The Seaway; Shell Eastern Petroleum (Pte) Ltd v The Owners of the Ship or Vessel "Seaway" [2003] SGHC 115

Case Number	: Adm in Rem 600162/2002
Decision Date	: 23 May 2003
Tribunal/Court	: High Court
Coram	: Tai Wei Shyong AR
Counsel Name(s)	: Steven Chong, S.C.(Rajah & Tann) for the plaintiffs; Loh Wai Yue (Rajah & Tann) for the plaintiffs; S Mohan (Gurbani & Co) for the defendants.; Bernard Yee (Gurbani & Co) for the defendants.
Parties	: Shell Eastern Petroleum (Pte) Ltd — The Owners of the Ship or Vessel "Seaway"

1 The plaintiffs are the owners of an oil terminal at Pulau Bukom, Singapore, including a berth known as wharf "No. 8" ("the plaintiffs' wharf"). The defendants are the owners of the vessel "SEAWAY", registered at the port of Papendrecht in the Netherlands.

2 On 6 May 2002, the SEAWAY was proceeding through the Sinki Fairway en route from the West Jurong Anchorage to the Ramunia Shoals when it collided into the plaintiffs' wharf. The plaintiffs allege in the Statement of Claim that the collision was caused "by the negligence and/or breach of duty of the Defendants, their servants or agents in the navigation and management of the vessel"; and that the SEAWAY damaged, among other things, the breasting dolphins and the jetty head. They bring this action to recover their losses, which as particularised in the Statement of Claim amount to S$16,150,000.

3 For their part, the defendants deny any negligence or breach of duty. However, they also plead at paragraphs 10 to 12 of the Defence that they are entitled to limit their liability, if any, under s 136 of the Merchant Shipping Act (Cap 179, Revised Edition 1996.)("the MSA"). The relevant part of that section states:

Limitation of shipowner's liability in certain cases of loss of life, injury or damage.

> **136.** —(1) The owner of a ship shall not, where all or any of the following occurrences take place without his actual fault or privity:
>
> (a) where any loss of life or personal injury is caused to any person being carried in the ship;
>
> (b) where any damage or loss is caused to any goods, merchandise or other things whatsoever on board the ship;
>
> (c) where any loss of life or personal injury is caused to any person not carried in the ship through the act or omission of any person (whether on board the ship or not) in the navigation or management of the ship or in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers, or through any other act or omission of any person on board the ship; and
>
> (d) **where any loss or damage is caused to any property (other than any property mentioned in paragraph (*b*)) or any right is infringed through the act or omission of any person (whether on board the ship or not) in the navigation or management of the ship**, or in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers, or through any other act or omission of any person on board the ship,

be liable to damages beyond the following amounts:

(i) … ; and

(ii) in respect of such loss, damage or infringement as is mentioned in paragraphs (*b*) and (*d*), whether there is loss of life or personal injury or not, an aggregate amount not exceeding in the currency of Singapore the equivalent of 1,000 gold francs for each ton of the ship's tonnage.

[Emphasis added.]

4 The defendants aver at paragraph 12 of the Defence that in the event that they are liable for the damage done to the plaintiffs' wharf, they are entitled to limit their liability by virtue of this provision to S$607,927.68, (calculated in accordance with the formula set out therein), plus interest.

5 This application was one brought by the plaintiffs under s O 14 r 12 of the Rules of Court (Chapter 322) for summary determination of a point of law, the question being simply whether the defendants are indeed entitled to limit their liability (if any) as they have pleaded. At the hearing, the facts as I have recited them above were not disputed and the sole issue was whether they fall within s 136 of the MSA under paragraph (d). If they do, then the defendants are entitled to limit their liability and conversely, if they do not, then no limitation of liability applies. Given the large difference in the quantum of damages that would apply with and without the statutory limitation (assuming the defendants are liable without actual fault or privity in the first place), and the corresponding likelihood that the matter would be resolved by the parties without a trial if a determination was made in the defendants' favour, I was of the view that the matter was suitable for determination under O 14 r 12. In the event, I determined the question in favour of the defendants – that is to say, that the defendants are entitled to limit their liability under s 136 of the MSA. I now give my reasons.

Overview of the Parties' Arguments

6 As is often the case in complex cases, the nub of the issue boils down to the proper interpretation of a single, innocuous looking, word – in this case the word "property", happily ensconced in the first sentence of s 136 (d). Before delving into the detail of the legal arguments made by respective counsel, it would be useful to set out the general thrust of each side, so that the overall picture is not obscured by the fine, and often interwoven, legal threads running through it.

