, a new contract is formed between the holder and the carrier.⁶⁰ Therefore, the arbitration clause in the B/L will bind the lawful holder.⁶¹ Considering this, the author concludes that if the arbitration clause is expressly mentioned on the reverse side of the bill of lading, the lawful holder will acquire the rights and liabilities of the shipper, thereby consenting to the arbitration clause.

⁵⁶ Arbitration Act, 1996, s5(2)(a)

⁵⁷ Ozdel M (n51)

⁵⁸ *Primetrade AG v Ythan Ltd ("the Ythan")* [2006] 1 Lloyd's Rep 457, 462

⁵⁹ Arbitration Act, 1996, s2(1)

⁶⁰ Professor Francis Rose; Professor Francis M.B. Reynolds, 'Transfer of bill of lading' in Carver (ed) *Carver on Bills of Lading* (Sweet & Maxwell 2022) [9-114]

⁶¹ Sir Richard Aikens, Richard Lord QC, Michael Bools QC, Michael Bolding, Kian Sing Toh SC, *Bills of Lading* (3rd edn, Informa Law from Routledge 2020) 266

3.3 Enforcement of Arbitration Clause in a Liner Bill of Lading under Different Jurisdictions

Enforcement under UK Jurisdiction

Under English Law, the kompetenz-kompetenz principle gives arbitrators the power to decide whether they have the jurisdiction to hear a dispute or not. This principle is engraved in the Arbitration Act, 1996, under Section 30,⁶² which gives the arbitrator the power to decide the validity of an arbitration agreement and the constitution of the tribunal. The provision further gives a legal remedy to challenge the jurisdiction of the tribunal before the national courts. Courts, in pursuance of the Arbitration Act 1996, encourage non-interference with arbitration proceedings and act as a supervisory jurisdiction over the arbitration proceeding.⁶³ This supervisory jurisdiction of the courts confirms that the power of the tribunal under the kompetenz-kompetenz principle is not absolute, and the courts can hear a challenge under Sections 32, 67 and 72 of the Arbitration Act 1996⁶⁴, on the lack of jurisdiction of the tribunal⁶⁵. Under Article II (3) of the New York Convention, 1958,⁶⁶ the court of the member state is obliged, on an application by the other party, to refer the parties to arbitration when one of the parties commences a proceeding in breach of the arbitration agreement. Since the United Kingdom is a signatory to New York Convention 1958, the provisions of the conventions are incorporated in the Arbitration Act 1996, wherein, under section 9 of the Arbitration Act 1996, the court upon considering the validity of the arbitration clause, shall refer the parties to arbitration on an application by the party against whom a legal proceeding has been commenced in breach of the arbitration clause. In light of these provisions, the author believes

⁶² Gary Born(n40) 56; Arbitration Act, 1996 s30

⁶³ *Star Hydro Power Limited v National Transmission and Despatch Co Ltd.* [2025] EWCA Civ 928 [42]-[45]

⁶⁴ Arbitration Act, 1996 s32, 67, 72

⁶⁵ *Dallah Real Estate and Tourism Holding Company v The Ministry of Religious Affairs, Government of Pakistan* [2010] UKSC 46 [104]

⁶⁶ New York Convention (n25) Article II (3)

that the court has an appropriate supervisory jurisdiction over an arbitral tribunal that allows the independent functioning of the tribunal, subject to the court's power to consider an appeal or challenge. Therefore, a valid arbitration clause in a liner B/L having its seat in England and Wales or Northern Ireland will be enforceable without any legal complexities.

The next thing to be considered is the arbitrability of disputes arising under liner B/Ls. The majority of disputes pertaining to liner B/Ls are likely to be initiated by cargo interests against the carrier for misdelivery or cargo damage claims. Contrarily, the carrier may bring claims against the cargo interests or shippers for demurrage and detention charges, or liability under wrongful declaration of dangerous goods. In this context, the reasoning of the House of Lords in the case of *Fiona trust & Holding Corp and others v Privalov and others*⁶⁷ is instructive. The court held that an arbitration clause should be construed in such a way that a rational businessman intends to resolve all disputes arising under the contract by the tribunal unless otherwise expressly mentioned in the contract. The author concurs with the reasoning of the House of Lords, as this brings more certainty and clarity to the clause, as any and all disputes are to be decided by the tribunal. The author therefore submits that an arbitration clause in a liner B/L should be worded in a way to widen the scope of the arbitral tribunal, which confers power to decide on all disputes that may arise under the liner B/L, including the authority to rule on its own jurisdiction. This will allow for bringing certainty and predictability in the enforcement of the arbitration clause and eliminate challenges to the arbitral tribunal's jurisdiction.

Enforcement under European Jurisdiction

Enforcement of an arbitration clause under common law jurisdiction is long settled. The legislation and the judgments of the courts are aligned to enforce the arbitration clause.

⁶⁷ *Fiona trust & Holding Corp and others v Privalov and others* [2008] 1 Lloyd's Rep. 254 (HL) 256

However, under European jurisdiction, Article 1(2)(d) of the Brussels I Regulation⁶⁸ expressly excludes arbitration from the scope of the regulation, resulting in parallel litigations that undermine the decision of the parties to resolve the dispute via arbitration.⁶⁹ In *Wadi Sudr*,⁷⁰ the exclusion of arbitration from the scope of the Brussels I Regulation created chaos when, consequent to the arbitration clause in the B/L, the shipowner commenced arbitration proceedings in London. However, before that, the cargo owner commenced a proceeding before the Spanish Court. In retaliation to this, the shipowner also approached the commercial courts in London on the grounds that the dispute fell within the scope of the arbitration agreement in the B/L. The Spanish Court made its preliminary decision, concluding that the arbitration clause was not incorporated into the B/L, thereby giving jurisdiction to the Spanish Court. Parallely, in England, the Commercial Court ruled that the preliminary findings of the Spanish Court did not bind the English Court. Subsequently, the Court of Appeal was to decide whether the arbitrators were to consider the judgment of the Spanish court even though the Brussels I Regulation expressly excludes arbitration. Relying on the decision in *The Front Comor*,⁷¹ the Court of Appeal answered in the affirmative. The result of this was reflected in the new Regulation (EU) No 1215/2012 (Hereinafter, "Recast Regulation")⁷² wherein it was stated that when an action is commenced before the court of the member states, the Regulation does not prevent the courts from referring the parties to arbitration and also gives the power to decide on the validity of the arbitration agreement in accordance with their national laws.⁷³

The author argues that, even though the Recast Regulation is being made conducive to arbitration by excluding the arbitration from its ambit and granting powers to refer the parties

⁶⁸ Brussels I (n29) Article 1(2)(d)

⁶⁹ Ozdel M (n51)

⁷⁰ *National Navigation Co V Endesa Generacion Sa (The "Wadi Sudr")* [2010] 1 Lloyd's Rep 193.

⁷¹ *West Tankers INC v Allianz Spa (The "Front Comor")* [2012] EWCA Civ 27

⁷² Recast Regulation (n35)

⁷³ Ozdel M (n 51)

to arbitration, in scenarios such as the joined cases C-345/22 to C-347/22⁷⁴, where the national law disallows the enforcement of the arbitration clause against the third party for want of express agreement between the carrier and the lawful holder, the exception under the national law of the member state will allow the third party to circumvent the EJC and bring the dispute before their national courts.

Therefore, under European jurisdiction, regardless of the relevant provisions of Recast Regulation⁷⁵, if a national law of the member state does not recognise the jurisdiction and arbitration clause due to the absence of express agreement between the lawful holder of the B/L and the carrier, the question arises whether the arbitration clause in a liner B/L will be more effective in terms of enforcement than the EJC. The question can be answered in a context, for example, where the seat of arbitration is in London, the only option the carrier is left with is to commence the arbitration proceeding *ex parte*. Subsequently, the carrier will obtain an award and enforce it under section 66 of the Arbitration Act 1996⁷⁶, provided the cargo interest has its assets within the United Kingdom. However, suppose the cargo interest has its assets in a member state that does not recognise the arbitration agreement (due to the absence of express agreement). In that case, the court of the member state may consider the tribunal's lack of jurisdiction and refuse to enforce the award.

⁷⁴ Maersk (n 34)

⁷⁵ Recast Regulation (n 35)

⁷⁶ Arbitration Act, 1996, s66

4. The Binding Effect of the Arbitration Clause Against Third-Party Holders of Liner Bills of Lading

4.1 Introduction

When considering the inclusion of an arbitration clause in liner B/Ls in place of an EJC, it is essential to address several key legal issues that may arise. As seen from the above discussion, the B/L is constituted between the original parties, i.e. the carrier and the shipper, and consequently, the consignee is deemed to be a party to the contract on endorsement. The cargo insurer of the consignee, though not a party to the B/L, is involved and discharges its obligation when the cargo arrives in a damaged condition. This gives the insurer a right in subrogation to claim against the carrier under the B/L. Therefore, it is significant to take into account whether and how the terms and conditions of the B/L bind these third parties in cases of claims arising under the B/L.

