Model Courts of Justice 2026

THE UNITED KINGDOM HIGH COURT OF JUSTICE OF ENGLAND AND WALES

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Supervised by *Rana Elif Taze*

8 DECENT WORK AND ECONOMIC GROWTH

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LETTER FROM THE SECRETARY- GENERAL

Highly Esteemed Participants,

I welcome you all to the 14th Annual Edition of the Model Courts of Justice as the Secretary-General. My name is Rana Elif TAZE, and I am a junior law student at Ankara University.

The participants of the Model Courts of Justice 2026 will be focusing on the fields of International Transport Law, Maritime Transport Law, and Marine Insurance Law; specifically questioning the terms actual total loss and notice of abandonment. The case that will be simulated this year is 'Masefield AG v Amlin Corporate Member Ltd'. In this regard, the participants will have the opportunity to practice their subjects and improve their written and oral skills concerning commercial litigation and the determination of total loss within the framework of marine insurance law, as well as the legal complexities of piracy in international trade.

I would like to express my gratitude and appreciation to the distinguished Under-Secretaries-General of the court. Ms. Asude PATSAMAN demonstrated great dedication and perfect work despite all the other ongoing projects in her academic life. On the other hand, Ms. Esila YILMAZ performed a great example of diligence, patience, and commitment to work; despite the countless number of feedback and discussions, she was always eager to reach the best. Secondly, I would like to thank Ms. Nilsu TİLBE, academic trainee of the court, for her contributions and great effort to learn. Last but not least, I would like to express my greatest thanks to Ms.İlayda KARA, Director-General of the 14th Edition, to walk with me on this long journey. Without her dedicated work, this edition would never be possible. I am glad we were together in this.

Before attending the sessions, I highly recommend that all the participants read the Study Guideand Rules of Procedure and prepare the printed versions of these documents with them to refer to during the Conference. If you have any questions or hesitations about the Conference, please do not hesitate to contact me at secretarygeneral@modelcj.org.

Warm Regards,
Rana Elif TAZE
Secretary-General of the Model Courts of Justice 2026

LETTER FROM THE UNDER-SECRETARY-GENERAL

Distinguished Participants,

I am Saliha Esila Yılmaz, a junior student at Ankara University, Faculty of Law. I sincerely welcome each of you to the fourteenth session of Model Courts of Justice as one of the Under-Secretary-Generals of the High Court of England and Wales.

This year, the Commercial Court will simulate *Masefield AG v Amlin Corporate Member Ltd* (2010), a striking case arising from the seizure of insured cargo by Somali pirates in the Gulf of Aden. What may appear to be a straightforward piracy incident in fact raises fundamental questions at the heart of marine insurance law. For example, if ransom payments are a common and effective means of securing release, how should this influence the legal assessment of loss?

This case challenges us to consider how the law responds when piracy, commerce, and principle intersect on the high seas. We hope this study guide will provide you with clarity and confidence in addressing these intriguing topics.

I would like to conclude my letter by expressing my sincere gratitude to our academic team. It has truly been an honour to work alongside such dedicated individuals throughout this process. I would like to extend my heartfelt thanks to my esteemed co–Under-Secretary-General, Miss Asoude PATSAMAN, for her invaluable companionship and diligence. I am grateful to Miss Rana Elif TAZE, for her guidance, patience, constant support, and exceptional leadership as our Secretary-General. Finally, I would like to thank our Director-General, Miss İlayda KARA, and the entire organization team, whose dedication and tireless efforts made this conference possible.

I would be glad to address any inquiries or provide further assistance as needed, feel free to contact me at theunitedkingdomhighcourt@modelcj.org

Best regards,
Saliha Esila YILMAZ
Under-Secretary-General of the UK High Court

LETTER FROM THE UNDER-SECRETARY-GENERAL

Most Esteemed Participants,

My name is Asoude PATSAMAN, I am a junior law student at Ankara University Faculty of Law, here to serve you as one of the Under-Secretary-Generals of the UK High Court. It is my great honour and pleasure to welcome you to the Model Courts of Justice.

In this edition of Model Courts of Justice, our court will simulate a maritime dispute arising out of *Masefield AG v Amlin*, which concerns marine insurance, piracy, and the legal characterization of ransom payments in shipping operations. The dispute requires careful engagement with core concepts in marine insurance law, including the classification of insured perils, the characterization of loss, causation and proximate cause, and the legal treatment of payments and expenditures made in response to maritime security threats.

In this court, judges will engage with these questions through the lens of the High Court's reasoning and will be required to articulate submissions that reflect both the structure of marine insurance law and the commercial purpose of risk allocation in maritime trade.
Before I conclude my letter, I would like to express my gratitude to my fellow co-Under-Secretary-General, Ms. Esila YILMAZ, for her companionship throughout the process. Furthermore, special thanks to those who made this conference possible, Ms. Rana Elif TAZE and Ms. İlayda KARA, for their great efforts, devoted passion, and endeavour.

In case you have any questions, please feel free to contact me via e-mail at theunitedkingdomhighcourt@modelcj.org

Best regards,
Asoude PATSAMAN
Under-Secretary-General of the UK High Court

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I. INTRODUCTION TO THE RELATED MARITIME LAW CONCEPTS

Maritime law is one of the oldest branches of international law, which is rooted in early reliance of humanity on the seas for trade and travel. Its history can be traced to the Rhodian Sea Laws circa 900 BCE. The Rhodian Sea Law drew its authority both from maritime customs developed on the island of Rhodes in antiquity, which is now located in modern-day Greece, and from its later incorporation into the Digest of the Code of Justinian in the 6th century.[1] The regulations covered within the Rhodian Sea Law focused on the liability for the cost of lost or damaged cargo. Cargo loss mostly occurred during storms, when a part or all of the cargo had to be thrown overboard to preserve the safety of the ship. Piracy also accounted for significant losses, particularly from the 7th century onwards, when Arab and Slavic pirate raids made maritime trade increasingly dangerous.[2] Thus, maritime law served as a form of insurance, dividing the cost of losses among the ship-owners and cargo owners. The Romans absorbed these rules into their legal system, which later influenced Byzantine and medieval maritime codes.[3]

During the Middle Ages, the development of maritime law was marked by the emergence of influential regional codes that sought to resolve disputes arising from maritime trade. Among the most significant were the Laws of Oleron, which originated in France in the 12th century, and the *Consolato del Mare,* which is a compilation of Mediterranean maritime customs first consolidated in Barcelona in the 14th century.[4]

The Laws of Oleron had provisions governing the responsibilities of ship-owners, the rights of merchants, and the duties of crews. These provisions were widely accepted in Western Europe.[5] Similarly, the *Consolato del Mare* offered a framework for the resolution of disputes within the Mediterranean. These collections of rules served both as local regulations and international reference points, establishing a broader and clearer vision of maritime customs and obligations.

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[1] Editors of Encyclopedia Britannica, 'Rhodian Sea Law' (Encyclopedia Britannica) https://www.britannica.com/event/Rhodian-Sea-Law accessed 6 September 2025.

[2] *Ibid.*

[3] *Ibid.*

[4] Edda Frankot, 'Medieval Maritime Law from Oléron to Wisby: Jurisdictions in the Law of the Sea' (Academia.edu) https://www.academia.edu/73929503/Medieval_Maritime_Law_from_Ol%C3%A9ron_to_Wisby_Jurisdictions_in_the_Law_of_the_Sea accessed 6 September 2025.

[5] 'The Laws of Oleron' (Medieval England Project) https://memp.ace.fordham.edu/sources/the-laws-of-oleron/ accessed 6 September 2025.

In this way, medieval maritime law began to move towards a more unified body of principles that would shape the future of international maritime governance.[6]

In 1609, a Dutch jurist and philosopher, Hugo Grotius, published his work, *Mare Liberum*. In his work, Grotius defended the principle that the seas must remain free and open to the use of all nations and rejected any claim of exclusive domination by a single state.[7] In fact, his work translates from the Latin as 'The Free Sea'. This doctrine of freedom of the seas became foundational to international trade and emphasized the needs of a world that became increasingly dependent on maritime trade.[8]

In contrast, the English jurist John Selden, who wrote the *Mare Clausum* in 1635, argued that seas shall be subject to sovereign control in the same way as land territories. Selden's position was tied to England's aspirations to maritime dominance and its efforts to assert control over the surrounding waters.[9]

The tension between Grotius's vision of an open, universally accessible sea and Selden's assertion of closed, state-controlled seas persisted for centuries. It symbolized the struggle between the universal interests of navigation and trade on the one hand, and the strategic, economic, and security concerns of coastal states on the other. This intellectual conflict shaped legal thought and influenced state practice, anticipating the doctrinal balance that would later be enshrined in the modern law of the sea.

By the late 19th century, the law of the sea had begun to shift from reliance on customary norms to formal codification through treaties and international agreements. Advances in the shipbuilding industry, particularly the transition from sail to steam, dramatically increased the volume and range of maritime trade, while the rise of naval power emphasized the need for clear jurisdictional rules. During this period, European powers sought to standardize rules governing navigation, safety at sea, and the treatment of seafarers. Conventions such as the

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[6] Edda Frankot, 'Medieval Maritime Law from Oléron to Wisby: Jurisdictions in the Law of the Sea' (Academia.edu) https://www.academia.edu/73929503/Medieval_Maritime_Law_from_Ol%C3%A9ron_to_Wisby_Jurisdictions_in_the_Law_of_the_Sea accessed 6 September 2025.

[7] Yasuaki Onuma, 'Hugo Grotius' (Encyclopedia Britannica) https://www.britannica.com/biography/Hugo-Grotius accessed 6 September 2025.

[8] *Ibid*.

[9] Editors of Encyclopedia Britannica, 'John Selden' (Encyclopedia Britannica) https://www.britannica.com/biography/John-Selden#ref101656 accessed 6 September 2025.

1856 Declaration of Paris, which abolished privateering and established principles for neutral shipping during wartime, marked the creation of more systematic efforts to regulate maritime conduct.[10]

The first half of the 20th Century saw an acceleration of attempts to codify the law of the sea at the multilateral level. Conferences held at The Hague in 1907 addressed neutrality, blockades, and the rights of belligerents and neutrals at sea, though they failed to produce comprehensive agreements. Between World War I and World War II, the League of Nations attempted to codify by taking steps such as the 1930 Hague Codification Conference, which considered territorial waters, nationality of ships, and responsibility of states for damage caused to foreign nationals at sea.[11] These discussions laid the groundwork for later agreements, although their consensus was limited. At the same time, maritime law expanded through conventions on safety and liability, including the foundation of the International Maritime Organization (IMO) in 1948.[12]

The aftermath of the Second World War transformed the law of the sea into a pressing matter of international diplomacy. With the rapid growth of offshore oil exploration and the strategic importance of maritime trade routes, states sought a more comprehensive framework for maritime jurisdiction. This led to the First United Nations Conference on the Law of the Sea in 1958, which produced the Geneva Conventions on the Law of the Sea.[13] These included conventions on the territorial sea and contiguous zone, the continental shelf, the high seas, and fishing and conservation of living resources. While these conventions represented the first global codification of the law of the sea, they left unresolved key questions such as the precise breadth of the territorial sea and the legal status of the exclusive economic zone (EEZ).[14]

The limitations of the 1958 Geneva Conventions quickly became apparent as technological advances and resource demands pushed states to expand their claims over maritime zones. By

[10] Myres S McDougal and William T Burke, '*The Public Order of the Oceans: A Contemporary International Law of the Sea'* (Yale University Press 1962) https://share.google/5kiWVdriHAqAiTKR4 accessed 6 September 2025.

[11] Tam Xuan Song, 'The Historical Development of International Law of the Sea' (International Journal for Empirical Education and Research, 2017) https://journals.seagullpublications.com/ijeer/assets/paper/IJ0420190738/f_IJ0420190738.pdf accessed 6 September 2025.

[12] *Ibid*.