7 I begin with the defendants' position, as it is somewhat simpler. Their primary submission before me was that "property" in s 136 (d) of the MSA, on its natural and ordinary meaning, includes the plaintiffs' wharf. Section 136 draws a distinction between any "goods, merchandise or other things whatsoever on board the ship" (para (b) of s 136) on the one hand, and "any property other than any property mentioned in paragraph (b)" (para (d) of s 136) on the other. Apart from that, no other distinction is drawn between different types of property by the section, and the defendants submitted that none should be read into it. If support be needed that the plaintiffs' wharf falls within the word "property" in limb (d), counsel for the defendants, Mr Mohan, drew my attention to The Sivand [1998] 2 Lloyd's Rep 97. In that case, the plaintiffs were the owners of a marine oil terminal at Immingham in the Humber estuary, when the defendants' tanker Sivand collided with three of their mooring dolphins and their berthing dolphin, causing extensive damage. The point in dispute before the Court of Appeal related to the proper assessment of the damages, and the reasoning in the

judgment is of no relevance to the present case. Mr Mohan, quite rightly relied on The Sivand only to show that as a matter of language, the plaintiffs' mooring and berthing dolphins was variously described as "harbour works" or "harbour installations", which in turn was treated as a species of "property". The description of the dolphins as "harbour works" will later take on an added significance, but at this stage, it suffices merely to set out the following passage at page 107 of the judgment of Hobhouse L.J., which illustrates Mr Mohan's point:

> The defendants negligently and in breach of the duty of care which they owed to the plaintiffs, damaged the plaintiffs' property (the harbour works including the dolphins) thereby causing the plaintiffs loss. [Emphasis added.]

At its most fundamental level, that is the defendants' case.

8 The argument of the plaintiffs is somewhat more complicated, and requires reference to the legislative history of the MSA. We join the tale in 1958, when on the 8th of January that year, the UK signed the International Convention relating to the Limitation of Liability of Owners of Sea-Going Ships (Brussels, 10 October 1957)("the Convention"). Art 1(1) of the Convention states:

> **Article 1**
>
> (1) The owner of a sea-going ship may limit his liability in accordance with Article 3 of this Convention in respect of claims arising from any of the following occurrences, unless the occurrence giving rise to the claim resulted from the actual fault or privity of the owner:
>
> (a) loss of life, or personal injury to, any person being carried in the ship, and loss of, or damage to, any property on board the ship;
>
> (b) loss of life of, or personal injury to, any other person, whether on land or on water, loss of or damage to any other property or infringement of any rights caused by the act, neglect or default of any person on board the ship for whose act, neglect or default the owner is responsible or any person not on board the ship for whose act, neglect or default the owner is responsible…
>
> (c) any obligation or liability imposed by law relating to the removal of wreck and arising from or in connection with the raising, removal or destruction of any ship which is sunk, stranded or abandoned (including anything which may be on board such ship) and any obligation or liability arising out of damage caused to harbour works, basins and nagivable waterways.
>
> [Emphasis added].

It was common ground between the parties that Art 1(1) of the Convention forms the basis of the current s 136 of the MSA – or to put it in plainer terms, that the purpose of s 136 of the MSA is to give effect to Art 1(1) of the Convention.

9 The Convention was eventually acceded to by the UK on Singapore's behalf on 17 April 1963, and attained binding force in 1968. However, prior to that, on 24 December 1959, the then Merchant Shipping Ordinance (Cap 207) of Singapore was amended to give effect to Art 1(1) of the Convention. This was done by repealing the then existing s 340 of the Merchant Shipping Ordinance and substituting a new s 340 – which to this day remains in our laws virtually unchanged as s 136 of the Merchant Shipping Act[1]. A cursory comparison of Art 1(1) of the Convention and the present s 136 of the MSA shows that the transposition of the Art 1(1) provisions was far from verbatim. The English draftsman in fact transposed Article 1(1)(a) of the Convention to paragraphs (a) and (b) of s

136; and Article 1(1)(b) of the Convention to paragraphs (c) and (d) of s 136.

10 What of Article 1(1)(c) of the convention relating to the removal or wrecks and damage to "harbour works, basins and navigable waterways"? Counsel for the plaintiffs, Mr Chong SC pointed out that the new s 340 of the Merchant Shipping Ordinance inserted by the 1959 amendment dealt with wrecks and harbour works etc by way of sub-section (4) of s 340 (referred to hereafter as "ss (4)") which stated:

> (4) For the purposes of subsection (1) of this section, where any obligation or liability arises –
>
> (a) in connection with the raising, removal or destruction of any ship which is sunk, stranded or abandoned or of anything on board such a ship; or
>
> (b) in respect of any damage (however caused) to harbour works, basis or navigable waterways,
>
> the occurrence giving rise to the obligation or liability shall be treated as one of the occurrences mentioned in paragraphs (b) and (d) of that subsection, and the obligation or liability as liability to damages. [Emphasis added.]