A third party commencing a foreign proceeding does so in breach of the arbitration clause in the B/L. To restrain the party from further pursuing the foreign proceeding, the legal remedy at the disposal of the carrier is an anti-suit injunction. However, an anti-suit injunction is an *in personam* proceeding directed against the party, not the court.⁷⁷ Therefore, it is important to consider the role of an anti-suit injunction in such cases, along with the binding effect of the arbitration clause on third parties. This chapter will analyse the binding effect of the arbitration clause on third parties in liner B/Ls and determine the role of an anti-suit injunction in cases where a party initiates a proceeding in breach of the arbitration clause.

⁷⁷ *Truner v Grovit* [2001] UKHL 65, [22]-[23]

4.2 The UK Jurisdiction

The Consignee

Turning away from statutory provisions, under common law, the implied contract doctrine allowed the transfer of rights and obligations to the consignee upon presentation of the B/L to the carrier to take delivery.⁷⁸ The court in *Brandt v Liverpool*⁷⁹ concluded that when a consignee is not the endorsee under the relevant statutory provisions, the act of presentation of the B/L implied that the consignee undertook to pay outstanding charges, thus allowing the consignee to claim against the carrier for damaged cargo and the carrier to claim against the consignee for non-payment of freight and demurrage. Nevertheless, the application of this doctrine is regarded as a curative measure, used based on the facts of the case, and exercised only when there is a need for commercial sense to ensure the enforcement of obligations.⁸⁰ It may be inferred that the analysis of the court was to bind the consignee to the terms and conditions of the B/L in order for the consignee to acquire the right to sue and the obligation to pay the outstanding charges.

Under English law, the statutory provisions embedded in sections 2, 3 and 4 of COGSA 1992 remove the need for the application of the above doctrine. The provisions expressly confer the rights and obligations of the shipper onto the consignee as if it were the original party to the B/L.⁸¹ For the arbitration clause to bind the consignee, the statutory requirements under section 2(1) of COGSA 1992 and section 5(1) of the Arbitration Act 1996 must be fulfilled. In *The Epsilon Rosa*⁸² the Court of Appeal placed its emphasis on whether the consignee was able to

⁷⁸ Richard Aikens (n61) 260

⁷⁹ *Brandt v Liverpool* [1924] 1 K.B. 575

⁸⁰ - -, 'Proper Law of a Brandt V. Liverpool Contract' [1985] LMCLQ 189-190; *Leigh and Sullivan Ltd. v. Aliakmon Shipping Co.Ltd (The Aliakmon)* [1983] 1 Lloyd's Rep. 203.

⁸¹ *Ibid* (n61) 260

⁸² *Welex A.G. v Rosa Maritime Limited (The Epsilon Rosa)* [2003] 2 Lloyd's Rep. 509 515

readily ascertain the terms (the arbitration clause) incorporated in the B/L without requiring an extensive investigation, since this could lead to uncertainty. The arbitration clause will be binding if the consignee is able to do so. The rationale behind this reasoning is that the consignee is made aware of the arbitration clause and should be able to ascertain it without the need for a search.

How will this rationale work in the context of a liner B/L? If we consider a scenario where B (the consignee) receives a non-negotiable liner B/L from A (the shipper) with the reverse side of the B/L left unintentionally blank, will the arbitration clause bind B? Recalling Scrutton's view,⁸³ the availability of a standard B/L on the official website of the carrier would suffice for the incorporation of the terms mentioned on the reverse side, thereby binding the consignee. Though the facts differ, the court in *The Epsilon Rosa*⁸⁴ concluded that the arbitration clause should be ascertainable. Based on this, could B argue that the availability of the standard B/L on the official website of the carrier does not come within the ambit of being ascertainable, and the court should consider the B/L as it appears? In the author's opinion, the court in such cases should adopt a flexible approach and give commercial sense to the contract. Previous dealings of the parties and the consignee's knowledge of the terms of the contract should be the determining factor in the incorporation of the terms on the reverse side of the B/L. The author abides by Scrutton's opinion⁸⁵ that the consent to the terms of the B/L is obtained from the shipper, which is transferred to the consignee on endorsement. Therefore, an unintentional oversight should not allow the consignee to circumvent the arbitration clause in the B/L.

⁸³ Scrutton (n48) 9-114

⁸⁴ *The Epsilon Rosa* (n82)

⁸⁵ *Ibid* (n48) 9-114

The Cargo Insurer

The cargo insurer is a party adjacent to the consignee that has undertaken to indemnify the consignee for the cargo damages, if any, upon delivery. The consignee insures its goods so that if the goods arrive in a damaged condition due to the fault of the carrier, the consignee can look towards the cargo insurer for the insurance proceeds. The insurer, under the principle of subrogation, can then step into the shoes of the consignee to claim against the carrier for the damage caused to the goods.⁸⁶ As there is a contract of insurance between the consignee and the insurer, the question arises whether the arbitration clause contained in the B/L binds the insurer. In *Niagara Maritime Sa v Tianjin Iron & Steel Group Company Limited*⁸⁷ and *Starlight Shipping Co V Tai Ping Insurance Co Ltd Hubei Branch*,⁸⁸ the courts established that if a B/L contains an arbitration clause, all the parties are bound to enforce the claim in accordance with said arbitration clause, unless strong grounds are established to show the contrary. Justice Hamblen⁸⁹ concluded that the insurer's argument that the arbitration clause is not binding pursuant to the laws of China is unsustainable because the claim is one that arose under the B/L and therefore English Private International law will apply. This proves that an attempt to circumvent the arbitration clause in the B/L by the insurers, relying on their respective national law, won't be sustained.

In *Schiffahrtsgesellschaft v Voest Alpine*,⁹⁰ Justice Morrison stated that when the insurer indemnifies the assured, the rights of the assured are extinguished, and the assured can no longer bring a claim under the contract. The insurer, by stepping into the shoes of the assured, will have to claim against the carrier subject to the arbitration clause in the contract. The

⁸⁶ Professor Robert M Merkin, *Colinvaux's Law of Insurance* (13th edn. Sweet & Maxwell 2024) 12-001

⁸⁷ *Niagara Maritime Sa v Tianjin Iron & Steel Group Company Limited* [2011] EWHC 3035 (Comm)

⁸⁸ *Starlight Shipping Co V Tai Ping Insurance Co Ltd Hubei Branch* [2008] 1 Lloyd's Rep 230 (QB) (Starlight Shipping)

⁸⁹ *Ibid* (n88) 233

⁹⁰ *Schiffahrtsgesellschaft v Voest Alpine* [1997] 1 Lloyd's Rep 179 (QB) 187

insurers argued on appeal⁹¹ that they acquire the contractual rights without the obligation to arbitrate the dispute. Lord Justice Hobhouse, rejecting the argument, relied on section 82(2) of the Arbitration Act 1996, stating that “*any person claiming under or through a party*” is bound by the arbitration clause.

Furthermore, Section 2(4) of COGSA 1992⁹² grants the right of suit to a person other than the owner of the goods who has any interest or right under the B/L. Under common law, the general rule is that only the owner of the goods has the right to sue a carrier for damages caused to the goods.⁹³ However, this rule would not permit an insurer to claim in subrogation against the carrier, as the insurer is not the owner of the goods. Therefore, Section 2(4)⁹⁴ allows the insurer to pursue a claim against the carrier as the insurer acquires the right through assignment and subrogation. An exception to this was discussed by the court in *The Baltic Strait*⁹⁵. While analysing section 2(4) of COGSA 1992, Justice Andrew Baker partly disagreed with the arbitral tribunal's finding that the consignee and its insurer could recover losses on behalf of the seller.⁹⁶ The judge emphasised that a bill of lading in the hands of a charterer functions merely as a receipt, and that for the charterer to claim against the carrier, the right must be under the charterparty and not the bill of lading. For section 2(4) of COGSA 1992 to apply, rights under 2(1) of COGSA 1992 must be vested. Consequently, if an insurer claims against a carrier under section 2(4) on behalf of a consignee that has not acquired the right under section 2(1) of COGSA 1992, then the claim made by the insurer will fail. Mere assignment of rights from the consignee to the insurer, where the rights have not been acquired in the first place, would not entitle the insurer to claim under section 2(4) of COGSA 1992 against the carrier.