[13] For more information https://legal.un.org/avl/ha/gclos/gclos.html

[14] *Ibid*.

the 1970s, newly independent states, particularly from the Global South, demanded a legal regime that recognized their sovereign rights over marine resources. This led to the convening of the Third United Nations Conference on the Law of the Sea held between 1973 and 1982. These extensive and comprehensive conferences resulted in the United Nations Convention on the Law of the Sea (UNCLOS),[15] which entered into force in 1994. It introduced the 200 nautical mile Exclusive Economic Zone (EEZ) and established principles for deep-sea mining under the common heritage of mankind, alongside providing mechanisms for dispute settlement, including the creation of the International Tribunal for the Law of the Sea (ITLOS).[16]

The following terms defined under UNCLOS determine when and where States may lawfully exercise enforcement powers, including visit, seizure, and prosecution. Having established this framework, the following will emphasize maritime spaces and competences between flag States and coastal States, will assess how UNCLOS terminology both enables and constrains contemporary counter-piracy measures.

A. Maritime Spaces

For several centuries, the sea adjacent to the coast was treated as subject to limited coastal control, forming the 3-mile 'cannon-shot' standard.[17] The 1958 Geneva Conventions on the Law of the Sea initiated comprehensive codification but left some issues unsettled, including the breadth of the territorial sea, which produced uneven state practice around the world until 1982. The 1982 United Nations Convention on the Law of the Sea (UNCLOS) established a clear framework that fixed the territorial sea at up to 12 nautical miles in its Article 3 and created new maritime spaces, most notably the exclusive economic zone (EEZ), while consolidating and refining the continental shelf regime. The contemporary order is a layered system composed of internal waters, the territorial sea, straits used for international navigation

[15] For more information https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en

[16] Tam Xuan Song, 'The Historical Development of International Law of the Sea' (International Journal for Empirical Education and Research, 2017) https://journals.seagullpublications.com/ijeer/assets/paper/IJ0420190738/f_IJ0420190738.pdf accessed 6 September 2025.

[17] 'From the Cannon Shot Rule to UNCLOS' (American University Washington College of Law, Pence Law Library) https://wcl.american.libguides.com/c.php?g=563260&p=3877795&utm accessed 13 September 2025.

where relevant, archipelagic waters where relevant, the contiguous zone, the EEZ, the continental shelf, and the high seas.[18]

Maritime spaces are measured from baselines. The normal baseline is the low-water line along the coast as marked on officially recognized charts pursuant to Article 5 of UNCLOS. The Convention permits the use of straight baselines where the coastline is deeply indented and cut into, or where there is a fringe of islands along the coast, according to Article 7. It further addresses river mouths in Article 9, bays and their closing lines in Article 10, low-tide elevations in Article 13, and the combination of methods for drawing the baselines in Article 14. The legal sufficiency of any subsequent maritime claim depends upon baselines established in accordance with these provisions and coastal geography that satisfies the stated criteria. Waters within the inner side of the baseline constitute internal waters under Article 8(1). Within internal waters, the coastal state exercises sovereignty over the water column, seabed, subsoil, and airspace, which are subject to general international obligations. In practice, the legal position supports comprehensive port-state control, adoption and enforcement of customs, fiscal, immigration, criminal, safety, and environmental rules, and the regulation of infrastructure and policing consistent with overarching obligations[19].

The territorial sea may extend up to 12 nautical miles from the baselines by virtue of Article 3, with the sovereignty of the coastal state extending to the waters, seabed, subsoil, and the airspace above under Article 2(1). Ships of all states enjoy the right of innocent passage through the territorial sea under Article 17. Passage must be continuous, quick, and, to be characterized as innocent, must not be prejudicial to the peace, good order, or security of the coastal state, with activities that negate innocence enumerated in Article 19(2). The coastal state may adopt laws and regulations relating to navigational safety, the protection of navigational aids and facilities, conservation of living resources in relation to passage, prevention of pollution, research and hydrographic surveys related to passage, and the prevention of infringement of customs, fiscal, immigration, or sanitary laws under Article 21. It may take necessary steps to prevent passage that is not innocent and may, when essential for security, temporarily suspend innocent passage in specified areas under Article 25. Special precautions apply to nuclear-powered ships and ships carrying inherently dangerous or noxious substances under Article 23.

[18] *Ibid*.

[19] 'The Law of the Sea' (Manchester University Press, 2022) https://www.manchesterhive.com/display/9781526159038/9781526159038.00010.xml accessed 13 September 2025.

Criminal and civil jurisdiction over foreign ships in passage is restricted by Articles 27 and 28, while warships and government ships operated for non-commercial purposes benefit from immunities as recognized in Article 32.[20]

Where a strait connects parts of the high seas or an exclusive economic zone and is used for international navigation, the transit passage regime applies. Transit passage is a freedom of navigation and overflight for continuous and expeditious transit by ships and aircraft, as outlined in Articles 37 and 38. The regime cannot be suspended under Article 44. States bordering straits may designate sea lanes and adopt traffic separation schemes in accordance with generally accepted international regulations under Article 41, and they may enact non-discriminatory laws and regulations relating to navigation safety, pollution control, and fishing that are consistent with the Convention under Article 42. Users of the Strait are bound by obligations stated in Article 39. Where a route through the high seas or an exclusive economic zone is of similar convenience, the regime of innocent passage rather than transit passage applies under Article 36. In straits formed by an island of a state bordering the strait where a route of similar convenience exists seaward of the island, non-suspendable innocent passage is preserved under Article 45.

For archipelagic states, the Convention authorises the drawing of archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago. Those baselines are subject to numerical and geometric constraints, including general limits on baseline segment length with a limited allowance for segments up to 125 nautical miles, no more than 3 per cent of the total number of baselines being less than 100 nautical miles, and an overall water-to-land ratio requirement, as provided in Article 47. An archipelagic state and archipelagic waters are respectively defined in Articles 46 and 49. The archipelagic state exercises full sovereignty over archipelagic waters, the airspace above, and the seabed and subsoil, subject to navigation regimes. Archipelagic sea lanes passage can be designated pursuant to Article 53 in areas where sea lanes and air routes are suitable for the continuous and expeditious transit of foreign ships and aircraft, and the regime is functionally analogous to transit passage.[21]

Beyond the territorial sea, a coastal state may establish a contiguous zone extending to a distance of up to 24 nautical miles from the baselines as recognized by Article 33(2). The contiguous zone is not an area of sovereignty; it permits the coastal state to prevent and punish

[20] Tanaka Yoshifumi, *The International Law of the Sea* (Cambridge University Press, 2019).

[21] *Ibid*.

infringements of its customs, fiscal, immigration, or sanitary laws and regulations committed within its territory or territorial sea under Article 33(1). Enforcement measures must be limited to those enumerated heads and be necessary and proportionate in application, and the initiation of hot pursuit is governed by Article 111.[22]

The exclusive economic zone is a *sui generis* area extending up to 200 nautical miles from the baselines as set out in Article 57 and defined in Article 55. In the exclusive economic zone, the coastal state has sovereign rights for the purpose of exploring, exploiting, conserving, and managing the natural resources of the waters suprajacent to the seabed and its subsoil, together with jurisdiction concerning artificial islands, installations and structures, marine scientific research, and the protection and preservation of the marine environment, as provided in Article 56(1). Other states retain the freedoms of navigation and overflight and the laying of submarine cables and pipelines under Article 58(1), which are to be exercised with due regard to the rights and duties of the coastal state and in compliance with the Convention pursuant to Article 58(3). The coastal state determines the allowable catch and its capacity to harvest living resources, may grant access to other states through licensing and other arrangements, and must adopt conservation and management measures to maintain or restore populations of harvested species at levels that can produce the maximum sustainable yield qualified by environmental and economic factors, in accordance with Articles 61 and 62. Duties of cooperation are established for straddling stocks, highly migratory species, anadromous stocks, and marine mammals in Articles 63 to 67. Enforcement against foreign vessels, including boarding, inspection, arrest, and judicial proceedings, is authorised by Article 73, which requires prompt release of detained vessels and crews upon the posting of a reasonable bond or other security under Article 73(2) and limits penalties for fisheries violations by foreign vessels in the absence of agreement under Article 73(3).[23]

Artificial islands, installations, and structures, together with safety zones not exceeding 500 meters around them, are governed by Article 60, and such installations do not have the status of islands and generate no maritime zones under Article 60(8). All states may lay submarine cables and pipelines in the exclusive economic zone pursuant to Article 58(1), while the coastal state may approve pipeline routing on the continental shelf and adopt reasonable measures for resource and environmental protection as provided in Article 79. Marine scientific research in the exclusive economic zone is subject to the consent of the coastal state in Article 246, with

[22] Donald R Rothwell and Tim Stephens, *The International Law of the Sea* (Bloomsbury Publishing, 2016).

[23] *Ibid*.

obligations of notification, participation, data and sample sharing, and publication set out in Article 249. Where entitlements overlap, delimitation of the exclusive economic zone aims at an equitable solution under Article 74.[24]

The continental shelf comprises the seabed and subsoil of the submarine areas that extend beyond the territorial sea to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines where the outer edge does not extend to that distance, as defined by Article 76. Where the continental margin extends further, the outer limit may reach as far as 350 nautical miles from the baselines or 100 nautical miles from the 2,500-metre isobaths, subject to the formulae and constraints specified in Article 76 and to recommendations by the Commission on the Limits of the Continental Shelf under Article 76(8). The coastal state possesses exclusive sovereign rights to explore and exploit the natural resources of the continental shelf, including mineral and other non-living resources of the seabed and subsoil and sedentary species, with these rights being inherent and not dependent on occupation or express proclamation under Article 77. The legal status of the waters above the shelf and the airspace above those waters remains unaffected by continental shelf rights under Article 78. The coastal state may authorize and regulate drilling and other operations for the exploitation of shelf resources under Article 81. Other states may lay submarine pipelines on the shelf, subject to the approval of the coastal state of the route and to reasonable measures concerning exploration of the shelf and the prevention, reduction, and control of pollution from pipelines, as recognized in Article 79. Payments or contributions for production from the continental shelf beyond two hundred nautical miles are prescribed by Article 82, and the possibility of tunnelling through the subsoil is preserved in Article 85. Delimitation between states with opposite or adjacent coasts aims to achieve an equitable solution in accordance with Article 83.[25]

The high seas consist of all parts of the sea not included in the exclusive economic zone, the territorial sea, or the internal waters or archipelagic waters of a state, as stated in Article 86. No state may validly purport to subject any part of the high seas to its sovereignty under Article 89. Core freedoms of the high seas include navigation, overflight, laying submarine cables and pipelines, constructing artificial islands and installations permitted under international law, fishing, and scientific research, all in accordance with Article 87. These freedoms are exercised with due regard for the interests of other states and for the rights recognized in the Convention.

[24] Donald R Rothwell and Tim Stephens, *The International Law of the Sea* (Bloomsbury Publishing, 2016).

[25] Maria Gavouneli, *Functional Jurisdiction in the Law of the Sea* (Brill, 2007).

Ships on the high seas are subject to the exclusive jurisdiction of the flag state, and the flag state must effectively exercise jurisdiction and control in administrative, technical, and social matters pursuant to Articles 92 and 94. States shall cooperate to the fullest possible extent in the repression of piracy under Articles 100 to 107, in the suppression of illicit traffic in narcotic drugs under Article 108, and in addressing unauthorized broadcasting under Article 109. The right of visit exists in limited circumstances set out in Article 110, and the duty to assist persons in distress at sea is codified in Article 98. Hot pursuit may be undertaken when competent authorities have good reason to believe that a foreign ship has violated the laws and regulations of the state, subject to strict conditions regarding commencement, identification, continuity, and termination, as provided by Article 111. Marine scientific research on the high seas is a freedom governed by Article 257, which is subject to environmental and safety obligations.[26]
The seabed, ocean floor, and subsoil beyond the limits of national jurisdiction constitute the Area within the meaning of Article 1(1) and Part XI of the Convention. The Area and its resources are the common heritage of mankind as declared in Article 136, and no state may claim or exercise sovereignty or sovereign rights over any part of the Area or its resources under Article 137. Activities in the Area are organized, carried out, and controlled by the International Seabed Authority on behalf of mankind as a whole according to Articles 153 and 156-160. The Convention requires that activities in the Area be conducted for peaceful purposes under Article 141, that effective protection of the marine environment be ensured, including from harmful effects that may arise from such activities, as set out in Article 145, and that the financial and other economic benefits be equitably shared, with particular regard to developing and land-locked states, under Article 140.[27]

B. Piracy

Piracy has long been denounced as *hostis humani generis,*[28] the enemy of all mankind. It is the oldest threat to maritime security and international trade. Some sources trace the first pirates in history to a seafaring people known as the *'Sea Peoples'*. In the 13th century BCE, these people wreaked havoc on ancient eastern Mediterranean empires such as the Hittites, Ugarits, and

[26] Natalie Klein, *Maritime Security and the Law of the Sea* (Oxford University Press, 2011).