In 1970, the Merchant Shipping Ordinance was renamed the Merchant Shipping Act (Cap 172), and s 340 of the Ordinance became s 295 of the new Act – no changes were made to the substance of the section.

11 There matters remained until 1977. On 13 September 1977, the depository of the Convention in Brussels received a note from the Singapore Ministry of Home Affairs dated 6 September 1977. In the note, the Singapore Government confirmed that it considered itself bound by the Convention with effect from 31 May 1968, with the following reservations: (i) the right to exclude Art 1 (1)(c); and (ii) to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons. It is the first-mentioned reservation which is of importance to us. On 16 April 1981, the Government passed the Merchant Shipping (Amendment) Act 1981, which, among other things, repealed ss (4) in order to take advantage of the reservation in relation to Art 1(1)(c).

12 This repeal was the cornerstone of the plaintiffs' case, which can now be stated in what I believe is its simplest and strongest form as follows. The effect of ss (4) was to deem "harbour works" within paragraph (d) of the statutory limitation of liability. It follows from the very fact of the deeming provision that "harbour works" was not within the meaning of "property" in the first place – otherwise the deeming provision would not have been necessary. The intention and effect of the 1981 repeal was to remove "harbour works" from the limitation of liability regime. The damage in this case was to the plaintiffs' "harbour works" (which was not disputed by the defence). They therefore cannot rely on the limitation since (a) "harbour works" was not within the meaning of "property" in the first place and (b) that would frustrate the purpose of the repeal.

13 To complete the historical journey, s 295 of the Merchant Shipping Act was later in 1985 renumbered as s 272, and again in 1996 as s 136 of the Merchant Shipping Act, where it remains to this day, without of course, the crucial ss (4).

14 Having sketched a brief overview of the arguments made by the parties, I now turn to consider the finer points raised by the parties.

Consideration of the Parties' Arguments in Detail

15 As stated above, Mr Mohan's position, first and foremost, was one of simplicity itself: the solitary proposition that the words of s 136 (d) of the MSA on their natural and ordinary meaning clearly encompassed the damage done by the SEAWAY. However, during the hearing, he gamely engaged the formidable arguments advanced on behalf of the plaintiffs in relation to ss (4) and its repeal. Essentially, he sought to muster his troops around two interpretative guides to the MSA which, he submitted, when examined with care would expose the weaknesses in the plaintiffs' position.

The first was the travaux preparatoires of the 1957 Convention, in particular an exchange between the delegate from Norway and Britain on Art 1(1)(c) of the Convention:

> Mr Rein (Norway):
>
> …
>
> In the first place, the difference between (a) and (b) [of Art 1(1)] is that (a) refers only to objects or persons on board the ship, while (b) refers to any other person or object outside the ship which has been damaged…
>
> …
>
> …In sub-section (c) [of Art 1(1)] the Drafting Committee is talking about wreck liability and then adds, <…and any obligation or liability arising out of damage to harbour works, basis and navigable waterways.> As far as I understand, that is entirely covered by 1(b) and sub-section (3) [of Art 1] which refers to strict liability. [Emphasis added.]
>
> Mr Miller (Great Britain):
>
> Mr President, Gentlemen, I ought to say in order that there be no misapprehension in anybody's mind a short word about the Scandinavian proposal to delete from Article 1(c) the words <…and any obligation or liability arising out of damage to harbour works, basis and navigable waterways.> Our Scandinavian friends say the damage to harbour works, basins and navigable waterways is damage to property under (b) anyhow, so why put it in? However, before we do that, let us carefully consider where it leads.
>
> Damage to property under (b) is only capable of limitation if it is due to the act, neglect or default of the Master, Pilot, any member of the crew or of any other person on board the ship for whose act, neglect or default the owner is responsible. Thus there is that qualification, if you leave damage to harbour works, basins or navigable waterways to the tender mercies of clause (b).
>
> Unfortunately, in our law there is an absolute liability upon the shipowner whose vessel damages any dock or waterways belonging to a dock authority or anything belonging to a dock authority, quite independent of negligence. In fact, in the case which finally decided that that was the effect of our legislation, the judges pointed out the absurd effect of that – namely, that it would be better to be negligent than not negligent, because if you were negligent you could limit, under the equivalent of the Merchant Shipping Act, if you were not negligent you could not limit because it is not a loss of or damage to property cause by an act of negligence or default of the Master. Therefore if you are content to leave that absolute obligation, that absolute liability,

unlimitable - which my Government is certainly not content to do – then you must delete the words at the end of (c). On the other hand, if you want to deal with it you must put them in (c), because (c) is unqualified by the requirement that the damage must be due to the act, neglect or default of the Master, Pilot etc.