⁹¹ *DVA v Voest Alpine* [1997] 2 Lloyd's Rep 279 (CA). 285-286

⁹² COGSA 1992, s2(4)

⁹³ Richard Aikens (n48) 284

⁹⁴ COGSA 1992, s2(4)

⁹⁵ *Sevylor Shipping and Trading Corporation v Altfadul Company for Foods, Fruits & Livestock and Another (The "Baltic Strait")* [2018] 2 Lloyd's Rep 33 45

⁹⁶ *The Baltic Strait* (n95) [67]

The author agrees with the court's rationale for distinguishing whether the consignee has rightfully acquired the rights and obligations under the B/L, which in turn will allow the consignee to assign those rights to the insurer to claim against the carrier. Since the subrogated right can only be exercised by the insurer if the consignee has acquired the rights under the B/L, if the consignee rejects the goods under the sales contract, the rights under the B/L are not transferred to the consignee, and only the shipper has the right to claim against the carrier.⁹⁷

When the arbitration clause binds the insurers, “*the right to arbitrate is derived under a contract, eg by way of assignment, subrogation or direct-action statute*”⁹⁸. These derived rights bring obligations upon the insurer, which were dealt with in *The Frio Dolphin*⁹⁹. Firstly, the insurer undertakes to bring an action against the carrier in accordance with the arbitration clause, and if the action is “*inconsistent*”¹⁰⁰ with the forum clause, the courts have the discretion to grant an anti-suit injunction. Secondly, the insurer's obligation is to not bring a suit against the incorrect non-party, as it would be inequitable, oppressive and vexatious. In the author’s opinion, such a scenario might appear in cases where the liner carrier, under a slot charter¹⁰¹ arrangement, ships the container on a different liner carrier's vessel. Therefore, for example, if C (Carrier), under a slot charter arrangement with D (another carrier), ships B’s (Consignee) container on D’s vessel, the contract of carriage will still be between C and B. Consequently, if the cargo arrives in a damaged condition, the insurer, on indemnifying the consignee, will claim in subrogation against the carrier. Applying the rationale established in *The Frio Dolphin*¹⁰², the insurer will be under the obligation to bring the suit against the right liner

⁹⁷ *East West Corp. v. DKBS 1912* [2003] 1 Lloyd’s Rep 241 (CA). 247

⁹⁸ *The Frio Dolphin* [2021] 2 Lloyd’s Rep 387 (QB) 389

⁹⁹ *Ibid*

¹⁰⁰ *Ibid* (n98) 389

¹⁰¹ In *Metvale Ltd v Monsanto International Sarl (The Msc Napoli)* [2008] EWHC 3002 (Admlty) Mr. Justice Teare explained the term Slot Charter [11] “...the slot charterers are only hiring space on a vessel and they are therefore not acting as operators as under a time charterparty and usually have no control over the operation of the vessel.”

¹⁰² *Ibid* (n98)

carrier, i.e. C, in accordance with the forum clause, and if it brings a claim against the liner carrier D or its vessel, the court will treat such a suit as oppressive and vexatious. The right carrier against whom a claim is filed is identified from the terms of the liner B/L, MSC's liner B/L under Clause 1, the definition of carrier expressly mentions the MSC Mediterranean Shipping Company SA,¹⁰³ and similarly, the terms of carriage of Maersk under Clause 1 "Carrier" mentions Maersk A/S of 50 Esplanaden, 1263 Copenhagen K, Denmark.¹⁰⁴

In the author's view, in cases of containers shipped in a slot charter arrangement, the third-party holder of the liner B/L will be under the obligation to claim against the right carrier in accordance with the terms of carriage, and any contrary argument will be unsustainable before the courts.

4.3 The EU Jurisdiction

If a liner B/L governed by English law contains an arbitration clause with the seat in London and is consigned to a party within the EU jurisdiction, can the consignee or its insurer initiate a proceeding before their national courts in breach of the arbitration clause? Under English law, third parties such as the consignee and the insurer will be bound by the arbitration clause,¹⁰⁵ and a proceeding initiated in breach of the arbitration clause will allow the other party to obtain an anti-suit injunction. Contrary to the established position under English law, in the EU Jurisdiction, the binding effect of an arbitration clause on third parties varies. The Brussels I Regulation¹⁰⁶ and the Regulation (EC) No 593/2008 (Rome I) exist in consonance¹⁰⁷. Within

¹⁰³ MSC Bill of lading (n12) clause 1

¹⁰⁴ Maersk terms of carriage (n13) clause 1

¹⁰⁵ Yvonne Baatz, 'Should third parties be bound by arbitration clauses in bills of lading?' [2015] L.M.C.L.Q 85 <<https://www.i-law.com/ilaw/doc/view.htm?id=351775>> accessed date 17 August 2025. 95

¹⁰⁶ Brussels I Regulation (n29)

¹⁰⁷ Recital 7 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations OJ L 177, 4.7.2008

the context of a B/L, Rome I applies to the contractual obligations between the original parties, namely the shipper and the carrier, whereas when the B/L is in the hands of a third party, the binding effect of the jurisdiction and arbitration clause is determined by national law.¹⁰⁸ Considering that there is no harmony between the national laws of the Member States,¹⁰⁹ the binding effect of the arbitration clause against third parties is uncertain. In *Coreck Maritime GmbH v Handelsveem BV*¹¹⁰ it was clarified by the court that the enforceability and binding nature of the terms of the B/L against a third party depend on whether the third party has acquired all the rights and obligations under the valid contract between the shipper and the carrier in accordance with the national law of the relevant Member State.

Furthermore, the decision in *Wadi Sudr*¹¹¹ highlighted the difficulty in the enforcement of an arbitration clause against a third party. The successor, the Recast Regulation¹¹², introduced reforms to counter the legal issues that arose in *Wadi Sudr*.¹¹³ Under Recital 12¹¹⁴, even though arbitration is not within the ambit of the Recast Regulation, the courts of the Member States are vested with the power to refer the parties to arbitration and determine the validity of the arbitration clause. Consequently, the aim was to separate the court's power from the Recast Regulation to examine and deal with the enforcement of the arbitration clause in a B/L. As observed by Ozdel, 'With the Recast Regulation, it now seems that English courts can enforce an award pursuant to the New York Convention, even in cases where there is an inconsistent judgment by the court of another Member State. With this new change, the solution to keep arbitration clauses in bills of lading effective will again be a practical one: it will also be essential for the winning party to have the award recognised and enforced pursuant to the New

¹⁰⁸ Ibid (n105)

¹⁰⁹ Ibid (n103) 103

¹¹⁰ *Coreck Maritime* (n33)

¹¹¹ *The Wadi Sudr* (n70)

¹¹² Recast Regulation (n35)

¹¹³ Ibid (n70)

¹¹⁴ Recast Regulation, Recital 12 (n35)

York Convention in the place where the assets of the losing party are located.¹¹⁵ The author partly disagrees with the opinion of Ozdel; as in the author's opinion, the position is unaltered due to the condition that the binding effect of the terms of the B/L in the hands of the third party is subject to the national laws of the member states.¹¹⁶ In the joined cases of C-345/22 to C-347/22¹¹⁷, the Spanish insurer in subrogation commenced a suit before the Spanish Court, in breach of the EJC, claiming that under Article 251 of the LNM (Spanish Law), the third party acquires all the rights under the B/L except Jurisdiction and Arbitration agreements, as these require express consent for the forum clause to bind the third parties. When the case was referred to the Court of Justice of the European Union, it was held that the enforceability of the jurisdiction against the third party should be determined in accordance with the national substantive law of the court seised with the dispute. This proves that the enforcement of the jurisdiction and arbitration clause, when one of the parties is in a Member State, that party, by relying upon its national laws, may avoid the forum clause and bring the dispute before its national court.

Although Article 34 of the Recast Regulation allows the Member States to stay the proceedings in favour of a third state (party) when the contract is governed by an EJC, such a situation could lead to vexatious and oppressive proceedings being pursued to avoid the jurisdiction clause where the EU Member State is first seised with proceedings¹¹⁸. In the author's view, a similar situation could arise when enforcing an arbitration clause against third parties. Where the third party commences a proceeding before its national court, Recital 12 of the Recast Regulation will allow the court to determine the binding effect of the arbitration clause in accordance with its respective national law.

¹¹⁵ Ozdel M (n51)

¹¹⁶ Coreck Maritime (n33)

¹¹⁷ Maersk Case (n34)

¹¹⁸ The Recast Regulation (n35) Article 34

To conclude, if an arbitration clause is incorporated into a liner B/L, the threat of circumvention of the arbitration clause by third parties still persists in jurisdictions where national law restricts the binding effect of the arbitration clause, such as the European Union.

5. Role of Anti-Suit Injunction

5.1 Introduction

At this juncture, it is evident from the above discussion that enforcement of an arbitration clause in a liner B/L against third parties may face a similar threat of circumvention as seen for the EJC. Where the third party's national law allows bringing a dispute before their national court, the possibility of vexatious proceedings looms, contrary to the arbitration agreement. Therefore, to preserve the arbitration agreement and restrain the party breaching it from further pursuing the foreign proceeding, an anti-suit injunction is a legal remedy available to the other party.

Under common law, an anti-suit injunction is a weapon in the hands of the court to restrain a party from commencing a proceeding in a foreign court in breach of the obligation to arbitrate under a contract.¹¹⁹ This foreign proceeding creates a clash of jurisdiction with the original agreement, where all disputes between the parties were to be resolved through arbitration. Consequently, the injunction acts to resolve the clash and reminds the party in breach of the promise made under the agreement to arbitrate all disputes.¹²⁰ Quoting Staughton J in *Tracomina S.A. v Sudan Oil Seeds Co. Ltd*, 'the case is not itself a case about peanuts. It is about who shall decide a case about peanuts.'¹²¹ Therefore, the supervisory court directs, *in personam*, the party in breach to resolve the dispute as agreed under the contract.