[27] Michael W Lodge, 'International Seabed Area' (Oxford Public International Law) https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1179 accessed 13 September 2025.

[28] A Latin phrase for 'enemies of mankind'.

Egypt with their aggressive and invasive actions, as well as playing a destructive role that contributed to the end of the Bronze Age.[29]

State sovereignty is also challenged by piracy since it occurs beyond the territorial jurisdiction of any single state, usually on the high seas, strengthening the view that pirate attacks threaten all states. With the expansion of global trade, the need for a uniform legal framework became indispensable. Between the First and Second World Wars, a '*Draft Convention on Piracy*' was developed with contributions from Harvard University.[30] However, amid more pressing global security concerns, the draft did not receive much attention, although it laid the groundwork for future treaties. After the Second World War, the growth of global trade and increased reliance on maritime routes led to a need for clearer legal frameworks.[31] This resulted in the 1958 Geneva Conference on the Law of the Sea, which produced four conventions regulating international maritime law.[32]

One of these conventions, which is the 1958 Geneva Convention on the High Seas, included articles 14 to 22 specifically addressing piracy.[33] These articles were based on the earlier Harvard Draft but also incorporated new elements, marking the first time piracy was clearly defined and regulated in an international treaty.[34] This definition later served as a basis for Articles 100-107 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), where the definitions were expanded and clarified, although no new legal framework has been adopted on the subject ever since.[35]

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[29] Joshua Mark, 'Sea Peoples' (World History Encyclopedia, 2 September 2009) https://www.worldhistory.org/Sea_Peoples/ accessed 15 September 2025.

[30] Clyde H. Crockett, 'Toward a Revision of the International Law of Piracy' (DePaul Law Review, 1976) https://via.library.depaul.edu/law-review/vol26/iss1/5/ accessed 15 September 2025.

[31] Tullio Treves, '1958 Geneva Conventions on the Law of the Sea' (UNLEGAL Audovisual Library of International Law) https://legal.un.org/avl/ha/gclos/gclos.html#:~:text=Four%20separate%20conventions%20were%20adopted,to%20become%20party%3A%20the%20Convention accessed 15 September 2025.

[32] *Ibid*.

[33] Ahmet Hamdi Topal, '*Uluslararası Hukukta Deniz Haydutluğu ve Mücadele Yöntemleri'* (Dergi Park, 2010) https://dergipark.org.tr/tr/pub/auhfd/issue/42498/512011 accessed 15 September 2025.

[34] *Ibid*.

[35] Elizabeth Nyman, 'Modern Piracy and International Law: Definitional Issues with the Law of the Sea' (Research Gate, November 2011) https://www.researchgate.net/publication/264455539_Modern_Piracy_and_International_Law_Definitional_Issues_with_the_Law_of_the_Sea accessed 15 September 2025.

Article 100 of the Convention, which is the first article governing piracy, focuses on the duty to cooperate in the repression of piracy as an introductory; however, the main clause concerning the definition of piracy is Article 101. Article 101 supplies the definition by stating that any illegal act of violence, detention, or depredation committed for private ends by the crew or passengers of a private ship or aircraft, directed against another ship or aircraft or persons or property on board, and occurring on the high seas or in any other place beyond the jurisdiction of any State is piracy. The provision also encompasses voluntary and intentional participation in operating a ship or aircraft with the intention that it serve as a pirate vessel or aircraft.[36]

The definition in Article 101 sets out four requirements to shape contemporary practice. A possible act of piracy can only be defined as piracy under UNCLOS when unlawful physical force is used in an environment where all the requirements mentioned in the article are met, and this creates the first requirement mentioned in the article, which is 'violence'.[37] As the second requirement, 'private ends' excludes state-authorized force and acts motivated by ideologies, as it generally confines piracy to non-public motives. Third, the 'two-ship' requirement demands that the primary act be directed from one vessel or aircraft against another. This requirement makes internal hijackings typically fall outside of Article 101 and prosecute them under the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, which criminalizes unlawful seizure and other threats to safe navigation without requiring a second vessel. Fourth and the last requirement is the 'high seas' requirement, which limits piracy to the high seas or other areas beyond the national jurisdiction of coastal states. By contrast, violence within internal waters, archipelagic waters, or the territorial sea is not 'piracy' according to Article 101. The International Maritime Organization (IMO) treats such incidents as 'armed robbery against ships' in its Code of Practice and leaves the jurisdiction to the coastal State.[38]

Article 102 of UNCLOS ensures that mutiny does not create a definitional gap where a warship or other government ship or aircraft is taken over by a mutinous crew; acts that would otherwise satisfy Article 101 are treated as piracy because the vessel is assimilated to a private platform for the duration of the mutinous control. Articles 101(b) and (c) further widen accountability

[36] Eugene Kontorovich, 'International Legal Responses to Piracy off the Coast of Somalia' (2009) http://www.asil.org/insights090206.cfm accessed 15 September 2025.

[37] Ahmet Hamdi Topal, 'Uluslararası Hukukta Deniz Haydutluğu ve Mücadele Yöntemleri', (2010) 59 Ankara Üniversitesi Hukuk Fakültesi Dergisi 99.

[38] *Ibid*.

beyond the boarding party, which is a person who voluntarily participates in the operation of a ship or aircraft known to be a pirate vessel, and is liable, as is anyone who incites or intentionally facilitates the commission of Article 101 offenses. This captures navigators, logisticians, and financiers, and prevents insulation merely because a given actor did not execute the overt attack.[39]

Under Article 103, a 'pirate ship or aircraft' exists when persons in dominant control intend to use it to commit Article 101 acts or have used it for that purpose. According to Article 104, the retention or loss of nationality by such a ship or aircraft is determined by the law of the State of registration. UNCLOS does not automatically render a pirate vessel as stateless, nor does it compel a loss of flag; instead, legislation of the flag state decides whether nationality is withdrawn or retained with practical consequences for jurisdiction, boarding, and diplomatic protection.[40] UNCLOS explicitly states in Article 92 that a ship will be deemed stateless if it is sailing under the flags of two or more States.[41]

Under 105, on the high seas or in any place outside the jurisdiction of any State, any State may seize a pirate ship or aircraft, arrest the persons on board, and take the property found there. The competent courts of the seizing State then determine penalties and the disposition of ships, aircraft, and property, subject to the rights of third parties acting in good faith. Since these are exceptional powers, international responsibility may follow if a seizure is effected 'without adequate grounds' under Article 106. Finally, Article 107 encompasses who may conduct a piracy seizure. Accordingly, only warships or military aircraft or other ships or aircraft 'clearly marked and identifiable as being on government service and authorized to that effect', may lawfully interdict on account of piracy.[42]

As demonstrated, UNCLOS lays the main structure for the definition, but there are instances where it struggles to cover piracy attacks due to its limited applicability of the requirements that have been set in its articles.

[39] Ahmet Hamdi Topal, 'Uluslararası Hukukta Deniz Haydutluğu ve Mücadele Yöntemleri' (2010) 59 Ankara Üniversitesi Hukuk Fakültesi Dergisi 99.

[40] *Ibid*.

[41] UNCLOS, art 92(2).

[42] *Ibid*.

II. INTRODUCTION TO THE MARITIME TRADE

Since transitioning to an agricultural society, trade has always held great importance for humankind, playing a decisive role in shaping sociological and economic relations. Especially in recent years, various means of transportation have developed in accordance with the rapid increase in trade volume. Maritime trade, which stands out due to factors such as cost-effectiveness, energy efficiency, and high transport capacity, has become the most preferred means of transport in global trade, with over 80% preference according to the latest data provided by the International Maritime Organization (IMO).[43]

Maritime transport is widely used as it plays a critical role in global commerce, and any disruption can lead to serious losses. For instance, the crisis caused by the grounding of the *Ever Given* ship owned by *Evergreen* in the Suez Canal in 2021 resulted in approximately 9.6 billion USD losses for global trade.[44] As this example illustrates, the damages arising from problems in maritime transport can be just as devastating as its profit potential is vast. Therefore, the sustainability of maritime trade, its continuous operation, and navigational safety are of great importance. In this context, addressing the security issues holds importance, both for ensuring regional security and for enabling global trade to continue without disruption. At its core, UNCLOS allocates coastal states' capabilities and preserves freedoms of navigation and overflight on the high seas, together with specialized regimes for straits used for international navigation and archipelagic sea-lanes passage.[45] Within this structure, the International Maritime Organization (IMO) develops detailed technical and security instruments that states implement domestically and enforce through jurisdiction. The International Convention for the Safety of Life at Sea (SOLAS) Convention of 1974 and the

[43] Saygın Can Oğuz 'Dünyada Deniz Taşımacılığı ve Eğilimler' (İzmir Kalkınma Ajansı) https://kalkinmaguncesi.izka.org.tr/index.php/2020/04/28/dunyada-deniz-tasimaciligi-ve-egilimler/ accessed 17 September 2025.

[44] Saim Oğuzülgen, '*MV Ever Given Kazasının Hatırlattıkları'* (Denizcilik Dergisi) https://www.denizcilikdergisi.com/yazarlar/kapt-saim-oguzulgen/m-v-ever-given-kazasinin-hatirlattiklari/ accessed 17 September 2025.

[45] Said Mahmoudi and Martin Ratcovich Leopardi, 'Transit Passage' (Oxford Public International Law) https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1231?rskey=V6erOR&result=1&prd=OPIL accessed 18 September 2025.

International Convention for the Prevention of Pollution from Ships (MARPOL) supply the most prominent safety and security standards.[46]

Beyond the provisions stated in these multilateral conventions, the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) and its 2005 Protocol create treaty-based offences and cooperation mechanisms to suppress unlawful acts against the safety of maritime navigation.[47] Regionally, measures such as ReCAAP[48] in Asia add operational content to treaty obligations. Annual reporting of ReCAAP and incident alerts illustrate how information sharing, capacity building, and coordinated enforcement reduce response times and improve interdiction quality.[49]

During the Age of Discovery, Iberian powers pioneered oceanic routes. Britain followed with increasing momentum from the sixteenth century, then accelerated in the seventeenth and eighteenth centuries to establish settlements across North America and the West Indies and, later, a global network of colonies and coaling stations. Maritime expansion, naval supremacy, and mercantile regulations made Britain a leading power in trade. The legal and commercial infrastructure that supported this rise included Admiralty courts, the growth of Lloyd's of London as a marine insurance marketplace, and a common-law jurisprudence that still frames many disputes today.[50]

By the nineteenth century, dominance of Britain at sea rested not only on its navy and financial power, but also on the institutions it built around maritime trade. London became the centre of

[46] 'SOLAS&MARPOL' (Martek Marine Innovative Ship Solutions, 9 May 2022) https://www.martek-marine.com/blog/solas-marpol/ accessed 18 September 2025.

[47] 'Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf' (International Maritime Organization) https://www.imo.org/en/about/conventions/pages/sua-treaties.aspx accessed 18 September 2025.

[48] Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) is a multilateral regional instrument under which contracting states undertake to prevent and suppress piracy and armed robbery against ships through structured intergovernmental cooperation, notably by establishing the ReCAAP Information Sharing Centre (ISC) and a network of timely incident reporting, information exchange, and capacity-building, with the objective of enhancing maritime security and safeguarding navigation in the region.

[49] 'About ReCAAP Information Sharing Centre' (RECAAP) https://www.recaap.org/about_ReCAAP-ISC accessed 18 September 2025.

[50] 'Maritime Heritage Timeline' (Scarborough Maritime Heritage Centre) https://www.scarboroughsmaritimeheritage.org.uk/article.php?article=185 accessed 19 September 2025.

marine insurance through Lloyd's and other underwriters, setting the rules for managing risk. Standard forms such as charter-parties and bills of lading were developed and widely adopted, bringing consistency to shipping contracts. Admiralty courts in London created a large body of case law that made English shipping law predictable and reliable.[51] The UK now operates as a legal, regulatory, and insurance hub embedded in multilateral governance. The IMO is headquartered in London, and the UK serves on the IMO Council, participating in the development of safety, environmental, and security standards that member states implement. London also anchors the market for liability cover: The International Group of Protection and Indemnity (P&I) Clubs[52] covers roughly 90% of the world's maritime tonnage, tying claims handling, casualty response, and pollution-liability financing to the UK's legal and financial ecosystem.[53]

Dispute resolution is equally concentrated. Multiple studies and industry reports estimate that around 80% of the world's maritime arbitrations are handled in London, reflecting a bench of specialist arbitrators and lawyers, procedural neutrality, and a developed body of English shipping and insurance law.[54] For parties litigating or arbitrating marine-insurance disputes, this concentration provides predictability in principles and an efficient connection between insurers, brokers, and P&I correspondents.