[Emphasis added.]

16 Relying on the speech of the Norwegian delegate, Mr Mohan submitted that paragraphs (b) and (c) of Art 1 (1) are not mutually exclusive. In support of this, he also referred me to the judgments in the Australian case of The Tiruna, at first instance and on appeal ([1986] Lloyd's Rep 536 and [1987] 2 Lloyd's Rep 666 respectively). I should like to set out this case in some detail, since the arguments before the trial judge and the Court of Appeal in that case bore some similarity to the arguments that were before me.

17 The relevant facts of the case are straightforward. The plaintiffs' vessel Tiruna, a prawn trawler, had collided with the vessel Pelorus, and sunk in the waters of North Queensland, Australia. Immediately after the sinking, the plaintiffs received a notice from the Acting Harbourmaster alleging that the sunken vessel constituted a threat to the safe navigation of ships and required the removal of the wreck under the Queensland Marine Acts, which it eventually was at the plaintiffs' expense. The plaintiffs claimed damages in the action, alleging that the collision had been caused by the defendants' negligence. The defendants argued contributory negligence, and also sought to rely on the Convention to limit their liability to the plaintiffs in relation to removal of the wreck. In Australia, unlike in the UK and in Singapore, the 1957 Convention had been enacted by the rather more straightforward technique of incorporating it directly as part of the law of the land via the Navigation Act 1912. However, like Singapore, the Australian Government had reserved the right to exclude the application of Art 1(1)(c) of the Convention, and indeed had exercised that right by not enacting that paragraph. At first instance (The Tiruna [1986] Lloyd's Rep 536), Thomas J. said in respect of this point (at p 545):

> If the whole of that article [Art 1 of the Convention] were in force, sub-par. (c) would clearly cover this part of the plaintiff's claim [for wreck removal]. However, s. 333 of the Navigation Act, 1912, expressly denies sub-par. 1(c) of art. 1 the force of law as part of the law of the Commonwealth… Mr Chesterman, Q.C. [for the owners of the Pelorus], in an attempt to preserve maximum limitation of liability, submitted that such a claim fell within art. 1(b). This submission of course assumes that there is an overlap in the coverage of sub-pars. (b) and (c). If sub-par (b) were to be taken in isolation, it could probably be maintained that damages of the present kind are included. However, art. 1 should be read as a whole. The scheme of the three sub-paragraphs is to make each exclusive of the other. For example, sub-par (a) relates to damage to persons and things carried in the relevant ship… (b) relates to damage to "other person(s)" and "other property"; and sub- par. (c) is a special paragraph relating to the unusual kind of liability resulting from a legal requisition for removal of a wreck. It would be inappropriate to impute to the legislature an intention in s. 333 to achieve nothing at all by declining to bring sub-par. (c) into domestic law, which would be the effect of reading sub-par. (b) as including the claims of the kind mentioned in sub-par. (c). With respect it is plain that the Commonwealth Parliament intended at least to ensure that the removal of wrecks would be generally facilitated and to ensure that Government authorities which expend money on such removal will not be met by an unmeritorious claim of limitation by a shipowner. It seems to me that the Commonwealth has, at least with respect to liability of this kind, conferred an equal benefit upon an innocent shipowner who incurs such a liability under governmental requisition and who makes a claim arising from such liability against the tortfeasor shipowner.

18 On appeal, Kelly J. and McPherson J. agreed with the trial judge's analysis of the limitation of liability issue (although in the end they found that the plaintiffs were not entitled to claim for the wreck removal for other reasons.) However, Macrossan J., dealt with this point as follows (at p 676):