This chapter firstly discusses the general role of an anti-suit injunction to preserve and enforce the arbitration agreement in a B/L against third parties. Secondly, the author addresses various

¹¹⁹ Sir Peter Gross, 'Anti-suit injunctions and arbitration' [2005] LMCLQ 10 <<https://www.ilaw.com/ilaw/doc/view.htm?id=130462>> accessed date 21 August 2025

¹²⁰ Aleka Mandaraka-Sheppard, *Modern Maritime Law and Risk Management*, (2nd edn, Informa Law from Routledge 2009) 243

¹²¹ *Tracomina S.A. v Sudan Oil Seeds Co. Ltd* [1983] 1 W.L.R. 662, 664 (Staughton J)

limitations faced by English Courts regarding an anti-suit injunction under EU Regulations. Finally, to emphasise the significance of anti-suit injunction in enforcing the arbitration clause in a liner B/L, the author discusses the re-gain of power of the English Courts post withdrawal of the United Kingdom from the European Union, decision (EU) 2020/135.

5.2 Anti-suit Injunction under English Law

It is often the case that the consignee or its insurer, in breach of the arbitration clause in a B/L, commences a suit before its home jurisdiction to either delay the proceeding or obtain a favourable order under its national laws. In *The Angelic Grace*¹²², the court highlighted two points: the plaintiff's contractual rights and the courts' discretion under the relevant provisions of the Senior Courts Act, 1981. Firstly, as the foreign proceeding commenced by a party in breach of the agreed forum deprives the plaintiff of its contractual rights, a remedy by way of damages would be inadequate. Secondly, the court further stated that, under Section 37 of the Senior Courts Act 1981, the exercise of discretion in granting an anti-suit injunction should be made without hesitation if the party establishes strong grounds. Furthermore, in *Starlight Shipping Co v Tai Ping Insurance Co Ltd*,¹²³ while dealing with the relationship between Section 37 of the Senior Courts Act, 1981 and Section 44 of the Arbitration Act 1996, the court relied on the rationale of *The Angelic Grace*¹²⁴. It concluded that the arbitral tribunal had no power to grant an anti-suit injunction and protect the interest of the party against whom the vexatious proceedings are brought. Consequently, the court derives its power under Section 44(3) of the Arbitration Act, 1996 in cases of urgency and can exercise the discretion of issuing an anti-suit injunction under Section 37 of the Senior Courts Act, 1996. The author is of the

¹²² *Aggeliki Charis Compania Maritima S.A. v. Pagnan S.P.A. (The "Angelic Grace")* [1995] 1 Lloyd's Rep 87 (CA)

¹²³ *Starlight Shipping* (n88)

¹²⁴ *Ibid* (n120)

opinion that the courts' power to grant an anti-suit injunction is a powerful remedy available to a party in an international commercial transaction, such as under the B/L. The party will incur additional legal costs to object to the suit in the foreign proceeding and the objective established under the contract to arbitrate the dispute will be defeated. There is an equitable obligation on the third parties to the B/L to arbitrate the dispute,¹²⁵ and any action contrary to the forum clause will entitle the other party to obtain an anti-suit injunction.

It is clear from the above discussion that the interplay between Section 44 of the Arbitration Act, 1996 and Section 37 of the Senior Courts Act, 1981, gives the power to the court to issue an anti-suit injunction. However, a further question can be raised whether the courts, in the absence of an arbitral proceeding being commenced, have the independent power to issue an anti-suit injunction under Section 37 of the Senior Courts Act, 1981. This issue came before the apex court in *UST*.¹²⁶ The court emphasised the negative aspect of the arbitration that the parties in each case undertake to arbitrate the dispute, and not to bring the dispute in a different forum. Therefore, the 'argument that the negative aspect of an arbitration agreement is enforceable only when an arbitration is on foot or proposed' was rejected by the Supreme Court.¹²⁷ It concluded that even if the arbitral proceedings were not yet commenced or there was no intention to commence, the power to exercise discretion with regard to the issuance of an anti-suit injunction is found in Section 37 of the Senior Courts Act, 1981.¹²⁸ The author is of the opinion that this judgment aligns with the provision of Article II (1) of the New York Convention,¹²⁹ which puts an obligation on the courts of the contracting states to recognise the arbitration agreement, under which the parties have agreed to resolve the dispute through

¹²⁵ *The Frio Dolphine* (n98)

¹²⁶ *UST-Kamenogorsk Hydropower Plant JSC V AES UST-Kamenogorsk Hydropower Plant LLP* [2013] 2 Lloyd's Rep 281 (UST)

¹²⁷ *Ibid* 286

¹²⁸ Senior Courts Act, 1981, s37

¹²⁹ New York Convention (n54), Article II(I)

arbitration. As one of the parties had no intention to commence the arbitral proceeding, the relevant provisions of the Arbitration Act, 1996 were not triggered, and no arbitral tribunal was on foot to rule on its own jurisdiction. Therefore, if the courts were to not recognise the arbitration clause, no negative aspect of the arbitration would enforce the party to arbitrate the dispute, thus giving a free hand to the party to commence a proceeding before its home jurisdiction. In the context of liner B/Ls, consider a scenario where the B/L provides for London Arbitration and a dispute arises under it. While the carrier and the consignee are in a negotiation, the consignee nevertheless commences a suit before its national court to compel the carrier to settle the dispute. Consequently, the carrier will always have the option, based on the rationale of *UST*,¹³⁰ to obtain an anti-suit injunction to restrain the consignee from further pursuing the foreign proceeding. This legal remedy will be available to the carrier regardless of whether it has the intention to commence the arbitration proceeding or not.

5.3 The Effectiveness and Recognition of Anti-Suit Injunction in the Enforcement of an Arbitration Agreement

For the arbitration clause in a liner B/L to work effectively, it is important to consider whether a foreign court will recognise the anti-suit injunction to stay the proceeding brought by the party in breach of the contract. Prior to considering that, it is essential to examine the English Courts' approach to entertaining an anti-suit injunction and exercising the discretion of granting one. The House of Lords in *Airbus v Patel* dealt with the principle of comity. Lord Goff, while dealing with the grant of an anti-suit injunction, stated that, 'comity requires that the English Forum should have a sufficient interest in, or connection with, the matter in question to justify the indirect interference with the Foreign Court.....'.¹³¹ An arbitration clause in a liner B/L

¹³⁰ *UST* (n124)

¹³¹ *Airbus v Patel* [1998] 1 Lloyd's Rep 631, 640

providing for London Arbitration will give the English Court a sufficient connection as a supervisory court to intervene in the foreign proceeding initiated by the party in breach of the contract.¹³² Moving on to the recognition of anti-suit injunctions by foreign courts, much of the controversy surrounding anti-suit injunctions deals with the fact that they indirectly interfere with the foreign courts' jurisdictional sovereignty.¹³³ However, the English Courts in *Ellerman Lines Ltd v Read*,¹³⁴ and *Turner v Grovit*¹³⁵ have clarified that they have no jurisdictional power to grant an anti-suit injunction to bind foreign courts, and the order is only directed against the party, *in personam*, that is amenable to the jurisdiction of the English Courts under the terms of the contract. Despite the clarification, recognition of the anti-suit injunction within the EU jurisdiction was uncertain. Prior to the United Kingdom's withdrawal decision (EU) 2020/135 from the European Union dated 30th January 2020, the recognition of anti-suit injunction between the member states was in question. In *Turner v Grovit*¹³⁶ and *The Front Comor*,¹³⁷ the Court of Justice of the European Union decided whether the provisions of the Regulation prohibit the grant of an anti-suit injunction restraining a party from commencing or pursuing a suit in another member state in breach of the contract. Concluding that an anti-suit injunction is precluded within the Regulation, the court reasoned that the restraining injunction is contrary to the Regulation's core principle of mutual trust and that the injunction undermines the latter court's jurisdiction. In the author's view, disregarding the anti-suit injunction in turn undermines the principle of party autonomy. Where an anti-suit injunction restrains a party from pursuing a suit before a non-agreed forum, non-recognition allows the same party to circumvent the forum clause of the contract to bring the suit before a favourable forum. The

¹³² Arbitration Act, 1996, s(2) scope of application of provisions.

¹³³ Aleka Mandaraka-Sheppard (n118) 245

¹³⁴ *Ellerman Lines Ltd v Read* [1928] 2 KB 144 151-152

¹³⁵ *Truner v Grovit* [2001] UKHL 65 para [22]-[23]

¹³⁶ C-159/02 *Gregory Paul Turner v Felix Fareed Ismail Grovit and Others* [2004] ECR 2004 I-03565, para

¹³⁷ *Allianz SpA, Generali Assicurazioni Generali SpA, v West Tankers Inc* [2009] 1 Lloyd's Rep 413 (The Front Comor)

author abides by the opinion of Yonne Baatz that, ‘although party autonomy is a well-established principle at the heart of Brussels I and under English common law rules, there are significant differences in the priority given to party choice between the two sets of rules, which can potentially lead to very different outcomes.’¹³⁸ Under Brussels I Regulation, the definite rules of jurisdiction bring certainty, but also the rigidity that eliminates discretion, whereas under English law, discretion in relation to the grant of anti-suit injunctions reinforces party autonomy by enforcing the terms of the contract against the party in breach.