[51] Christopher Kingston, 'Marine Insurance in Britain and America, 1720-1844: A Comparative Institutional Analysis' (2007) 67(2) *J Econ Hist* 379.

[52] Protection and Indemnity (P&I) Clubs are mutual, non-profit maritime liability associations through which ship owners, charterers, and other maritime operators collectively insure and share among themselves, specified third-party liabilities arising from the operation of ships, including personal injury and death, collision and property damage, pollution liabilities, wreck removal, and certain cargo liabilities. They are typically supplemented by claims handling, legal support, and security arrangements to facilitate the resolution of maritime claims and the continuity of trade.

[53] 'About the International Group of P&I Clubs' (International Group of P&I Clubs) https://www.igpandi.org/article/about/ accessed 19 September 2025.

[54] *'The Maritime Arbitration Universe in Numbers: Is London's Crown Under Threat?'* (Holman Fenwick Willan, September 2023) https://www.hfw.com/app/uploads/2024/04/005239-HFW-Maritime-Arbitration-Universe-in-Numbers-Sep-23.pdf accessed 19 September 2025.

III. INTRODUCTION TO MARINE INSURANCE LAW

A. Historical Context of Marine Insurance

Marine insurance constitutes one of the earliest and most structurally complex mechanisms developed by maritime communities to address the extraordinary risks inherent in navigation and seaborne trade. From the outset of organised maritime commerce, the sea represented the uncertain and the unexpected. The loss could arise not only from natural perils such as storms and shipwrecks but also from human conduct, including piracy, collision, and navigational error. These risks were characteristically catastrophic, capable of extinguishing the entire economic value of the cargo in a single incident. The historical emergence of marine insurance must therefore be understood as a juridical response to the fundamental incompatibility between the unpredictability of maritime risk and the continuity required for commercial exchange.

Long before the formalisation of insurance as a legal contract, early maritime regulations such as the Rhodian Sea Laws served as a form of insurance by dividing the cost of losses among ship-owners and cargo owners. Emergency funding mechanisms known as *bottomry* and *respondentia* were also utilised, whereby repayment of a loan was conditional upon the safe arrival of the ship. Although such instruments combined elements of finance and hazard assumption, they revealed an early recognition that maritime risk could be detached from ownership and transferred to another party in exchange for remuneration. Over time, this conceptual separation of risk-bearing from ship-owning interests matured into the distinct institution of marine insurance, characterised by indemnity, fortuity, and reliance upon good faith between the contracting parties.[55]

The gradual professionalisation of marine insurance coincided with the growth of long-distance trade and the increasing complexity of maritime ventures. As shipping expanded beyond localized routes into transcontinental networks, the financial consequences of maritime loss exceeded the capacity of individual merchants to absorb them, creating a risk of instant bankruptcy.[56] This economic reality necessitated the emergence of specialised risk-bearers whose function was neither to navigate vessels nor to trade goods, but to assume exposure to maritime hazards in return for a premium. In this sense, marine insurance represented a pivotal legal innovation that enabled the expansion of maritime commerce by transforming

[55] Yvonne Baatz, *Maritime Law* (3rd edn, Informa Law from Routledge 2014).

[56] Christopher Hill, *Maritime Law* (6th edn, Lloyd's Practical Shipping Guides, Informa Law from Routledge 2003).

unpredictable loss into a calculable and distributable financial burden.[57] The development of marine insurance was not isolated from other branches of maritime law but rather it evolved in close interaction with doctrines such as general average, which is closely related to and payable by marine insurance, salvage, which P&I insurers help fund regarding environmental protection, and collision liability, where insurance clauses evolved specifically to cover liabilities established by the courts, each of which addressed different dimensions of maritime loss and collectively formed a coherent system of risk allocation at sea.[58]

The institutional consolidation of marine insurance occurred most decisively within English maritime law, where mercantile custom, the law merchant, was progressively absorbed into the jurisprudence. English courts played a central role in articulating the legal principles that distinguished insurance from speculative wagering and established its enforceability as a contract of indemnity. The requirement of an insurable interest, as codified in sections 5 and 6 of the UK Marine Insurance Act of 1906, the doctrine of proximate cause, and the principle of utmost good faith (*uberrimae fidei*) emerged as foundational concepts that shaped the law of insurance.[59] These doctrines reflected the particular informational asymmetry inherent in maritime ventures, where the assured possessed superior knowledge of the risk presented, and where concealment or misrepresentation could undermine the insurance relationship, leading to avoidance of the contract. The legal insistence on good faith thus functioned as a corrective mechanism.[60] The prominence of marine insurance within English law also reflected the position of London as a global maritime and financial center, where practices became standardized through institutions like Lloyd's and the drafting of standard clauses, reinforcing the centrality of insurance to maritime enterprise.[61]

Marine insurance further developed in tandem with the doctrine of general average, one of the most ancient and enduring principles of maritime law. General average rests upon the equitable premise that extraordinary sacrifices voluntarily made for the common safety of ship and cargo should be borne proportionally by all interests involved in the maritime adventure.[62]

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[57] Aleka Mandaraka-Sheppard, *Modern Maritime Law (Volume 2): Managing Risks and Liabilities* (3rd edn, Informa Law from Routledge 2024)

[58] Geoffrey Hudson, Tim Madge and Keith Sturges, *Marine Insurance Clauses* (5th edn, Informa Law from Routledge 2024)

[59] *Ibid*.

[60] Yvonne Baatz, *Maritime Law.*

[61] Geoffrey Hudson, Tim Madge and Keith Sturges, *Marine Insurance Clauses*.

[62] Aleka Mandaraka-Sheppard, *Modern Maritime Law (Volume 2): Managing Risks and Liabilities*.

Historically, general average served as a communal risk-sharing mechanism, dividing the cost of losses among ship-owners and cargo owners, as it complements marine insurance by allocating loss internally among participants in a voyage.[63] As marine insurance became widespread, insurers increasingly assumed the financial consequences of general average contributions owed by insured parties, with standard policies on hull, cargo, and freight providing that insurers would contribute to the assured's account. thereby reinforcing the interdependence between these institutions.[64] This relationship illustrates that marine insurance did not replace earlier mechanisms of loss distribution, but rather integrated with them. The insurer's role in advancing funds and absorbing contributions ensured that general average adjustments could be implemented without paralyzing commercial operations, thereby preserving the continuity of maritime trade following casualties.[65]

A similar relationship is observable between marine insurance and the law of salvage, which historically sought to incentivise voluntary assistance to vessels and property in peril at sea.[66] The traditional "no cure, no pay" principle aligned the interests of salvors with those of ship-owners and insurers by conditioning remuneration upon successful intervention. Marine insurers have long been indirectly involved in salvage operations, as the preservation of insured property reduces the magnitude of loss payable under insurance policies.[67] Over time, the scope of salvage law expanded beyond the preservation of property to encompass the protection of the marine environment, particularly with the recognition of special compensation regimes.[68] Marine insurance, particularly through mutual insurance arrangements such as protection and indemnity (P&I) cover, adapted to this shift by extending coverage to liabilities arising from environmental damage and salvage-related obligations. In this way, marine insurance evolved in response to changing societal values while remaining anchored in its original function of mitigating maritime risk.[69]

The historical significance of marine insurance is further illustrated by its relationship with collision liability. Ship collisions have long been among the most frequent and financially consequential maritime incidents, giving rise to complex questions of fault, causation, and the

[63] Yvonne Baatz, *Maritime Law.*

[64] *Ibid*.

[65] *Ibid*.

[66] Christopher Hill, *Maritime Law.*

[67] *Ibid*

[68] *Ibid*.

[69] *Ibid*.

distribution of loss.[70] Traditional collision regimes were premised upon fault-based liability, which is negligence, requiring proof of negligent conduct or omission.[71] While historically, courts applied a rule of equal division of damages, modern regimes divide loss proportionally to the degree of fault, or equally only where different degrees of fault cannot be established.[72] Such liability exposure posed existential risks to ship-owners, effectively threatening instant bankruptcy, particularly where collisions resulted in extensive property damage or loss of life. Marine insurance emerged as the primary mechanism through which these risks could be absorbed and redistributed, enabling ship-owners to continue operating despite the danger of navigational accidents.[73] The historical development of hull insurance and protection and indemnity (P&I) insurance reflects a functional differentiation in coverage driven by the case *De Vaux v Salvador* (1836). This resulted in hull policies covering damage to the insured vessel and typically three-fourths of liability to the other vessel, while P&I Clubs emerged to cover the remaining one-fourth of liability, as well as distinct categories of loss excluded from hull cover, such as damage to harbours and loss of life or personal injury.[74] By rendering collision liability insurable, marine insurance contributed decisively to the stability and resilience of maritime commerce.

The progressive codification and internationalisation of maritime law during the nineteenth and twentieth centuries further shaped the historical trajectory of marine insurance. The adoption of national statutes, such as the Marine Insurance Act 1906 and Merchant Shipping Acts in the UK, and international conventions governing collision and salvage, e.g., 1910 Collision Convention and 1989 Salvage Convention, limitation of liability, and pollution introduced standardised liability regimes that directly influenced the scope and structure of insurance coverage.[75] Marine insurance law, while remaining fundamentally contractual in nature, became increasingly intertwined with public regulation and international norms, such as the requirement for compulsory insurance certificates under pollution conventions.[76] Insurers were no longer passive indemnifiers of loss but active participants in a regulatory environment that

[70] S. Gault, S. Hazlewood and A. Tettenborn (eds), *Marsden on Collisions at Sea* (13th edn, Sweet & Maxwell 2003); Yvonne Baatz, *Maritime Law.*

[71] *Ibid*.

[72] Christopher Hill, *Maritime Law*; Yvonne Baatz, *Maritime Law.*

[73] Aleka Mandaraka-Sheppard, *Modern Maritime Law (Volume 2): Managing Risks and Liabilities*.

[74] Geoffrey Hudson, Tim Madge and Keith Sturges, *Marine Insurance Clauses*.

[75] *Ibid*.

[76] Yvonne Baatz, *Maritime Law.*

emphasized safety, risk prevention, and environmental protection.[77] This transformation is reflected in the growing importance of compliance-based underwriting, whereby adherence to international safety standards and risk management protocols has become a condition of coverage.[78]

B. Key Principles and Concepts in Marine Insurance

Marine insurance contracts are governed by a distinctive set of principles and concepts that have developed historically in response to the exceptional risks of maritime activity and that continue to differentiate marine insurance from other branches of insurance law. These are not merely technical rules of contract law since they are designed to preserve equilibrium in a legal relationship marked by uncertainty, asymmetry of information, and the potentially catastrophic nature of maritime loss.

1. Indemnity and Insurable Interest

The principle of indemnity constitutes the structural foundation of marine insurance contracts and reflects the fundamental juridical proposition that marine insurance is not a contract of gain but one of compensation.[79] The obligation of the insurer is limited to placing the assured, so far as money can achieve, in the same financial position as if the insured loss had not occurred, but no better. This principle historically emerged to differentiate marine insurance from speculative or wagering arrangements that threatened commercial morality. Policies such as PPI (Policy Proof of Interest) on disbursements have been condemned by the House of Lords as "*a gamble, discountenanced by sound principle and not enforceable by law*".[80] In the maritime context, where losses are often sudden and catastrophic, the indemnity principle performs a crucial stabilising function by ensuring that insurance operates as a risk-management tool rather than a profit-generating instrument.

The application of indemnity in marine insurance is shaped by the characteristics of maritime property and ventures. Ships and cargo are exposed to volatile market conditions, depreciation, and fluctuating freight values, rendering post-loss valuation particularly complex. To address these difficulties, marine insurance law permits the use of agreed or valued policies, whereby the parties stipulate in advance the value of the insured subject matter. This custom solves

[77] Aleka Mandaraka-Sheppard, *Modern Maritime Law (Volume 2): Managing Risks and Liabilities*.