> The first question, and it is one to which His Honour [the trial judge] gave consideration, is the effect to be attributed to the obviously deliberate legislative intention not to carry sub-cl (c) [of Art 1(1)] into effect in Australia… His Honour appeared to accept that if sub-cl 1(b) were to be taken in isolation, it would probably apply to and so limit the plaintiff's claim against the second defendant for the wreck-raising expenses. He seemed to suggest that this might or would be so not just if sub-cl (c) were excluded from legal effect (as indeed it is), but only if it were to be taken that it had never existed as part of a balanced scheme. It then appeared to be suggested that the deliberate selection by the legislature from the words of the scheme has involved a purposive rejection of sub-cl (c) which has consequences for the interpretation of the remaining clauses. [Emphasis added.]
>
> But what follows if sub-cl (c) has not, like the other two sub-clauses of art. 1, been translated into full legal effect? Can it necessarily be said that the legislature has thereby indicated that it does not wish a limitation of claim to apply to any item which might have been covered by sub-cl (c) had it been enacted, or is it, on the contrary, to be taken as indicating that it is content that the limitation should apply in accordance with a plain, unrestricted reading of (a) and (b), the two sub-clauses which it has chosen to proceed upon?
>
> A limitation arising under sub-cl. (c) might apply to claims which would not fall within the joint coverage of pars. (a) and (b), but it does not follow that the two areas are completely mutually exclusive. It is not at all an unlikely notion that in the original Convention scheme, the three paragraphs should have been decided upon for the effect which they would separately have, without its being considered in any way disadvantageous that some part of the coverage which one of them achieved might, arguably, have been provided under one or other of the remaining clauses. Or course, if a reading were suggested which gave no effect to one of the clauses beyond what flowed from the others, that would be a different matter altogether and would constitute a reason for rejecting the suggestion. In short, the position may simply be that the decision to enact only sub-cll (a) and (b) depended upon a realisation that those paragraphs, on a fair, unrestricted reading, provided all the coverage that was desired.

19 It was to the approach of Macrossan J. that Mr Mohan specifically drew my attention. Adopting Macrossan J.,'s broad reasoning, and interposing the reference in the travaux by the British delegate to the absolute liability of dock authorities, Mr Mohan argued that if the reference to "harbour works" in ss (4) was relevant at all, it should be considered a separate head of limitation only in so far as it relates to public harbour works, and not to private harbour works. Mr Mohan further submitted that in order to appreciate this point fully, it was necessary to have regard to the state of the law in England at the time; in particular two legal rules which underlay the concerns of the British when the Convention was being drafted. The first rule was that contained in s 74 of the Harbour, Docks and Piers Clauses Act 1847, which provided that if a vessel damaged a dock pier or any works connected therewith, the owner of the vessel was liable to make good the damage. In 1928, the House of Lords held that under that provision, a shipowner was absolutely liable, and the dock authorities need not prove negligence (The Mostyn [1928] AC 57).

20 The second legal rule was that decided in The Stonedale [1956] AC 1, that public authorities claims for removal of wrecks (and damage to harbour works) were recoverable as debts, and not as damages. Recovery of losses as a debt would potentially be outside the realm of s 136(1) altogether, as that section only related to an action in damages.

21 It is against the backdrop of these two rules, according to Mr Mohan, that Art 1(1)(c) and its progeny, ss (4) of s 340 of the Merchant Shipping Ordinance, should be viewed. Seen in this light, the rather opaque drafting technique of ss (4) becomes immediately more transparent. The sub-section deemed "the occurrence giving rise to the obligation or liability"[2] to be "treated as one of the occurrences mentioned in paragraphs (b) and (d)"[3] of sub-section (1) so as to include within the limitation regime cases of absolute liability where there was an absence of negligence. It also deemed "the obligation or liability as a liability to damages", in order to deal with the rule in The Stonedale (referred to above), that a liability to public authorities for removal of wrecks or damage to harbour works was recoverable as a debt. The key point is that ss (4) was not drafted with a view to deeming "harbour works" as falling within the more general category of "property" in s 340 (1)(d), as the plaintiffs suggested. Rather, it was drafted in its form to ensure that liability incurred against public authorities was limitable in light of the existing legal framework – it was created in effect to "get around" the two legal rules referred to above.

22 To further reinforce the point just made, Mr Mohan also referred me to the Parliamentary speech by the then Minister for Communications and Labour Mr Ong Teng Cheong, at the second reading of the Merchant Shipping (Amendment) Bill 1981, which among other things, repealed ss (4):

The amendment to the section on Limitation of Liability is to make shipowners wholly liable for the cost of wreck-removal and of repairs to facilities at the Port of Singapore Authority ["the PSA"] whenever there is an accident in its waters. Without the amendment, shipowners can limit their liability to such damages if they can prove that the accident occurred without their fault or privity, as provided in the International Convention Relating to the Limitation of Liability of Owners of Sea-Going Ships, 1957. When we acceded to the Convention, we made the reservation that a shipowner should not be entitled to limit his liability in this way. But the reservation was not reflected in the existing legislation and the amendment is, therefore, necessary. [Emphasis added.]

23 Mr Mohan submitted that it was clear from this that ss (4) was repealed in order to allow claims in respect of facilities of the PSA to be recoverable in full, and was not intended to have any impact on owners of private harbour works.