The Recast Regulation, under Recital 12, expressly excludes arbitration from its scope, while Article 71 confirms that the New York Convention prevails over the Regulation. Therefore, the question is whether an arbitration clause expressly granting the arbitral tribunal the power to issue an anti-suit injunction permits recognition and enforcement of such an injunction under the Brussels Ia Regulation. The Court of Justice of the European Union in *Gazprom*¹³⁹ considered this point, where the parties had expressly conferred power on the arbitral tribunal to issue an anti-suit injunction against a party in breach of the arbitration clause. The court, relying upon the rationale established in *The Front Comor*,¹⁴⁰ stated that only an anti-suit injunction issued by a court of a member state runs contrary to the basic principle of mutual trust and therefore is forbidden under the Regulation. However, since arbitration is excluded under Recital 12 of the Regulation, an award by the arbitrator restraining the party in breach of the arbitration clause is not considered as being contrary to the principle of mutual trust under the Regulation. The author is of the view that Recital 12¹⁴¹ grants powers to the courts of the member states to determine the validity of the arbitration clause when the court is first seised.

¹³⁸ Yvonne Baatz, ‘Forum selection in contracts for the carriage of goods by sea: the European dimension’ [2011] L.M.C.L.Q 208 <<https://www.i-law.com/ilaw/doc/view.htm?id=267697>> accessed on 28 August 2025

¹³⁹ Case C-536/13 *Gazprom OAO v. Lietuvos Respublika* EU:C: 2015:316. [33]-[39] (*Gazprom*)

¹⁴⁰ *The Front Comor* (n134)

¹⁴¹ Recast Regulation (n35) Recital 12

Therefore, despite applying the rationale of *Gazprom*¹⁴², there is still uncertainty on whether the courts of the member state can refuse the recognition of the restraining arbitral award on grounds of their respective national law.¹⁴³

Under English Law, can the arbitral tribunal be conferred with the power to issue an anti-suit injunction? According to section 38(1) of the Arbitration Act, 1996¹⁴⁴ the parties can agree upon the specific powers of the arbitral tribunal, other than those listed in the section, with regard to the arbitral proceedings. Therefore, the provision allows the parties to expressly agree to confer powers on the arbitral tribunal to issue an anti-suit injunction. Similarly, pursuant to section 48(1) of the Arbitration Act, 1996¹⁴⁵ the parties have the leeway to decide the powers with regard to the remedies that the tribunal may exercise, and section 48(5)¹⁴⁶ allows the tribunal ‘to order a party to do or refrain from doing anything.’ The word “anything” can be given a wider scope to include the powers to issue an anti-suit injunction against the party that has commenced a foreign proceeding in breach of the arbitration clause. However, Charles Debattista is of the view that, ‘That is, however, unlikely to put the matter to rest. For, if the recalcitrant foreign claimant proceeds abroad in defiance of the peremptory order, the jilted London counterparty's only recourse would be to approach an English court to enforce the peremptory order under s.42(1), with the permission of the tribunal, which presumably would be forthcoming. As soon, however, as the English court intervenes so to enforce, such intervention is likely to come to grief against *West Tankers*.’

Has the position changed after the United Kingdom’s withdrawal by Decision (EU) 2020/135 of 30 January 2020 from the European Union? In *QBE Europe SA/NV v Generali*,¹⁴⁷ the

¹⁴² *Gazprom* (n139)

¹⁴³ As seen in the Joined Cases C-345/22 to C-347/22 (n34)

¹⁴⁴ Arbitration Act, 1996, s38(1)

¹⁴⁵ Arbitration Act, 1996, s48(1)

¹⁴⁶ Arbitration Act, 1996, s48(5)

¹⁴⁷ *QBE Europe SA/NV and Another v Generali Espana De Seguros Y Reaseguros* [2023] 3 Lloyd’s Rep 192

insurance policy was governed by English Law and provided for London Arbitration. In a direct action against the insurer of the yacht, Generali (the insurer that indemnified Red Eléctrica de España, the owners of the power cable damaged by the yacht), relying on the relevant provisions of Spanish law, brought proceedings in Spain in breach of the arbitration clause. QBE, the insurer of the yacht, approached the English Court to obtain an anti-suit injunction against Generali, restraining it from further pursuing the Spanish proceeding. The argument advanced by Generali that the arbitration clause does not bind the third party in light of Spanish Law was rejected.

The court reiterated the rationale established in *The Jay Bola*¹⁴⁸, that the derived right comes with *benefits and burdens*¹⁴⁹. Furthermore, the Court, relying on *Enka v Chubb*,¹⁵⁰ concluded that the court of the seat has the power to identify the law governing the arbitration clause. In the author's view, the same facts within the Recast Regulation would have led to an opposite outcome, as an anti-suit injunction would have been denied¹⁵¹ by the English Courts in light of *The Front Comor*¹⁵² decision that precluded the exercise of restraint against a court of a member state. As noted by Dr Aygün Mammadzada, 'English courts' newfound freedom to grant anti-suit injunctions against the proceedings at European Member State courts' [...] 'English courts are thus now back to their routine and not restrained in the exercise of their inherent jurisdiction to protect jurisdiction and arbitration clauses where the ends of justice require it'.¹⁵³

¹⁴⁸ *Zainalabdin Payabi And Baker Rasti Lari V. Armstel Shipping Corporation and Panthai Shipping Ltd. (The "Jay Bola")* [1992] 2 Lloyd's Rep 62. (QB)

¹⁴⁹ Derived rights come with the benefit to claim against the party with the burden to enforce the claims in accordance with the forum clause, in this case, arbitration in London.

¹⁵⁰ *Enka Insaat Ve Sanayi A.S. v OOO Insurance Company Chubb* [2020] UKSC 38

¹⁵¹ *Nori Holdings Ltd & Ors v. PJSC Bank Otkritie* [2018] EWHC 1343 (Comm)

¹⁵² *The Front Comor* (n134)

¹⁵³ Dr Aygün Mammadzada, 'The Rebirth of the European "Anti-Suit Injunction" Issue Post-Brexit' in Baris Soyer (ed), *Damages, Recoveries and Remedies in Shipping Law* (Informa Law from Routledge 2024)

Assuming, arguendo, that *Gazprom*¹⁵⁴ provides a viable solution for the enforcement and recognition of an anti-suit injunction within the EU Jurisdiction, the question is whether the rationale established in *Gazprom*¹⁵⁵ can be used to protect an arbitration clause in liner B/Ls. This prompts a further question as to whether an anti-suit injunction will be recognised under the Recast Regulation, where an arbitration clause provides for London Arbitration, expressly granting powers to the arbitrators to issue an anti-suit injunction. The author is of the opinion that Recital 12 of the Recast Regulation expressly states that ‘This should be without prejudice to the competence of the courts of the Member States to decide on the recognition and enforcement of arbitral awards in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958 (‘the 1958 New York Convention’), which takes precedence over this Regulation.’¹⁵⁶ As the provision of the regulation does not preclude the recognition of the arbitral award, the anti-suit injunction issued by the arbitral tribunal would be recognised and enforced by the court of the member state. However, for a London-seated arbitration where the Arbitration Act, 1996 will apply, Section 48¹⁵⁷ gives the parties the option to confer power to issue an anti-suit injunction to the arbitrators; the independent powers to issue an injunction by the arbitrators are still untested under the Arbitration Act, 1996.

¹⁵⁴ *Gazprom* (n139)

¹⁵⁵ *Ibid*

¹⁵⁶ Recital 12 of Recast Regulation (n35)

¹⁵⁷ Arbitration Act, 1996 s48

6. The Way Forward - Key Considerations for the Construction of an Arbitration Clause in Liner Bills of Lading

6.1 Introduction

In terms of international dispute resolution, arbitration is regarded as ‘...suffering fewer ills than litigation of international disputes in national courts...’.¹⁵⁸ However, the enforcement of an arbitration agreement in liner B/Ls may take a hit due to a lack of uniformity in the legal regime between countries. Although the New York Convention brings some clarity on the enforcement and recognition of arbitration agreements, there still exists a lacuna that parties exploit.¹⁵⁹ To ensure that arbitration in liner B/Ls achieves commercial certainty and clarity for the parties to the B/L, the leading liner shipping companies and independent organisations like Baltic and International Maritime Council (BIMCO) play a vital role in drafting a standard arbitration clause for the liner B/L that will help change the dynamics of the dispute resolution mechanism in liner carriage.¹⁶⁰ This chapter discusses the relevant updated provisions that will support the resolution of disputes under liner B/Ls through arbitration in a cost-effective and timely manner. Furthermore, the distinction between the interpretation of the wording of the arbitration clause under English Law and US Law will be analysed, and the significance of the quasi-institutional arbitration centres in the resolution of small claims liner disputes will be discussed.