[78] Geoffrey Hudson, Tim Madge and Keith Sturges, *Marine Insurance Clauses*.

[79] *Ibid*.

[80] *Ibid*.

problems regarding the amount to be settled in the event of a total loss.[81] Such valuation does not negate the indemnity principle but rather operationalizes it within a commercial environment where speed, certainty, and liquidity are essential. The agreed value functions as a conclusive measure of indemnity in the event of total loss, reflecting a pragmatic accommodation between legal theory and maritime commercial practice.[82]

The doctrine of insurable interest is closely intertwined with indemnity, which serves as a juridical safeguard against speculative insurance. Insurable interest requires that the assured have a legally recognised relationship to the insured subject matter such that he or she would benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto.[83] Historically, this requirement was introduced to curb the proliferation of wagering policies, particularly prevalent in early marine insurance markets, where individuals insured ships or cargoes in which they held no genuine interest. In marine insurance, the concept of insurable interest is interpreted expansively under Section 5 of the UK Marine Insurance Act of 1906, reflecting the nature of maritime ventures. Ship-owners, charterers, who may have an interest in advance freight, cargo owners, mortgagees, who have an interest in respect of any sum due under the mortgage, and even parties with contingent contractual rights may possess insurable interests, provided that loss would cause them measurable economic detriment, or they may incur liability in respect thereof.[84]

Nevertheless, the requirement of insurable interest remains indispensable in preserving the legitimacy of marine insurance as a compensatory institution; the assured must be interested in the subject-matter insured at the time of the loss, though he need not be interested when the insurance is affected. By ensuring that recovery corresponds to genuine loss, the doctrines of indemnity and insurable interest collectively anchor marine insurance within the broader normative framework of maritime law and commercial fairness.[85]

[81] Geoffrey Hudson, Tim Madge and Keith Sturges, *Marine Insurance Clauses*.

[82] *Ibid*.

[83] Barış Soyer and Andrew Tettenborn, *Maritime Liabilities in a Global and Regional Context* (Maritime and Transport Law Library, Informa Law from Routledge 2018).

[84] *Ibid*.

[85] Geoffrey Hudson, Tim Madge and Keith Sturges, *Marine Insurance Clauses*.

2. Utmost Good Faith (*Uberrimae Fidei*)

The doctrine of utmost good faith (*uberrimae fidei*), codified in Section 17 of the UK Marine Insurance Act 1906, represents one of the most distinctive and historically entrenched principles of marine insurance law[86]. Unlike ordinary commercial contracts, where caveat emptor ("*let the buyer beware*") typically prevails, marine insurance imposes an enhanced duty of disclosure upon the parties, particularly on the assured, requiring full and frank communication of all material facts before the conclusion of the contract.[87] This obligation reflects the structural asymmetry of information inherent in marine insurance, where the assured typically possesses superior knowledge of the vessel, voyage, cargo, and operational conditions, while the insurer must assess risk based largely on the information provided.[88]

In this context, materiality is determined by reference to whether a fact would influence the judgment of a prudent insurer in fixing the premium or determining whether to accept the risk. However, judicial interpretation established that the insurer must also prove inducement, meaning the non-disclosure actually influenced the specific underwriter to enter the contract.[89]

The duty of the assured extends not only to facts of which he has actual knowledge but also, historically, to those which he ought to have known in the ordinary course of business. This standard emphasises the reliance placed upon disclosure as the foundation of risk assessment. The severity of the traditional remedy for breach, avoidance of the contract *ab initio*, illustrates the centrality of good faith to the insurance relationship.[90]

The historical justification relies on facts such as marine insurers cannot feasibly inspect every vessel or verify every voyage condition. The doctrine of utmost good faith thus operates as a legal substitute for physical inspection, enabling insurers to price risk accurately. Without such a doctrine, marine insurance markets would be vulnerable to adverse selection and moral hazard, undermining commercial viability.[91]

Modern legal developments, specifically the UK Insurance Act 2015, have moderated the harshness of traditional remedies. Accordingly, for non-consumer contracts, the 2015 Act replaced the duty of disclosure with a *duty of fair presentation*. While the rationale of

[86] Yvonne Baatz, *Maritime Law.*

[87] Aleka Mandaraka-Sheppard, *Modern Maritime Law (Volume 2): Managing Risks and Liabilities*.

[88] Yvonne Baatz, *Maritime Law.*

[89] *Ibid*.

[90] Aleka Mandaraka-Sheppard, *Modern Maritime Law (Volume 2): Managing Risks and Liabilities*.

[91] Yvonne Baatz, *Maritime Law.*

transparency remains, the Act abolished the "avoidance only" remedy for non-fraudulent breaches.[92]

3. Perils of the Sea and Marine Perils

The concept of perils of the sea occupies a central position in marine insurance contracts and represents one of the oldest and most litigated categories of insured risk. Traditionally, perils of the sea refer to fortuitous accidents or casualties of the sea, as opposed to the ordinary action of the winds and waves.[93] While historically this implied conditions of an extraordinary nature, modern jurisprudence clarifies that the "extraordinary" element refers to the effect of the sea on the vessel rather than the severity of the weather itself. Thus, a loss may be a peril of the sea even if the weather conditions were foreseeable or not exceptionally severe. This distinction reflects the requirement of fortuity, distinguishing insurable risk from certainty, inevitable deterioration, or ordinary wear and tear.[94]

Marine perils contain a wide category of risks, including not only natural hazards such as storms, waves, and grounding, but also human-induced risks such as collision and jettison.[95] Piracy was also traditionally considered a peril of the sea; however, its classification has fluctuated over time, moving to war risks in 1937, back to marine risks in 1983, and often excluded again in modern policies to be covered under war risks.[96] The classification of a loss as resulting from a peril of the sea often involves complex analysis, particularly where multiple causative factors are present. Marine insurance law addresses this complexity through the doctrine of proximate cause, which identifies the dominant or effective cause of the loss.[97]

Losses arising from inherent vice, the natural behaviour of the subject-matter, wilful misconduct, or unseaworthiness, specifically in time policies where the assured is privy to the condition, traditionally fall outside the scope of coverage.[98] However, it is important to note that claims for negligence of the master or crew are generally covered, as provided such negligence results in a covered loss and does not amount to the privity of the owner to

[92] Barış Soyer and Andrew Tettenborn, *Maritime Liabilities in a Global and Regional Context.*

[93] Geoffrey Hudson, Tim Madge and Keith Sturges, *Marine Insurance Clauses*.

[94] Yvonne Baatz, *Maritime Law.*

[95] *Ibid*.

[96] Geoffrey Hudson, Tim Madge and Keith Sturges, *Marine Insurance Clauses*.

[97] Yvonne Baatz, *Maritime Law.*

[98] Geoffrey Hudson, Tim Madge and Keith Sturges, *Marine Insurance Clauses*.

unseaworthiness. The jurisprudence thus reveals a consistent judicial effort to balance technical causation with commercial common sense.[99]

4. Constructive Total Loss (CTL) and Actual Total Loss (ATL)

The distinction between actual total loss and constructive total loss represents a defining feature of marine insurance law and reflects the unique economic realities of maritime casualties. An actual total loss (ATL) occurs under Section 57(1) of the UK Marine Insurance Act 1906, where the insured subject matter is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof. In maritime contexts, this may arise where a vessel sinks and cannot be recovered, or is reduced to a mere congeries of planks, or where cargo is destroyed completely. The legal consequence of actual total loss is straightforward since the assured is entitled to recover the full insured value under the policy without the necessity of giving a notice of abandonment.[100]

Constructive total loss (CTL), by contrast, embodies a more nuanced legal concept designed to address situations where the subject matter, although not physically destroyed, has become economically irrecoverable. A constructive total loss arises under Section 60 of the 1906 Act where the subject-matter is reasonably abandoned because its actual total loss appears unavoidable, or because the cost of repairing or recovering the insured property would exceed its value when repaired or recovered. This doctrine reflects a pragmatic recognition that maritime ventures are governed not merely by physical realities but by economic rationality.[101]

Abandonment plays a critical role in the operation of constructive total loss. While the act of abandonment in the sense of a mental decision or an economic test is distinct from the procedural requirement, the assured must generally give a notice of abandonment to elect to treat the loss as total. By doing so, the assured transfers any remaining proprietary interest in the subject matter to the insurer upon acceptance or validity of the abandonment; the insurer is entitled to take over the interest of the assured in whatever may remain of the subject matter.[102]

Historically, the doctrine of constructive total loss functioned as an essential corrective to the

[99] Yvonne Baatz, *Maritime Law*; Geoffrey Hudson, Tim Madge and Keith Sturges, *Marine Insurance Clauses*.

[100] Alperen Akkaya, 'Piracy in Somalia and Insurance Law: *Masefield AG v Amlin Corporate Member Ltd*' (2012) *Yalova Üniversitesi Hukuk Fakültesi Dergisi* 135.

[101] Yvonne Baatz, *Maritime Law.*

[102] Geoffrey Hudson, Tim Madge and Keith Sturges, *Marine Insurance Clauses*.

rigidity of actual total loss, appearing to have originated in cases of capture to decrease the hardship of an assured waiting for the chance of recapture.[103]

5. Subrogation and Contribution

Subrogation is a fundamental principle of marine insurance law that entitles the insurer, upon indemnifying the assured, to *step into the assured's shoes* and exercise any rights of recovery against third parties responsible for the loss.[104] This doctrine serves to prevent double recovery by the assured, as the contract is one of indemnity and the assured is not entitled to be indemnified for more than the loss suffered. In maritime contexts, subrogation plays a particularly significant role due to the prevalence of third-party liability scenarios, including collision, where insurers pursue recoveries based on the degree of fault.[105]

The historical function of subrogation extends beyond mere restitution. By enabling insurers to pursue recovery actions, the doctrine reinforces accountability within maritime commerce as insurers acquire all rights and remedies of the assured in and in respect of the subject matter insured as from the time of the casualty.[106] Subrogation also interacts closely with the principle of contribution, which governs situations where multiple insurers cover the same risk. Contribution ensures equitable distribution of loss among insurers, preventing the assured from selectively recovering from one insurer while leaving others uncompensated. This statutory right allows an insurer who has paid more than its proportion of the loss to recover from other insurers.[107]

6. Discussion on Ransom Payment

Historically, piracy has long been recognised as one of the marine perils, and losses arising from seizure, detention, or depredation by pirates were routinely covered under marine insurance. Early marine insurance practice treated piracy as a standard risk of navigation, listing pirates alongside the storms and shipwreck. In this historical framework, ransom payments were often perceived as a pragmatic means of mitigating loss.[108]

However, in contemporary practice, ransom payments have acquired heightened legal sensitivity due to the changing nature of piracy and the evolution of international law. Modern

[103] Geoffrey Hudson, Tim Madge and Keith Sturges, *Marine Insurance Clauses*.

[104] Yvonne Baatz, *Maritime Law.*

[105] *Ibid*.

[106] Geoffrey Hudson, Tim Madge and Keith Sturges, *Marine Insurance Clauses*.

[107] Barış Soyer and Andrew Tettenborn, *Maritime Liabilities in a Global and Regional Context.*

[108] Geoffrey Hudson, Tim Madge and Keith Sturges, *Marine Insurance Clauses*.

piracy, particularly in regions characterized by weak governance and organised crime, such as Somalia, frequently involves prolonged detention of vessels and crews, complex negotiation processes, and substantial financial demands.[109] Thus, ransom payments have emerged not merely as incidental losses, but as deliberate expenditures undertaken to secure the release of ships, cargo, and even human life. From a marine insurance perspective, such payments raise questions concerning their legal classification and their scope.[110]

One doctrinal approach to ransom payments in marine insurance law has been to characterize them as losses incurred to avoid greater insured losses. Under this doctrine, a ransom payment may be viewed as an extraordinary expenditure voluntarily incurred for the common safety of the maritime adventure, particularly where the alternative would be the total loss of the vessel, cargo, or crew. This aligns ransom payments with established maritime principles as the payment is often the only effective means of securing the release of the vessel, cargo, and crew to prevent a total loss.[111] Where such payments are treated as falling within the scope of insured marine perils, indemnity may be justified on the basis that the loss is causally linked to an insured risk and incurred in good faith to mitigate its consequences, often recoverable under the Sue and Labour clause as a reasonable measure to avert or minimize a loss.[112]

However, the availability of insurance cover for ransom payments is conditioned upon considerations of legality and public policy. Unlike traditional perils of the sea, ransom payments involve external legal regimes, such as international law, anti-terrorism legislation, and national criminal prohibitions on the financing of organized crime, even though the payment of ransom to pirates for "private ends" is not illegal under English law and is not contrary to public policy.[113] Where a ransom payment is made to an entity designated under sanctions regimes or associated with terrorist activity, irrespective of its maritime character, indemnification may be precluded on grounds of illegality. In such cases, marine insurance law yields to public law norms, stressing that contracts of insurance cannot operate to indemnify unlawful conduct. The obligation of the insurer to indemnify is therefore not absolute but subject to the legality of the underlying transaction in the applicable jurisdiction.[114]

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[109] Kontorovich, 'International Legal Responses to Piracy off the Coast of Somalia'.