24 I would add that Mr Mohan attempted at the hearing to refer me further to the Travaux Preparatoires of a 1976 Convention on Limitation of Liability for Maritime Claims, in particular the sentiments expressed there by the Singapore delegate in respect of claims for damage to harbour works. However, Singapore neither acceded to nor ratified this convention, and I could not see how anything expressed by a delegate of the Government of the day in 1976, in support of or against a convention which was never acceded to or ratified, could aid me in interpreting a provision which became part of our law in 1959. I found the reference altogether too remote and I therefore did not take any cognisance of anything in the Travaux of the 1976 convention.

25 In reply to the above-mentioned points, Mr Chong made the following submissions. First, he argued that this was not an appropriate case to consider the travaux preparatoires of the Convention. Relying on the House of Lords decision in Fothergill v Monarch Airlines [1981] AC 251, Mr Chong argued that two conditions must be fulfilled before the travaux of a convention can be profitably used: (i) that the material involved is public and accessible, and (ii), that the travaux clearly and indisputably point to a definitive legislative intention (per Lord Wilberforce at p 278). Adopting the language of Lord Steyn in another case, Effort Shipping Co. v Lindon Mangement S.A. (The Giannis NK") [1998] AC 605, "only a bulls- eye counts." Mr Chong's submission was that there is no bulls-eye in this case – nothing in the travaux (explicitly) indicates that "harbour works" was meant to encompass only public harbour works. Therefore, the travaux does not support the defendants' submission that "harbour works" in Art 1(c) should be so confined.

26 As for the defendants' reference to the speech of the late Mr Ong Teng Cheong, Mr Chong argued that this too was misguided. His objection was part philosophical and part substantive. The philosophical point, as I understood it, was that it was simply inappropriate to refer to the parliamentary intent of a deletion to a statute. If something is deleted, it ceases to exist and there is literally nothing to interpret. Mr Chong thus submitted that s 9A(2) of the Interpretation Act (Cap 1) was not applicable since "the issue did not concern the text of an amendment, but rather the effect of its deletion from the MSA"[4].

27 The substantive objection to the defendants' reliance on Mr Ong's speech was that the precise wording of the reference to harbour facilities was to facilities at the PSA, whenever there is an accident in its waters, not to facilities owned by the PSA. Facilities at the PSA connotes geographic location, whereas facilities owned by the PSA connotes proprietary interest. To bring home the point, Mr Chong pointed out that there were "public" harbour works in Singapore which were owned by bodies other than the PSA, for example, jetties and berths owned by the Jurong Town Corporation or the Sentosa Development Corporation. It could not be supposed, he argued, that these harbour works fell outside the scope of the deletion of ss (4), and were subject to limitation of liability. Therefore, the reference to "facilities at the PSA" must simply be a reference to harbour works within the geographic waters of Singapore, whether owned by the PSA or other public bodies, or even private entities. This includes the plaintiffs' works at Pulau Bukom, which are within the waters administered by the PSA.

Determination

28 I agreed with the primary submission of counsel for the defendants, Mr Mohan, that on a plain reading of s 136 of the MSA, the damage done to the plaintiffs' wharf falls within paragraph (d). I was of the view that the words "any property" in that paragraph are more than ample to cover the damage done to the plaintiffs' dolphins, jetty head etc. There was simply no basis on the existing version of the MSA, to draw distinctions between different types of property beyond that drawn in the Act – to do that would be to re-write the statute. If s 136 were all the material before me, I would have had no hesitation in determining the question at hand in the defendants' favour.

29 However, I could not but consider very seriously Mr Chong's argument that in light of the legislative history of the MSA, "harbour works" should be treated as a special species of "property" outside of the legislative intent of s 136(d). I found the arguments finely balanced, but in the end, I was of the view that the plaintiffs' position fell just short of the mark. I shall attempt to explain why.

30 I begin by stating that I agreed with Mr Chong that the travaux of the Convention was not particularly instructive. There was the initial temptation to glean from the speech of the British delegate an intention to hive off "harbour works" into an exclusive category, and to place some reliance on that. However, upon further consideration, I decided that that would have been quite wrong. First, the reference made by the British delegate was to the absolute liability of dock authorities. This suggests that Article 1(1)(c) may have been motivated by a need to deal with the special regime of liability applicable to public authorities, rather than a desire to hive off wreck liability and damage to harbour facilities generally. Secondly, and more importantly, there was no reason to prefer the British approach over that of any other member; and it was clear in this case that there were differing views. In the words of Mr Chong, there was no "bulls-eye". It may have been that the Convention had been moulded more by British hands than any others, but to accord undue weight to this would be to surrender principle to the vagaries of international politics.