¹⁵⁸ Gary Born (n42) 7

¹⁵⁹ Eva Litina, *Theory, Law and Practice of Maritime Arbitration: The Case of International Contracts for the Carriage of Goods by Sea* (Wolters Kluwer 2020) 205-206

¹⁶⁰ Eva Litina (n151) 207-210

6.2 Arbitration Act, 2025

The Arbitration Act, 2025¹⁶¹ received the royal assent on the 24th of February 2025¹⁶² and came into force on 1st of August 2025¹⁶³. The Act of 2025 amends and introduces a modernised version of the Arbitration Act 1996. The Act of 2025, under Section 7,¹⁶⁴ introduces Section 39A in the Arbitration Act, 1996, empowering the arbitral tribunal to make awards on a summary basis. Where one of the parties has no real prospect of succeeding or defending the claim, this provision is significant to expedite the arbitration proceeding when there is a clear admission of fault or where the parties have no real defence to succeed. An award on a summary basis could be useful in misdelivery claims where the carrier has no probable defence. The Privy Council in *SZE Hai Tong Bank Ltd v Rambler Cycles Co Ltd* reiterated the position that, ‘It is perfectly clear law that a shipowner who delivers without production of the bill of lading does so at his peril.’¹⁶⁵ Therefore, a claim for misdelivery in such cases leaves the carrier with no potential defences against delivery without the production of original B/Ls. However, what is the test to determine whether the parties have ‘no real prospect of success’? The Explanatory Notes of the Arbitration Act, 2025 state that ‘The “no real prospect of success” threshold is the same as that applied in court proceedings in England and Wales’.¹⁶⁶ As for the newly granted powers of the arbitral tribunal to grant a summary award under section 39A of the Arbitration Act, 1996¹⁶⁷, the powers are similar to those of the court's power under CPR 24¹⁶⁸ to issue a

¹⁶¹ Hereinafter, “the Act of 2025”

¹⁶² <https://lawcom.gov.uk/news/the-arbitration-act-2025-has-received-royal-assent/>

¹⁶³ Arbitration Act, 2025

¹⁶⁴ Arbitration Act, 2025, s7

¹⁶⁵ *SZE Hai Tong Bank Ltd v Rambler Cycles Co Ltd* [1959] 2 Lloyd's Rep. 114

¹⁶⁶ Explanatory Notes of the Arbitration Act, 2025, para 29

<<https://www.legislation.gov.uk/ukpga/2025/4/notes/division/1/index.htm>> accessed date 07 September 2025

¹⁶⁷ Arbitration Act, 1996, s39A

¹⁶⁸ Part 24 – Summary Judgment <<https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part24>> accessed date 07 September 2025

summary judgment. In *Swain v Hillman*¹⁶⁹ the court discussed the test of “no real prospect of being successful or succeeding” and interpreted the provision in a way that the court needs to determine ‘whether there is a "realistic" as opposed to a "fanciful" prospect of success’.

Consequently, the author is of the view that, within the context of a liner B/L, if the carrier delivers the container in the absence of the original B/L to a party that is not the consigned owner of the cargo, the named consignee, by an application under section 39A of the Arbitration Act, 1996 will be able to obtain a summary award. The arbitrators in such cases will have to decide whether the carrier has any real prospect of succeeding and based on *SZE Hai Tong Bank Ltd v Rambler Cycles Co Ltd*¹⁷⁰ the carrier will be held liable. In the author's view, the power to grant a summary award is a step forward in limiting the national courts' intervention with the arbitral proceeding to sections 67, 68 and 69 of the Arbitration Act, 1996,¹⁷¹ reinforcing the autonomy of the arbitration. In liner disputes where most of the claims are of small sums, this power could be an advantage in the speedy disposal of disputes.

6.3 Construction of the Arbitration Clause

Moving on to the construction of the arbitration clause, the primary question that arises is whether the dispute is arbitrable. The English Courts' approach, while dealing with the issue of the arbitrability of disputes, is to take into account the intention of the parties when they agreed to the contract. When interpreting the distinction between “arising out of” and “arising under” the agreement, Lord Hoffman in *Fiona Trust v Privalov* stated that ‘the construction of an arbitration clause should start from the assumption that the parties, as rational businessmen, are likely to have intended any dispute arising out of the relationship into which they have

¹⁶⁹ *Swain v Hillman* [2001] 1 All E.R. 91

¹⁷⁰ *Ibid* (n154)

¹⁷¹ Arbitration Act, 1996, s67, 68, 69

entered or purported to enter to be decided by the same tribunal. The clause should be construed in accordance with this presumption unless the language makes it clear that certain questions were intended to be excluded from the arbitrator's jurisdiction.'¹⁷² This leads to the conclusion that unless the parties expressly state the disputes that are to be excluded from arbitration, the English Courts will interpret that the parties intended to arbitrate all disputes, including the validity of the arbitral tribunal. This decision of the House of Lords brings certainty regarding the wording of the arbitration clause, thereby eliminating potential disputes that may arise in relation to arbitrability. However, the interpretation of these words changes in other jurisdictions. As seen in the B/L issued by MSC¹⁷³ and Maersk¹⁷⁴ for all shipments to or from the United States of America, the liner B/L is governed by U.S. Law. If an arbitration clause is incorporated in place of the EJC, the B/L and the arbitration clause will be governed by U.S. Law. In that case, it is important to take into consideration the way U.S. Courts interpret the wording of the arbitration clause that determines the scope of arbitration. In *Mediterranean Enterprise Inc v Ssagyong*,¹⁷⁵ the U.S. Court concluded that the wording "arising under" has a narrower meaning, which suggests that only disputes that arise between the parties with regard to breach of contract are arbitrable, and the wording "arising out of or relating to" has a broader meaning that confers powers on the arbitral tribunal to determine the validity of the arbitration clause, in other words, rule on its own jurisdiction.

As seen above, the distinction between the two jurisdictions is significant, and the use of the wording of the arbitration clause in a standard liner B/L without taking this distinction into account could lead to uncertainty. Thus, it may be reasonable to infer that if a standard arbitration clause is included in the liner B/L, the wording must contain "arising under and

¹⁷² Fiona Trust (n67) 257 (Lord Hoffman)

¹⁷³ MSC Bill of Lading (n9)

¹⁷⁴ Maersk Terms of Carriage (n10)

¹⁷⁵ *Mediterranean Enterprise Inc v Ssagyong* 708 F 2d 14458, 1464 (9th cir 1983)

relating to” or “arising under and in connection with”. This broad scope of the arbitration clause will empower the arbitrators to decide on disputes arising under the B/L and also rule on their own jurisdiction by considering the validity of the arbitration clause.

6.4 Institutional Arbitration for Resolving Liner Disputes

The next thing to consider is the importance of an institutional arbitration in liner B/L. The conduct of arbitration is determined based on whether the parties in the arbitration agreement have agreed on an ad hoc or institutional arbitration. An ad hoc arbitration allows flexibility to the parties to determine the procedure and power of the arbitral tribunal, including the appointment of the arbitrators. Contrary to that, under an institutional arbitration, the rules and conduct of the arbitration are the fixed rules of the institution.¹⁷⁶ The rules of an Institutional arbitration are framed in a way to offer an efficient and effective way of resolving disputes, thereby bringing certainty and clarity to the proceedings.¹⁷⁷

As discussed above, the disputes under liner B/L are of small sums.¹⁷⁸ Therefore, an institutional arbitration that has a structured way of conducting arbitration pursuant to the institution's rules will allow the introduction of certainty and help streamline the resolution process. Recalling Lord Briggs’ lecture,¹⁷⁹ a prudent merchant expects certainty from the dispute resolution system. The author submits that, given the distinct feature of the liner carriage, which operates in high volume, a standard arbitration clause that expressly includes institutional arbitration will eliminate unnecessary disputes pertaining to the validity of the arbitration clause, the seat of arbitration, or disagreements with the appointment of an

¹⁷⁶ Gary Born (n42) 26

¹⁷⁷ Ibid 27

¹⁷⁸ Jagan (n7)

¹⁷⁹ Lord Briggs (n41)

arbitrator.¹⁸⁰ Specialised quasi-institutional arbitration centres like the London Maritime Arbitrators Association, although not a core arbitration institution, has its own rules, as outlined in the LMAA Terms 2021 and the LMAA Small Claims Procedure 2021. Similarly, the Singapore Chamber of Maritime Arbitration (hereinafter, “SCMA”) is an arbitration centre that has its own set of rules, SCMA 4th edition.¹⁸¹ The small claims procedure of LMAA¹⁸² applies when either the parties mutually agree to resolve the dispute through the small claims procedure or when the claim amount of the dispute does not exceed USD 100,000. The right of appeal from the award obtained is mutually waived by the parties when they agree to resolve the dispute through the small claims procedure of LMAA, and as the power of the tribunal under the kompetenz-kompetenz principle is not absolute,¹⁸³ the parties will have the right to appeal on the arbitrator’s jurisdiction before the supervisory court.¹⁸⁴ The only drawback with the LMAA Terms 2021 is that there is no provision for the arbitral tribunal to conduct arbitration on a summary basis. The author is of the view that the positive change in provision under the Act of 2025 that gives power to the arbitrators to make an award on a summary basis under Section 39A of the Arbitration Act, 1996 will encourage LMAA to amend its rules in consonance with the updated statute. On the other hand, the SCMA 4th edition under Rule 44 – Expedited Procedure, which deals with claims that are up to USD 300,000, gives the arbitrators the power to summarily decide the matter. In addition to this, SCMA also has a small claims procedure for claims up to USD 150,000.