[110] Geoffrey Hudson, Tim Madge and Keith Sturges, *Marine Insurance Clauses*.

[111] Ashwin Nair, '*Masefield AG v Amlin Corporate Member Ltd* [2010] 1 Lloyd's Rep 509' (2010) 24 Australian and New Zealand Maritime Law Journal 138.

[112] Akkaya, 'Piracy in Somalia and Insurance Law'.

[113] Nair, '*Masefield AG v Amlin Corporate Member Ltd* [2010] 1 Lloyd's Rep 509'.

[114] Akkaya, 'Piracy in Somalia and Insurance Law'.

Marine insurance contracts, while traditionally governed by private law principles of indemnity and risk allocation, are now routinely drafted and interpreted against mandatory legal restrictions that limit contractual freedom. Insurers frequently incorporate express exclusions relating to sanctions, terrorism, and illegal payments in contracts, thereby reinforcing public policy limitations. Such clauses serve to provide clarity to assured parties regarding the limits of coverage in piracy incidents.[115]

From a professional and commercial standpoint, the treatment of ransom payments in marine insurance practice has tended toward a pragmatic and risk-sensitive approach. The preservation of human life is a paramount consideration in maritime operations, and insurers, ship-owners, and P&I Clubs have been recognizing the extreme importance of securing the release of seafarers. At the same time, this approach is followed with great caution since routine indemnification of ransom payments may inadvertently encourage piracy by reducing its financial risk.[116]

IV. INTRODUCTION TO THE HIGH COURT OF ENGLAND AND WALES

A. Overview

The High Court of Justice of England and Wales, commonly known as the High Court, is one of the senior courts within the legal system of the United Kingdom. It was created by the Judicatures of 1873–1875, which unified the previously fragmented court system by merging the common law courts and the Court of Chancery into a single institution.[117] The High Court is a superior court of the record, with the jurisdiction over the civil cases of significant complexity or value, supervisory jurisdiction over inferior courts and tribunals, and certain criminal and constitutional functions.[118]

The High Court is organised into three principal divisions, reflecting the historical jurisdictions from which they evolved: the Queen's Bench Division, *which hears contract, tort, commercial, and public law disputes*; the Chancery Division, *which deals with trusts, estates, company law, and insolvency*; and the Family Division, *which addresses matrimonial and child welfare*

[115] Geoffrey Hudson, Tim Madge and Keith Sturges, *Marine Insurance Clauses*.

[116] Aleka Mandaraka-Sheppard, *Modern Maritime Law (Volume 2): Managing Risks and Liabilities*.

[117] Judicature Act 1873 (36 & 37 Vict c. 66).

[118] Senior Courts Act 1981, United Kingdom, c. 54.

matters.[119] Each division is presided over by a senior judge and operates under the general authority of the Lord Chief Justice, who is the head of the judiciary of England and Wales. Specialist courts have developed within these divisions to address the increasing complexity of modern disputes. *The Commercial Court*, situated within the Queen's Bench Division, is among the most significant of these specialist courts. The history, structure, jurisdiction, and jurisprudence of the Commercial Court illustrate both the adaptability of the English legal system and its continuing role in the global commerce.[120]

Image I: *The High Court of England and Wales*

B. The Commercial Court of the High Court of England and Wales

1. History

The Commercial Court is one of the most prominent specialist courts within the judicial system of England and Wales, forming part of the Queen's Bench Division of the High Court of Justice. It was created in 1895 by Lord Chief Justice Russell of Killowen as an experimental tribunal intended to address a perceived weakness in the English courts in dealing with

[119] Constitutional Reform Act 2005, c 4.

[120] Mary Keyes, 'Jurisdiction and Choice of Court' in Mark Feldman (ed), *International Commercial Courts: The Future of Transnational Adjudication* (Cambridge University Press 2022) 251.

commercial disputes.[121] The increasing complexity of commercial life in the late nineteenth century, driven by the expansion of the British Empire, industrialization, and the growth of international trade, had revealed the limitations of the traditional common law courts. Disputes involving shipping, insurance, banking, and commodities demanded rapid, expert, and commercially realistic decisions.[122]

The innovation of the Commercial Court lay in the creation of a specialist jurisdiction, where cases were heard by judges with extensive knowledge of commercial law and its practical applications.[123] Initially, the court operated under a limited mandate on a voluntary basis. Over time, demonstrated efficiency and legal expertise earned the confidence of the mercantile community, and within a few years, the court became a permanent fixture of the Queen's Bench Division.[124]

Throughout the twentieth century, the Commercial Court developed into an internationally respected forum for the resolution of complex commercial disputes. Its jurisprudence became widely cited, not only in England and Wales but also in other common law jurisdictions and in arbitral tribunals worldwide.[125] The emergence of London as a global financial centre further consolidated the court's importance. In the twenty-first century, it continues to attract high-value disputes involving multinational corporations, foreign states, and international trade contracts, thereby reinforcing its role as a global judicial institution.[126]

2. Structure

The Commercial Court is part of the Queen's Bench Division of the High Court of Justice.[127] It is staffed by judges of the High Court who are selected for their expertise and experience in commercial law. Judges of the Commercial Court are usually drawn from the ranks of the most senior barristers or solicitors, many of whom have practiced extensively in shipping, insurance, or international trade before their judicial appointments. [128]

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[121] Lord Russell of Killowen, *Report on the Commercial Court*, Parliamentary Papers (1895) Cmd 123.

[122] *Ibid.*

[123] Commercial Court Users' Committee, *Commercial Court Guide* (12th edn, 2022).

[124] *Ibid.*

[125] *Ibid.*

[126] Weixia Gu and Jacky Tam, 'The Global Rise of International Commercial Courts: Typology and Power Dynamics' (2021) 22 *Chicago Journal of International Law* 1.

[127] Senior Courts Act 1981, s 25.

[128] Commercial Court Users' Committee, *Commercial Court Guide* (12th edn, 2022).

The court operates under the general supervision of the president of the Queen's Bench Division, but it has its own distinctive procedures and practices. It is supported by the Commercial Court Users' Committee, which provides a forum for dialogue between judges, practitioners, and representatives of the business community.[129] This collaborative framework ensures that the court remains responsive to the needs of international commerce.[130]

The types of disputes that fall within the jurisdiction of the Commercial Court are defined broadly. They include cases relating to banking and financial services, insurance and reinsurance, shipping and admiralty matters, energy and natural resources, commodities trading, construction and engineering contracts, and arbitration-related applications.[131] Importantly, the Commercial Court has a significant role in supervising arbitration, both in the enforcement of arbitral awards and in applications to set aside awards under the Arbitration Act of 1996.[132]

3. Proceedings

The *proceedings* in the Commercial Court are governed by the Civil Procedure Rules of 1998, which provide the overarching framework for civil litigation in England and Wales.[133] The rules are supplemented by the Commercial Court Guide, a detailed practice manual designed to address the distinctive needs of commercial litigation.[134]

The overriding objective of the Civil Procedure Rules is to enable the court to deal with cases justly and at proportionate cost. This principle is fundamental in the Commercial Court, where disputes often involve substantial sums, multiple parties, and issues of international law. [135]

a. Admissibility

Admissibility refers to the legal appropriateness of a case or evidence being heard or considered by the court, determined by whether the dispute falls within the jurisdiction of the court and complies with procedural requirements.[136] Admissibility before the Commercial Court is

[129] Commercial Court Users' Committee, *Commercial Court Guide* (12th edn, 2022).

[130] *Ibid.*

[131] *Ibid.*

[132] Arbitration Act 1996, c 23.

[133] Civil Procedure Rules 1998, SI 1998/3132.

[134] *Ibid.*

[135] *Ibid.*

[136] Business Bliss Consultants FZE, 'The Admissibility of a Judgement in a Criminal Proceeding Vis-a-vis' (Lawteacher.net, October 2025) https://www.lawteacher.net/free-law-essays/criminal-law/admissibility-of-a-judgment-in-a-criminal-proceeding-law-essay.php?vref=1 accessed 2 October 2025.

determined by whether the dispute properly falls within its commercial jurisdiction and whether the claimant has satisfied the necessary procedural and substantive requirements to invoke the court's authority. The jurisdiction of the Commercial Court, as part of the Queen's Bench Division of the High Court of Justice, is defined by *Practice Direction 58 of the Civil Procedure Rules*, which provides that a "commercial claim" encompasses disputes arising out of contracts and transactions of a commercial nature, including those relating to the *sale of goods, carriage by land, air, or sea, banking and financial services, insurance and reinsurance, commodities trading, and construction and engineering contracts*.[137]

However, admissibility is not limited to jurisdictional scope. It extends to a broader assessment of whether the claim is procedurally proper and legally sustainable. The court must be satisfied that:

Jurisdictional competence exists that is, the dispute has a sufficient nexus to England and Wales to justify adjudication. Where the contract contains an exclusive jurisdiction clause or arbitration clause favoring another forum, the claim may be deemed *inadmissible*. For example, in "*The Atlantic Star"* (1974) AC 436, the House of Lords affirmed that proceedings brought in England may be stayed if a foreign forum is more appropriate.[138]

Locus standi, legal standing, is established. Only a party with a direct legal interest in the subject matter may bring a claim. A mere economic or moral interest, without legal entitlement, renders a claim inadmissible.[139]

Compliance with procedural prerequisites is demonstrated. This includes proper service of the claim form under Part 6 of the Civil Procedure Rules, adherence to any pre-action protocols, and observance of limitation periods under the Limitation Act of 1980.[140] Failure to comply with these procedural rules can result in the claim being struck out as inadmissible.

There is no abuse of process. The Commercial Court retains inherent jurisdiction to reject claims that amount to an abuse of process. The Commercial Court nevertheless retains an inherent jurisdiction to reject claims that amount to an abuse of process, such as those that involve duplicative proceedings, vexatious litigation, or attempts to circumvent the principle of *res judicata*[141]. In *Johnson v Gore Wood & Co* (2002) 2 AC 1, the House of Lords clarified

[137] Practice Direction 58 – Commercial Court, supplementing CPR Part 58, under the Civil Procedure Rules 1998, SI 1998/3132.

[138] *The Atlantic Star* (1974) AC 436 (HL).

[139] Neil Andrews, *English Civil Procedure* (OUP 2003) 45–48.

[140] Limitation Act 1980, c 58; Civil Procedure Rules of 1998, SI 1998/3132, Part 6.

[141] *Res judicata* means an issue already adjudicated.

that claims reasserting matters that should have been raised in earlier proceedings are inadmissible on grounds of abuse of process.[142]

Observance of statutory and equitable limitations are complied. Certain claims are deemed inadmissible by operation of statute or public policy. For instance, claims that contravene sanctions regimes, violate statutory prohibitions, or are tainted by illegality. Similarly, equitable doctrines such as *clean hands and laches* may render a claim inadmissible where the conduct of the claimant has been unconscionable or where there has been undue delay in asserting rights.[143] Admissibility thus performs a gatekeeping function within the procedural framework of the Commercial Court. It ensures that only disputes meeting jurisdictional, procedural, and ethical thresholds proceed to the merits stage. By filtering out claims that are either procedurally defective, jurisdictionally misplaced, or legally abusive, the court safeguards the efficiency and integrity of its proceedings. This rigorous approach to admissibility contributes to the reputation of the Commercial Court for procedural discipline and legal certainty in international dispute resolution.[144]

b. Contentious Cases

In the context of the Commercial Court, *contentious cases* refer to proceedings in which there is a concrete dispute between parties requiring judicial determination, typically involving contested issues of fact or law, as opposed to non-contentious applications such as approvals, registrations, or enforcement orders made by consent. The docket of the Commercial Court is dominated by contentious litigation, often involving high-value and high-profile disputes. Many of these cases have an international dimension, reflecting the status of London as a global centre of dispute resolution. For example, in *Mareva Compania Naviera SA v International Bulkcarriers SA* (1980) 1 All ER 213[145], the court developed the freezing injunction, a landmark equitable remedy designed to prevent defendants from dissipating assets before judgment. Similarly, the court has played a key role in insurance and reinsurance litigation, shaping doctrines of utmost good faith and disclosure. The *freezing injunction*, formerly known as a *Mareva injunction,* is a provisional remedy that restrains a defendant from transferring or

[142] *Johnson v Gore Wood & Co* (2002) 2 AC 1 (HL).