31 Looking then at Art 1(1) of the Convention, without the benefit of the travaux, how should the different heads of limitation be viewed? I observe that this is not a case of a particular type of

liability being carved into different parts by a single identifiable criterion, but rather three altogether different descriptions of liability in the first place, and I might add, ill-fitting ones at that. Article 1(1)(a) deals with persons or property on board the vessel, however caused; Article 1(1)(b) deals with damage to persons or property not on board the vessel, but caused by neglect or default; Article 1(1)(c) deals with liability imposed by law incurred by wreck removal or damage to harbour works etc. It is evident from this simple comparison that at least three distinct criterion can be used to distinguish the three categories: (i) the location of the property – ie. within or without the vessel; (ii) the way in which the damage is caused – ie. with or without negligence; and (iii) the nature of the damage incurred – loss of life and property damage (including harbour works) on the one hand, and the cost of wreck removal on the other, the latter of which appears to be more in the nature of consequential economic loss. Bearing that in mind, I found it somewhat difficult to superimpose onto the categories an overarching design which separates them into three mutually exclusive pockets. I found it much easier to suppose that each head of limitation should be treated as an independent area of limitation, justified on different policy objectives, which thus leaves room for an overlap between them. In this respect, I preferred the sentiments expressed by Macrossan J. in The Tiruna (cited above), rather than those of his esteemed colleagues. I thus agreed with Mr Mohan that there was no reason to treat the three categories of limitation in Art 1(1) as mutually exclusive.

32 Turning to the 1959 transposition of Art 1(1) of the Convention to Singapore law in the form of s 340 of the Merchant Shipping Act, I could not but come to an analogous view. It seemed to me that ss (4) by its wording was targeted not at circumscribing a particular species of property, and thereby removing it from the purview of sub-paragraph (d), but rather at bringing into the regime a particular type of liability – ie. that incurred against bodies exercising administrative responsibility over public areas. I formed this view for a few reasons. First, Mr Mohan had submitted that in order to understand the thrust of ss (4), the words "harbour works" should be read in context with the words following them, ie. "basins, or navigable waterways", all of which generally fall under the control of public authorities, as opposed to private bodies. I agreed with this submission. Second, I was persuaded in part by Mr Mohan's submission on the need for the sub-section on the basis of the existing legal framework – ie. the rules encapsulated in The Mostyn and The Stonedale (referred to above). Finally, I agreed with him that as a matter of language and construction, the subjects which ss (4) sought to deem as falling within s 136 (b) and (d) were the occurrences mentioned in sub-paragraphs (a) and (b) of ss (4), and the treatment of claims as claims in damages. There was no conscious effort to deem "harbour works" to be within the meaning of "property". I admit that that might have been an unintended by-product, but if that were the case, Mr Chong's argument would not have the force which he seeks to ascribe to it.

33 If I am right about the proper purpose and effect of ss (4), then I think the repeal of ss (4) cannot have the effect contended by the plaintiffs. I should add that in respect of the speech by the late Mr Ong Teng Cheong on the purpose of deleting ss (4), I did not agree with Mr Chong that it was irrelevant because it related to a deletion, as opposed to a positive amendment. That argument has a certain logical appeal, but I think to adopt it wholesale would be to ignore the fact that a deletion is no less an amendment to a statute than an insertion or a substitution of a section - and for that reason the underlying motives for it cannot be entirely ignored in the appropriate case. I shall return to this point later on, but for now, it suffices to state that in any event, I was unable to derive much assistance from what was actually said. I felt that to make a decision on the basis of what Mr Ong meant by "facilities at the PSA" was to place too heavy a burden on a humble preposition, which in the context could be read in different ways.

34 I have given my reasons for rejecting the plaintiffs' argument based on ss (4). However, there is, I believe, a broader basis for finding in the defendants' favour. It was raised by necessary implication of the defence's arguments in this application, but not quite articulated in full. I shall

attempt to do that now.

35 The plaintiffs' position in this matter was unusual in that it was grounded, in a sense, on a negative; or to be more accurate, on the absence of a particular provision in a statute. Mr Mohan did not, I think, find it necessary to submit expressly that a statute should mean what it says, rather than what it does not. However, given the form the arguments in this case have taken, I think it is worth emphasising. It is undoubtedly the law of Singapore that statutes should be interpreted purposively where possible – section 9A of the Interpretation Act. However, a citizen looking at the laws which set out his legal rights and obligations is entitled, I think, to take them at face value. Where there is some ambiguity on the face of a provision, a deletion of part of it, or of another provision affecting it, may well be relevant. But where there is no patent ambiguity, as I find in this case, then I do not think it is desirable to go behind the words of the statute unless there are clear and compelling reasons, for example, to avoid a manifest absurdity. The imperative nature of this principle is most clear when interpreting statutes that deprive life or liberty, but it is no less important in relation to any other law. In point of fact, if the question before me had been whether harbour works belonging to a public authority could be subject to limitation, then purely on the basis of s 136 of the MSA, without consideration of other legal principles or rules, I may well have answered that in the affirmative as well, notwithstanding that such a determination would frustrate the purpose of the 1981 repeal. The barrier the plaintiffs had to surmount in this case was therefore a formidable one.