¹⁸⁰ Eva Litina (n151) 207-208

¹⁸¹ Kaili Ang and Arie C. Eernisse, ‘A Tale of Two Maritime Hubs: The Rise of Regional Maritime Arbitration Centers in Asia’ (Kluwer Arbitration Blog 2021) <<https://legalblogs.wolterskluwer.com/arbitration-blog/a-tale-of-two-maritime-hubs-the-rise-of-regional-maritime-arbitration-centers-in-asia/>> accessed date 07 September 2025

¹⁸² LMAA Small Claims Procedure 2021 <<https://lmaa.london/wp-content/uploads/2022/11/LMAA-Small-Claims-Procedure-2021.pdf>> accessed date 07 September 2025

¹⁸³ Dallah Real Estate (n65)

¹⁸⁴ Rule 4 of LMAA Terms 2021 <<https://lmaa.london/wp-content/uploads/2022/11/LMAA-Terms-2021.pdf>> accessed date 07 September 2025

In conclusion, the author is of the opinion that the construction of the arbitration clause will determine the way arbitration will be conducted between the parties. Drafters need to consider the updated provision under the Arbitration Act, 1996¹⁸⁵ that allows a summary award, which can help with the speedy disposal of the arbitration proceeding where the parties have no probable defence. The distinction between the interpretation under English Law and US Law requires careful consideration, as the wording that determines the scope of the arbitration clause differs within both jurisdictions. Furthermore, the level of standardisation in terms of dispute resolution systems can only be achieved through the use of arbitration centres like LMAA and SCMA that have the required maritime expertise to resolve the disputes.

¹⁸⁵ Section 39A of the Arbitration Act, 1996, which confers power on the arbitrator to pass a summary award.

7. Conclusion

The overall discussion in the dissertation was centred around determining whether arbitration is a legally viable alternative to the exclusive jurisdiction clause in the liner B/L. The Liner carriage operates in high volume; however, disputes arising under the B/L are of low value compared to those under charterparty B/Ls. This being the case, the certainty of the exclusive jurisdiction clause was in question.

Careful review of current practices showed that the use of an exclusive jurisdiction clause has its own drawbacks, as the third-party holder of the B/L has the option of invoking legal remedies like *forum non-conveniens* as an abuse of process. Despite *The Spiliada*¹⁸⁶ establishing the 2-limb test around the use of *forum non-conveniens* as a defence, misuse of the doctrine was evident from the *MSC case*.¹⁸⁷ Furthermore, the enforcement of the exclusive jurisdiction clause within jurisdictions like the European Union faces the risk of circumvention due to the provisions of the Recast Regulation. The joined cases C-345/22 to C-347/22,¹⁸⁸ and *Coreck Maritime*¹⁸⁹ are a reminder that third-party holders of the B/L, relying on their national laws, can circumvent the exclusive jurisdiction clause and bring the suit before their national courts. The resolution of disputes arising under liner B/Ls demands certainty, and the deficiencies in the enforcement of the exclusive jurisdiction clause in different jurisdictions make it a less favourable way to resolve disputes, resulting in a battle of jurisdictions, incurring unnecessary legal costs.

Consequently, the author analysed arbitration as an attractive alternative. Drawing inferences from an already established practice of arbitration in charterparty B/Ls, careful attention was

¹⁸⁶ *The Spiliada* (n25)

¹⁸⁷ *MSC Case* (n26)

¹⁸⁸ *Maersk Case* (n34)

¹⁸⁹ *Coreck Maritime* (n33)

given to legal issues that may arise when an arbitration clause is used in liner B/L. It is clear from the above examination that the incorporation of an arbitration clause by reference is not an issue, as the arbitration clause will be expressly mentioned on the reverse side of the liner B/L. Similarly, as liner B/Ls are computer-printed documents, the standard terms of carriage available on the website of the carrier will suffice for any misprint or mischance of terms on the reverse side of the B/L.

The unfortunate legal issue that arises in the enforcement of the arbitration clause is against the third-party holder of the B/L in certain jurisdictions. Under English Law, the position is well established. Relevant statutes bind the third-party holder of the B/L to the arbitration clause, thereby imposing an obligation to arbitrate all disputes, and any contrary argument is discouraged. However, in the European Jurisdictions, the shift in position as to the enforcement of the arbitration clause against third parties is subject to the national laws of the member states. This brought the enforceability of the arbitration clause on the same level as an exclusive jurisdiction clause, as the arbitration clause faces a similar risk of circumvention.

Before the United Kingdom's withdrawal from the European Union, the potent legal remedy of an anti-suit injunction against the party bringing the vexatious proceeding in breach of the arbitration clause was denied recognition by the Courts of Justice of the European Union as it was contrary to the principle of mutual trust between the member states. However, the analyses demonstrate that the withdrawal of the United Kingdom from the European Union has revived the power of the English Courts to issue an anti-suit injunction against the party bringing a suit in breach of the arbitration clause, and the same was evident in *QBE Europe SA/NV v Generali*.¹⁹⁰ This ensures that arbitration is protected from circumvention, and the parties are reminded of their obligation to arbitrate disputes arising under the liner B/L. The other possible

¹⁹⁰ *QBE Europe SA/NV v Generali* (n147)

remedy that was discussed was granting powers to the arbitral tribunal to issue an anti-suit injunction. The *Gazprom*¹⁹¹ case touched on a solution for the recognition of an anti-suit injunction within the European Jurisdiction, though these powers under a London-seated arbitration pursuant to the relevant provisions of the Arbitration Act 1996 are still untested.

Pulling these threads together, arbitration for liner B/L, though not a robust legal mechanism, can be regarded as a better alternative to the exclusive jurisdiction clause. A carefully drafted standard arbitration clause, while using the quasi-institutional arbitration centres for their procedural advantage, will help carriers to streamline the resolution of disputes arising under the liner B/L, thereby striking a balance to introduce a neutral forum for Merchants to resolve disputes efficiently and cost-effectively.

¹⁹¹ *Gazprom* (n139)

8. Bibliography

Table of cases

UK

Advent Capital Plc v Ellinas Imports-Exports Ltd [2005] 2 Lloyd's Rep 608

Aggeliki Charis Compania Maritima S.A. v. Pagnan S.P.A. (The "Angelic Grace") [1995] 1 Lloyd's Rep 87 (CA)

Airbus v Patel [1998] 1 Lloyd's Rep 631

Brandt v Liverpool [1924] 1 K.B. 575

Caresse Navigation Ltd V Zurich Assurances Maroc and Others (The "Channel Ranger") [2015] 1 Lloyd's Rep 256.

Dallah Real Estate and Tourism Holding Company v The Ministry of Religious Affairs, Government of Pakistan [2010] UKSC 46

DVA v Voest Alpine [1997] 2 Lloyd's Rep 279 (CA).

East West Corp. v. DKBS 1912 [2003] 1 Lloyd's Rep 241 (CA)

Enka Insaat Ve Sanayi A.S. v OOO Insurance Company Chubb [2020] UKSC 38

Fiona Trust & Holding Corp and others v Privalov and others [2008] 1 Lloyd's Rep. 254 (HL)

Golden Straight Corporation v Nippon YKK (The "Golden Victory") [2007] UKHL 12

Homburg Houtimport B.V. v. Agrosin Private Ltd. and Others ("The Starsin") [2003] 1 Lloyd's Rep 571

Leigh and Sullivan Ltd. v. Aliakmon Shipping Co.Ltd (The Aliakmon) [1983] 1 Lloyd's Rep. 203.