[143] *Clean-hands doctrine*, *Wex: Legal Information Institute*, Cornell Law School (last reviewed September 2022) https://www.law.cornell.edu/wex/clean_hands_doctrine accessed 12 February 2026.

[144] Andrew Burrows, *English Private Law* (3rd edn, OUP 2013) 180–182.

[145] *Mareva Compania Naviera SA v International Bulkcarriers SA* (1980) 1 All ER 213.

disposing of assets pending the outcome of litigation, ensuring that any eventual judgment is not rendered ineffective by prior asset dissipation.

The principle of *utmost good faith*, particularly significant in insurance contracts, imposes a duty on both parties, especially the insured, to act honestly and disclose all material facts that could influence the decision of the insurer to accept the risk or determine the premium. *Disclosure*, in this context, refers to the obligation of parties to reveal relevant information and documents to the opposing side and the court, thereby promoting transparency and fairness in the adjudicative process.

The court also deals with cases of profound constitutional or political significance when they intersect with commercial matters. For instance, issues of state immunity arise when a foreign sovereign or its instrumentalities are sued in connection with commercial transactions. In *AIG Capital Partners Inc v Republic of Kazakhstan*[146], the court examined whether Kazakhstan could claim immunity in proceedings concerning an investment dispute, illustrating how the boundaries between sovereign acts and commercial conduct are judicially assessed.[147] Similarly, the Commercial Court has addressed international sanctions, such as in *Melli Bank plc v Holbud Ltd*[148], where the enforcement of EU restrictive measures against Iranian entities raised questions about the validity of commercial contracts concluded under sanctions regimes.[149] The court also plays a vital role *in recognition and enforcement of foreign judgments and arbitral awards*, ensuring that international commercial obligations are respected within the English legal order. This was exemplified in *Yukos Capital SARL v OJSC Rosneft Oil Co*[150], where the court balanced the comity and the public policy considerations in enforcing arbitral awards set aside by Russian courts.[151]

[146] *AIG Capital Partners Inc v Republic of Kazakhstan* (2005) EWHC 2239 (Comm), (2006) 1 WLR 1420.

[147] Hazel Fox and Philippa Webb, *The Law of State Immunity* (3rd edn, OUP 2013) 45–48; August Reinisch, 'European Court Practice Concerning State Immunity from Enforcement Measures' (2006) 17 *EJIL* 803.

[148] *Melli Bank plc v Holbud Ltd* (2013) EWCA Civ 1506, (2014) 1 WLR 2191.

[149] Gráinne de Búrca, 'EU Law and the Powers of the European Court of Justice in the Context of International Sanctions' (2017) 40 *Fordham Int'l LJ* 1347.

[150] *Yukos Capital SARL v OJSC Rosneft Oil Co* (2014) EWHC 2188 (Comm), (2014) 2 Lloyd's Rep 435.

[151] Antonios Tzanakopoulos, 'Judicial Dialogue in Multi-Level Governance: The Yukos Case before English Courts' (2015) 64 *ICLQ* 815; Filip De Ly, 'Enforcement of Arbitral Awards and the Public Policy Exception' (2013) 30 *Journal of International Arbitration* 649.

c. Merits

The concept of the *merits* lies at the heart of judicial reasoning and procedural fairness. In legal discourse, a case decided *on the merits* refers to an adjudication based on the *substantive rights and obligations of the parties*, rather than on technicalities or procedural grounds. The notion thus distinguishes genuine judicial evaluation of facts and law from decisions arising out of jurisdictional bars, procedural defaults, or preliminary objections.

Assessing the merits of a dispute ensures that justice is rendered not merely in form but in substance, aligning with the fundamental principle that courts exist to resolve controversies according to law and evidence.[152] When disputes proceed to a full hearing, the Commercial Court adjudicates on the merits of the case, considering both the factual evidence and the applicable legal principles. Proceedings are adversarial in nature, involving extensive pleadings, disclosure of documents, expert testimony, and detailed oral argument. Judgments on the merits not only resolve the immediate dispute but also contribute to the development of commercial jurisprudence.[153]

The authority of the decisions of the Commercial Court extends beyond England and Wales, as they are frequently cited by foreign courts and arbitral tribunals. This transnational influence reflects the global prestige of English commercial law and its centrality in international trade and finance. For instance, judgments of the Commercial Court have been cited by the *Singapore Court of Appeal* in interpreting contractual principles under English law, as in *R1 International Pte Ltd v Lonstroff AG* (2015) SGCA 56[154], and by the *Hong Kong Court of Final Appeal* when determining issues of insurance and reinsurance, as in *China Insurance Co (HK) Ltd v Liberty Insurance Pte Ltd* (2021) HKCFA 3.[155]

Likewise, international arbitral tribunals operating under the International Chamber of Commerce and London Court of International Arbitration Rules frequently rely on Commercial Court jurisprudence in construing doctrines such as frustration, implied terms, and

[152] 'on the merits', *Wex*, Cornell Law School, last reviewed August 2020 https://www.law.cornell.edu/wex/on_the_merits accessed 5 October 2025.

[153] Commercial Court Users' Committee, *Commercial Court Guide* (12th edn, 2022).

[154] *R1 International Pte Ltd v Lonstroff AG* (2015) SGCA 56, (2015) 1 SLR 521 (Singapore Court of Appeal).

[155] *China Insurance Co (HK) Ltd v Liberty Insurance Pte Ltd* [2021] HKCFA 3, (2021) 24 HKCFAR 1 (Hong Kong Court of Final Appeal).

misrepresentation.[156] The persuasive authority of these decisions thus reinforces London's reputation as a leading forum for commercial dispute resolution.

4. Sources

The Commercial Court applies the same sources of law as the wider High Court, but with a particular focus on commercial contexts. The present dispute is accordingly heard before the Commercial Court, a specialised division of the High Court tasked with adjudicating complex commercial and international trade disputes.

a. Primary Sources

Primary sources are the foundational legal instruments that establish a court's authority, jurisdiction, and procedural framework. For the Commercial Court, these include Acts of Parliament such as the *Senior Courts Act of 1981*, which defines the constitution and powers of the High Court, and the *Arbitration Act of 1996*, which governs arbitration proceedings in England and Wales.[157] These statutes provide the court with its procedural and substantive powers, ensuring consistency across commercial adjudication. Academic commentary has highlighted that primary legislation both constrains and empowers courts to develop specialized commercial jurisprudence.

b. Secondary Sources

Secondary sources comprise subordinate legislation made under the authority of primary statutes. In the Commercial Court, statutory instruments regulating financial services, shipping, and arbitration procedures provide the detailed framework for implementing statutory provisions. Scholars have noted that secondary legislation often shapes the practical operation of commercial justice, bridging the gap between high-level statutory norms and everyday procedural realities.[158]

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[156] Julian D M Lew, Loukas A Mistelis and Stefan Kröll, *Comparative International Commercial; Arbitration* (Kluwer Law International 2003) 546–548; Gary B Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 2107–2110.

[157] Senior Courts Act 1981, c 54; Arbitration Act 1996, c 23; John F. McEldowney, 'The Development of Commercial Courts in England' (2019) 70 *CLJ* 1.

[158] Department for Business and Trade, *Statutory Instruments on Financial Services and Arbitration* (UK Government, 2024) https://www.legislation.gov.uk accessed 11 October 2025; Peter Cane, 'Subordinate Legislation and Judicial Control' (2008) 71 *M.L.R.* 45.

c. Judicial Precedent

Judicial precedent, stare decisis, refers to the doctrine under which courts are bound to follow the legal principles established in previous decisions when adjudicating similar cases, thereby ensuring consistency and predictability in the law.[159] *Judicial precedent* is central to the English legal system. The Commercial Court is bound by the decisions of the Court of Appeal and Supreme Court, while its own judgments are regarded as highly persuasive authorities. Recent articles have explored the cross-border influence of Commercial Court decisions, noting how courts in Singapore, Hong Kong, and international arbitral tribunals regularly cite them when interpreting contractual and insurance law principles.[160]

d. Common Law and Equitable Doctrines

Common law and equitable doctrines constitute a dynamic body of judge-made law that remains central to commercial litigation. Through doctrines such as good faith, restitution, and fiduciary duty, these principles allow the court to deliver justice beyond statutory confines, ensuring fairness and adaptability in complex commercial matters.[161]

e. Human Rights and International Obligations

The Human Rights Act of 1998 incorporates the European Convention on Human Rights, ensuring procedural fairness, access to justice, and fair trial guarantees. Furthermore, retained European Union law, preserved under the European Union (Withdrawal) Act of 2018, continues to influence areas such as competition, consumer protection, and financial regulation.[162] Legal scholarship has examined how these supranational instruments shape domestic commercial adjudication, particularly in disputes with international dimensions.[163]

f. International and Transnational Sources

The Commercial Court also recognises international commercial norms and transnational instruments, including rules established by trade associations such as the *Grain and Feed Trade Association* and principles derived from *lex mercatoria*. The concept of *lex mercatoria* can be understood as a contemporary manifestation of the *ius commune*.[164] In essence, the terms *lex*

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[159] Neil Duxbury, *The Nature and Authority of Precedent* (Cambridge University Press 2008) 1.

[160] Andrew Dickinson and Edwin Peel, *Commercial Court Practice* (OUP 2023) 54; Jacky Tam, 'The Global Influence of English Commercial Court Decisions' (2020) 22 *CJIL* 233.

[161] Jill Poole, *Textbook on Contract Law* (14th edn, OUP 2021).

[162] Human Rights Act 1998, c 42; European Union (Withdrawal) Act 2018, c 16.

[163] Hazel Fox, 'Human Rights in Commercial Litigation' (2018) 81 *M.L.R.* 231.

[164] Arzu Oğuz, *Karşılaştırmalı Hukuk* (Ankara, 2003) 57.

mercatoria, *ius commune*, and the law merchant all converge in meaning, each reflecting the historical evolution of transnational commercial norms that have guided trade across jurisdictions.[165] These sources, while not binding, are often incorporated by reference into commercial contracts, reflecting the court's responsiveness to global commercial practice.[166]

5. Overview

The Commercial Court of the High Court of England and Wales represents a remarkable fusion of tradition and modernity. Established in the late nineteenth century to meet the needs of a changing commercial world, it has evolved into one of the most respected commercial courts globally. Its jurisprudence shapes the practice of international trade, shipping, insurance, and financial law, while its procedural innovations continue to set benchmarks for efficiency and fairness.[167] The authority of the court derives not only from its statutory jurisdiction but also from its reputation for expertise, impartiality, and adaptability. By resolving disputes of immense economic and political importance, the Commercial Court reinforces the rule of law and ensures that London remains an ascendant centre for international dispute resolution. In this respect, the Commercial Court is more than a domestic tribunal: it is a global judicial institution whose judgments influence the development of commercial law across jurisdictions.[168]

V. CASE BEFORE THE COURT

A. Background of the Case

The decision in *Masefield AG v Amlin Corporate Member Ltd* (2010) EWHC 280 (Comm)*, the judgment of the England and Wales High Court in 2010*, *delivered by the Commercial Court*[169]*,* represents a leading authority on the interpretation of *actual total loss* and *constructive total loss* under the Marine Insurance Act of 1906. [170] As it was explained in the previous sections *actual total loss* means a situation where the insured subject matter is destroyed , or the insured

[165] Sülün Güçer, 'Lex Mercatoria in International Arbitration' (2009) 1 Ankara Bar Review.

[166] Roy Goode, Herbert Kronke and Ewan McKendrick *Transnational Commercial Law: Text, Cases, and Materials* (2nd edn, OUP 2015).