36 In the event, I am much comforted by the fact that in 1986, the Government saw fit to amend the then Port of Singapore Authority Act, by the insertion of a new section 26 which provided:

> 26 (1) Where damage is done to any property of the Authority by any vessel or float or timber, the cost of making good the damage, including the expenses of any inspection or survey carried out by the Authority to ascertain such damage, if any, may be recovered by the Authority as a debt from the master, owner or person in charge of the vessel or float or timber, as the case may be.

37 The PSA Act was subsequently repealed upon the dissolution of the PSA, but the provision survives today as s 107 of the Maritime & Port Authority of Singapore Act 1996. It confirms that all damage done to the property of the Maritime and Port Authority of Singapore is recoverable as a debt – and is consequently outside the limitation of liability regime, which only applies to claims in damages.

38 Finally, I should say a few words about policy. Mr Mohan submitted that were the court to decide this issue in the plaintiffs' favour, there were potentially serious repercussions for the shipping industry in Singapore and Singapore's attractiveness as a leading maritime hub in the world. If, he said, shipowners could not invoke s 136 of the MSA to limit their liability for damage to private jetties or terminals, Singapore's attractiveness as a leading port for merchant shipping would decline. No evidence was available to support this assertion, and I was not prepared to accept it without such evidence. It seemed to me that in the world of business, risks of almost any nature can be minimised by way of insurance or other means, and the real hazard is a lack of certainty upon which party the risks lie. In this respect, I am comforted by the fact that in finding in the defendants' favour, I am not propounding a new legal rule, but rather affirming what is generally believed to be the status quo. In both The Arcadia Spirit [1988] SLR 244 and BP Shipping Ltd v Caltex Singapore Pte Ltd [1996] 1 Lloyd's Rep 286, the parties assumed without argument that liability in respect of private harbour works was limitable.

39 Rather, I think the difficulty from a policy point of view is whether the distinction which I have drawn between liability for property owned by the Maritime & Port Authority of Singapore on the

one hand, and liability for all other harbour works on the other, can be supported. Considering all the material before me, I think it can. On 14 December 1959, when the Merchant Shipping (Amendment No. 2) Bill (which amended the Merchant Shipping Ordinance to include the new limitation regime) was being read for the second time, then Deputy Prime Minister Dr Toh Chin Chye said:

> Sir, in 1957, an international conference of 17 maritime countries met at Brussels to discuss the limitation of the liability of owners of sea-going ships. As a result of this conference, certain agreements were made and these agreements have been included in the United Kingdom Shipping Act.
>
> Singapore, being a free port for the ships of the world, should rightly have uniform shipping legislation in harmony with those countries which send their ships to our port. It is the purpose of this bill to include certain provisions which have been made in the international convection at Brussels of 1957. The objects of this Bill briefly are two-fold:
>
> (1) To extend the limits of the scope of liability;
>
> (2) To increase the quantum of liability.
>
> [Emphasis added.]

40 The underlying rationale for Singapore's participation in the Convention, as is evident from the passage above, was to establish a common platform of legal liability with the other major shipping nations of the world. It was not to balance the interests of shipowners against the interests of owners of marine facilities. From that point of view, the exemption from the liability regime provided to the Maritime and Port Authority of Singapore should be viewed as a privilege based on the special importance of its facilities in relation to the shipping industry as a whole, and the overriding interest in seeing them properly maintained. I am unable to find a compelling reason which requires an extension of that privilege to private jetty owners, or even to quasi-public bodies such as the Jurong Town Corporation or the Sentosa Development Corporation. I would add that the description of these two entities as "quasi-public" may, in view of their substantial commercial interests, be somewhat generous. In any event, if the Government desires to extend the benefit of full liability to private jetty owners or any other bodies, it is certainly at liberty to do so by amending the MSA or by any other means. However, for the courts to do it by reading into a statute something which is not there would be an improper usurpation of that prerogative.

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[1] The current s 136 of the MSA has been amended in form but not in substance from the original s 340 of the Merchant Shipping Ordinance - the amendments are not relevant for our present purposes.

[2] Emphasis added.

[3] Emphasis added.

[4] Paragraph 34 of the Plaintiff's Skeletal Arguments at p 12.

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