Metvale Ltd v Monsanto International Sarl (The Msc Napoli) [2008] EWHC 3002 (Admlty)

MSC Mediterranean Shipping Company S.A. V Interglobal Technologies Limited [2025] EWHC 1464 (Comm)

National Navigation Co V Endesa Generacion Sa (The "Wadi Sudr") [2010] 1 Lloyd's Rep 193

Niagara Maritime Sa v Tianjin Iron & Steel Group Company Limited [2011] EWHC 3035 (Comm)

Nori Holdings Ltd & Ors v. PJSC Bank Otkritie [2018] EWHC 1343 (Comm)

Primetrade AG v Ythan Ltd ("the Ythan") [2006] 1 Lloyd's Rep 457

QBE Europe SA/NV and Another v Generali Espana De Seguros Y Reaseguros [2023] 3 Lloyd's Rep 192

RTI Ltd v MUR Shipping BV [2024] UKSC 18

Schiffahrtsgesellschaft v Voest Alpine [1997] 1 Lloyd's Rep 179 (QB)

Sevylor Shipping and Trading Corporation v Altfadul Company for Foods, Fruits & Livestock and Another (The "Baltic Strait") [2018] 2 Lloyd's Rep 33

Sim v Robinow (1892) 19 R 665

Spiliada Maritime Corporation v Cansulex Ltd. (The Spiliada) 1 Lloyd's Rep 1

Star Hydro Power Limited v National Transmission and Despatch Co Ltd. [2025] EWCA Civ 928

Starlight Shipping Co V Tai Ping Insurance Co Ltd Hubei Branch [2008] 1 Lloyd's Rep 230 (QB)

Swain v Hillman [2001] 1 All E.R. 91

SZE Hai Tong Bank Ltd v Rambler Cycles Co Ltd [1959] 2 Lloyd's Rep. 114

The Abidin Daver (1984) 1 Lloyd's Rep 339

The Frio Dolphin [2021] 2 Lloyd's Rep 387 (QB)

Tracom S.A. v Sudan Oil Seeds Co. Ltd [1983] 1 W.L.R. 662

Truner v Grovit [2001] UKHL 65

TW Thomas & Co Ltd v Portsea Steamship Co Ltd [1912] A.C. 1

UniCredit Bank GmbH v RusChemAlliance LLC [2024] 3 WLR 659

UST-Kamenogorsk Hydropower Plant JSC V AES UST-Kamenogorsk Hydropower Plant
LLP [2013] 2 Lloyd's Rep 281

Vallejo v Wheller (1774) 1 Cowp 143, 1 ER 1012

Welex A.G. v Rosa Maritime Limited (The Epsilon Rosa) [2003] 2 Lloyd's Rep. 509

West Tankers INC v Allianz Spa (The "Front Comor") [2012] EWCA Civ 27

Zainalabdin Payabi And Baker Rasti Lari V. Armstel Shipping Corporation and Panthai
Shipping Ltd. (The "Jay Bola") [1992] 2 Lloyd's Rep 62. (QB)

EU

Allianz SpA, Generali Assicurazioni Generali SpA, v West Tankers Inc [2009] 1 Lloyd's Rep
413

C-159/02 Gregory Paul Turner v Felix Fareed Ismail Grovit and Others [2004] ECR 2004 I-
03565

Case 71/83 Partenreederei ms Tilly Russ and Ernest Russ v NV Haven- & Vervoerbedrijf
Nova and NV Goeminne Hout [1984] ECR 2417

Case C-387/98 Coreck Maritime GmbH v Handelsveem BV and Others [2000] ECR I-9337

Case C-536/13 Gazprom OAO v. Lietuvos Respublika EU:C: 2015:316.

Case C-543/10 Refcomp SpA v Axa Corporate Solutions Assurance SA and Others
ECLI:EU:C: 2013:62.

Joined Cases C-345/22 to C-347/22 Maersk A/S v Allianz Seguros y Reaseguros SA and
Mapfre España Compañía de Seguros y Reaseguros SA v MACS Maritime Carrier Shipping
GmbH & Co ECLI:EU:C: 2024:349.

US

Mediterranean Enterprise Inc v Ssagyong 708 F 2d 14458, 1464 (9th cir 1983)

UK Legislation

Arbitration Act, 1996

Arbitration Act, 2025

Carriage of Goods by Sea, 1992

Senior Courts Act, 1981

EU Legislation

Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters [1986] OJ L 299/31

Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2001] OJ L 12/16

Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations OJ L 177, 4.7.2008

Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2012] OJ L 351/20

International Convention

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3

Books

- -, 'Modern Liner Contracts: A Special Report, Lloyds of London, 1984.

Merkin R, Colinvaux's Law of Insurance (13th edn. Sweet & Maxwell 2024)

Rose F and M.B. Reynolds F, 'Transfer of bill of lading' in Carver (ed) Carver on Bills of Lading (Sweet & Maxwell 2022)

Aikens R and others, Bills of Lading (3rd edn, Informa Law from Routledge 2020)

Ardavan Arzandeh, Forum (Non) Conveniens in England: Past Present and Future (1st edn, Bloomsbury Publishing 2018)

Baatz Y, 'The Conflict of Laws' in Southampton on Shipping Law (Institute of Maritime Law, University of Southampton, UK 2008)

Born G, International arbitration: Law and Practice (2nd edn, Wolters Kluwer 2025)

Foxton D and others, 'The Bill of Lading as a Contract' in Scrutton (ed), Scrutton on Charterparties and Bills of Lading (25th edn, Sweet & Maxwell 2024) 5-021

Lista A, International Commercial Sale: The Sale of Goods on Shipment Terms (Routledge 2018)

Litina E, Theory, Law and Practice of Maritime Arbitration: The Case of International Contracts for the Carriage of Goods by Sea (Wolters Kluwer 2020) 205-206

Mammadzada A, 'The Rebirth of the European "Anti-Suit Injunction" Issue Post-Brexit' in Baris Soyer (ed), Damages, Recoveries and Remedies in Shipping Law (Informa Law from Routledge 2024)

Sheppard A, Modern Maritime Law and Risk Management, (2nd edn, Informa Law from Routledge 2009) 243

Tetley W, 'Jurisdiction and Forum Non Conveniens in the Carriage of Goods by Sea' in Martin (ed) Jurisdiction and Forum Selection in International Maritime Disputes (Kluwer Law International 2005)

Articles

- -, 'Proper Law of a Brandt V. Liverpool Contract' [1985] LMCLQ 189-190

Baatz Y, 'Forum selection in contracts for the carriage of goods by sea: the European dimension' [2011] L.M.C.L.Q 208 <<https://www.i-law.com/ilaw/doc/view.htm?id=267697>> accessed on 28 August 2025

Dimitrakiev D & others, 'A Comparative Analysis of Voyage Charter Parties and Liner Bills of Lading in Maritime Trade' (2025) 19 the International Journal on Marine Navigation and Safety of Sea Transportation 483.

Gross P, 'Anti-suit injunctions and arbitration' [2005] LMCLQ 10 <<https://www.i-law.com/ilaw/doc/view.htm?id=130462>> accessed date 21 August 2025

Jagan and Shanker A, 'Why arbitration for container liner disputes may not be the best fit?' (NAU Newsletter, October 2024) <<https://nau.com.sg/why-arbitration-for-container-liner-disputes-may-not-be-the-best-fit/>> accessed date 07 September 2025.

Jagan, 'Arbitration for Liner Bills of Lading' (NAU Newsletter, November 2023) <<https://nau.com.sg/arbitration-for-liner-bills-of-lading/>> accessed on 07 September 2025

Kaili Ang and Arie C. Eernisse, 'A Tale of Two Maritime Hubs: The Rise of Regional Maritime Arbitration Centers in Asia' (Kluwer Arbitration Blog 2021) <<https://legalblogs.wolterskluwer.com/arbitration-blog/a-tale-of-two-maritime-hubs-the-rise-of-regional-maritime-arbitration-centers-in-asia/>> accessed date 07 September 2025

Ozdel M, 'Enforcement of Arbitration Clauses in Bills of Lading: Where Are We Now?' (2016) 33 Journal of International Arbitration <https://discovery.ucl.ac.uk/10043088/1/Ozdel_Accepted%20manuscript%20-%20Melis%20Ozdel%20clean%20version%20JOIA.pdf> accessed 31 July 2025

Sing T, 'Jurisdiction Clause in Bill of Lading – Cargo Claimant's Perspective' [1995] LMCLQ 183

Sturley M., 'Overruling Sky Reefer in the International Arena: A Preliminary Assessment of Forum Selection and Arbitration Clauses in the New UNCITRAL Transport Law Convention' (2006) 37 JMLC 1 <https://docs.rwu.edu/law_ma_jmlc/vol37/iss1/2/> accessed date 09 September 2025

Yilmaz M, 'The impact of containerisation on carrier liability' [2025] LMCLQ 506. 512

Yvonne Baatz, 'Should third parties be bound by arbitration clauses in bills of lading?' [2015] L.M.C.L.Q 85 <<https://www.i-law.com/ilaw/doc/view.htm?id=351775>> accessed date 17 August 2025

Lectures

Lord Briggs, 'International Commerce: Mapping the Law in a Borderless World' (Sultan Azlan Shah Law Lecture, Kuala Lumpur, Malaysia, 5 November 2019) Posted Online 5 November 2019 <https://supremecourt.uk/uploads/speech_191105_87eda10749.pdf> accessed 31 July 2025

Paper/Thesis

Özdel M, 'Incorporation of Charterparty Clauses into Bills of Lading' (PhD Thesis, University of Southampton, 2009) <<https://eprints.soton.ac.uk/210841/>> accessed date 09 September 2025