[167] Commercial Court Users' Committee, *Commercial Court Guide* (12th edn, 2022).

[168] *Ibid.*

[169] *Masefield AG v Amlin Corporate Member Ltd* (2010) EWHC 280 (Comm).

[170] Marine Insurance Act 1906 (6 Edw 7 c. 41).

is irretrievably deprived of it, so that it ceases to be the thing insured.[171] Moreover, as it was explained before, *constructive total loss* means a situation where the subject matter insured is not completely destroyed or lost, but the damage or deprivation is so extensive that the cost of recovery or repair would exceed its value, making it reasonable for the insured to abandon it to the insurer.[172]

Herein the present case arose out of the hijacking of the vessel *Bunga Melati Dua* by the Federal Republic of Somalia pirates in August 2008. The claimant, *Masefield AG*, was the owner of two parcels of biodiesel stowed on the vessel, and the defendant, *Amlin Corporate Member Ltd*, was the insurer under an open cover policy.[173] The capture of the vessel raised fundamental questions regarding the scope of marine insurance protection. Specifically, the claimant argued that the seizure of the cargo by pirates amounted either to an *actual total loss* under section 57(1) of the Marine Insurance Act of 1906, based on an alleged *irretrievable deprivation*[174] of property, or to a *constructive total loss* under section 60(1) of the same Act, as the cargo had been abandoned due to the apparently unavoidable risk of loss.[175]

The dispute also raised significant issues of principle concerning public policy and the legal status of ransom payments in English law, in the context of a rapidly evolving landscape of modern piracy and maritime commerce.[176] The claimant argued that ransom payments to Somali pirates should be treated as unlawful or contrary to public policy, such that they could not be taken into account when assessing whether the cargo was irretrievably lost and therefore constituted an actual total loss under section 57(1) of the Marine Insurance Act of 1906.[177] The Commercial Court rejected this submission, holding that, in the absence of a statutory prohibition against ransom payments and given that such payments were not illegal under English law, they could not be disregarded in the assessment of deprivation for the purposes of

[171] Marine Insurance Act 1906 (6 Edw 7 c. 41), s 57(1).

[172] Marine Insurance Act 1906 (6 Edw 7 c. 41), s 60(1).

[173] *Masefield AG v Amlin Corporate Member Ltd* (2010) EWHC 280 (Comm), (2010) 1 Lloyd's Rep 509.

[174] *Irretrievable deprivation* means the insured has permanently lost the subject matter and has no reasonable prospect of regaining it.

[175] Marine Insurance Act 1906 (6 Edw 7 c. 41), s 57(1), s 60(1).

[176] For a general overview of issues relating to modern piracy and ransom in maritime commerce see: Dino Gliha, 'Piracy in Light of Marine Insurance Law with a View of Ransom Payments' (2018) 39(2) Zbornik Pravnog Fakulteta u Rijeci 833.

[177] *Masefield AG v Amlin Corporate Member Ltd* (2010) EWHC 280 (Comm); Marine Insurance Act of 1906, s 57(1).

determining total loss.[178] This reasoning is consistent with doctrinal interpretations that, while ransom payments may be morally debatable, they are treated as part of the commercial risk environment in marine insurance law and are not directly contrary to public policy within the context of insurance.[179]

Image III: *Bunga Melati Dua*

B. Historical Timeline of the Events

1. Firstly, on 19 August 2008, the vessel *Bunga Melati Dua* was seized by Somali pirates in the Gulf of Aden, a maritime corridor which, by 2008, had become one of the most piracy-prone regions in the world. The vessel was owned by MISC Berhad (Malaysian International Shipping Corporation) and was engaged in an international commercial voyage.[180] The vessel together with her crew and cargo were taken to Somali waters. On board was a substantial cargo, including two parcels of bio-diesel (approximately 15.000 metric tonnes) owned by Masefield AG. The insurer of the cargo was Amlin

[178] See also CMS, 'Marine insurance: recovery under cargo policy where ransom paid' (March 2010) (noting that ransom payments are not contrary to English public policy and may be the only feasible means of recovery).

[179] Popham, Archie, 'Ransom Payments, Maritime Insurance, and English Common Law: A Legal and Economic Dilemma' (2025) 4(1) *St Andrews Law Journal*.

[180] *Masefield AG v Amlin Corporate Member Ltd* (2010) EWHC 280 (Comm), (2010) 1 Lloyd's Rep 509, (n 21) [3]–[8].

Corporate Member Ltd under an open cover contract. This policy covered loss by both piracy and theft.

2. The vessel, together with her crew and cargo, was diverted towards Somali territorial waters and anchored off the Somali coast. From this date onward, the assured was entirely deprived of possession, control, and commercial use of the cargo. While no physical damage to the goods was reported at the time of seizure, the detention was indefinite in duration and dependent upon negotiations with non-state actors operating outside any recognized legal framework. During the course of the capture, one member of the crew of the vessel was killed. Thereafter no attempt was made to recover the vessel or cargo by military intervention.

3. Soon after the seizure, negotiations between the pirates and the owners of the vessel (MISC) were commenced with a view to obtaining the release of the vessel, cargo and crew. In addition, from the moment the ship was seized, subsequent developments were reported in the press and circulated among the relevant parties.

4. The following represents a selection of such exchanges and reports;

a) On 20 August 2008, only a day after the seizure, MISC Berhad sent an email stating that *MISC is in the progress the negotiation with the pirates*.

b) On 24 August 2008, the Claimant circulated an email internally with the un-confirmed information that *the pirates had contacted the owners and had demanded a ransom of $2 million and that the Malaysian government had asked the US government for help.*

c) On 26 August 2008, the Claimant received a message from MISC stating that negotiations are ongoing to secure the safe release of the crew members. On the same day Lloyd's List reported that *the Malaysian government is holding talks with the pirates behind the attack to secure the release of the 39 crew members.*

d) On 2 September 2008, MISC issued a press release confirming that *negotiations are ongoing for the safe release of the crew of MT Bunga Melati Dua… At least 30 ships have been hijacked in the Gulf of Aden this year… In all known cases, the crew are known to be unharmed by the pirates.* On 2 September 2008, an MISC representative confirmed that *it has a team in constant contact with the pirates.* In the same report, it was also stated that *the pirates are reported to have demanded over RM3mil for the*

release of each vessel and *two Malaysian navy vessels with navy commandos and rations are heading to the Gulf of Aden to help free the crewmen and the tank Bunga Melati Dua*.

5. About a month after the vessel had been seized the Claimant served a *notice of abandonment* [181] on the insurer, declaring that the cargo was *a total loss*. The insurer declined the notice, disputing that a total loss had occurred but the parties entered into an agreement that proceedings should be deemed to have commenced on 18 September 2008. [182]

6. About 10 days later MISC paid a ransom to the pirates and the vessel was shortly thereafter released together with her crew. Following the payment of a ransom by the shipowner, the vessel was released. On 26 October 2008, the vessel arrived in Rotterdam, and the cargo was discharged intact.[183]

7. Numerous commercial vessels had been captured in the Gulf of Aden and Western Indian Ocean during 2007–2008. Bunga Melati Dua was the sixth ship to be hijacked in 2008. Industry reports and maritime security analyses indicated that ransom payments had become a frequent and, in many cases, effective mechanism for securing release. However, the outcome of any individual detention remained inherently uncertain. The amount demanded, the length of captivity, the safety of the crew, and the integrity of the cargo varied significantly from case to case. Thus, while ransom was commonly paid in prior incidents, no legal or practical certainty existed at the moment of seizure that payment would occur, that negotiations would succeed, or that release would be timely. The process of negotiation demonstrated that ransom was both a realistic and customary mechanism of release.[184]

[181] *Notice of abandonment* means a formal written statement declaring insured gives up insured item or responsibility.

[182] *Masefield AG v Amlin Corporate Member Ltd* (2010) EWHC 280 (Comm).

[183] *Ibid.*

[184] *Ibid.*

8. *The marine open cover*[185] was in place for all of the shipments of the Claimant commenced during the policy period. It was obligatory from both the perspective of the assured and the insurer. The policy was an all risks policy albeit with a war exclusion clause which read as follows:

*"**6.** In no case shall this insurance cover loss, damage or expense caused by …*

***6.2.** capture, seizure, arrest restraint or detainment (piracy excepted), and the consequences thereof or any attempt thereat.*

***13.** No claim for Constructive Total Loss shall be recoverable hereunder unless the subject-matter insured is reasonably abandoned either on account of its actual loss appearing to be unavoidable or because the cost of recovering, reconditioning and forwarding the subject-matter to the destination to which it is insured would exceed its value on arrival."*

9. Masefield AG issued proceedings against Amlin Corporate Member Ltd in the High Court of Justice, Queen's Bench Division, the Commercial Court, seeking a declaration of actual and constructive total loss, indemnity for the insured value of the cargo, interest, and costs.

10. The Claim Form and Particulars of Claim were filed and served in accordance with the Civil Procedure Rules 1998, pt 6. The Defendant, Amlin Corporate Member Ltd, filed a Defence and Counterclaim disputing the total loss claim and asserting that ransom payments and subsequent release negated any irretrievable deprivation.[186]

11. The primary issue is whether, at the time the notice of abandonment was served on 18 September 2008, the Claimant had been irretrievably deprived of the cargo (and the shipowner of the vessel), thereby rendering the cargo an actual total loss, notwithstanding its subsequent recovery following the payment of ransom by or on behalf of the shipowners.

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[185] *A marine open cover* is an umbrella insurance agreement under which an insurer provides coverage for multiple shipments over a specified period, typically for six to twelve months.

[186] *Ibid,* Civil Procedure Rules 1998, SI 1998/3132.

C. CLAIMS OF THE PARTIES

1. Claims of the Claimant Party

1. The Claimant, Masefield AG, brought proceedings against Amlin Corporate Member Ltd following the hijacking of the vessel Bunga Melati Dua by Somali pirates in early 2010. The primary submission of the Claimant was that the seizure of the vessel and cargo constituted an *actual total loss (ATL)* within the meaning of section 57(1) of the Marine Insurance Act of 1906. It argued that the detention by pirates amounted to an *"irretrievable deprivation*" of the insured property. Emphasis was placed on the fact that, at the time the notice of abandonment was tendered, the vessel remained under pirate control and its release was uncertain. The Claimant maintained that the practical loss of control and the absence of any guaranteed recovery rendered the deprivation legally irretrievable.[187]

2. In the alternative, Masefield AG argued that the circumstances amounted to a *constructive total loss (CTL)* under section 60(1) of the Marine Insurance Act of 1906, asserting that the cargo was reasonably abandoned due to the apparent unavoidable total loss.[188]

3. The Claimant does not dispute that there existed a possibility, perhaps even a likelihood, that MISC might eventually secure the release of the vessel through the payment of a ransom. However, it submits that such a possibility must be disregarded for the purposes of ss 57(1) and 60(1) of the Marine Insurance Act of 1906 and cannot defeat a claim for total loss.[189] Even if it were assumed that a ransom payment might ultimately be made, such a possibility remains inherently uncertain and falls outside the allocation of risk contemplated by the policy. It cannot transform what was, at the relevant time, an irretrievable deprivation of the cargo into a mere temporary detention. The assessment of loss must therefore be made at the moment the notice of abandonment was served, and not retrospectively in light of negotiations that later proved successful.

[187] *Ibid*, Marine Insurance Act 1906 (6 Edw 7 c. 41), s 57(1).

[188] *Ibid*, Marine Insurance Act 1906 (6 Edw 7 c. 41), s 60(1).

[189] *Ibid.*

4. Declarations totalling US$13,326,481.75 were made in respect of the two parcels of cargo. The claim in respect of the total loss is put forward in the sum of about US$7 million being the net loss allowing for receipts from the disposal of the cargo after discharge at Rotterdam.

5. On this basis, the Claimant requested that the Court:
-Declare that the seizure and detention of the cargo by Somali pirates constituted an actual total loss (ATL) within the meaning of s 57(1) of the Marine Insurance Act of 1906;
-Alternatively, declare that the circumstances amounted to a constructive total loss (CTL) pursuant to s 60(1) of the same Act, and that the notice of abandonment of the Claimant had been validly tendered;
-Order the Defendant to indemnify the Claimant for the insured value of the cargo under the policy, together with interest and the costs of the proceedings.[190]

2. Claims of the Defendant Party

1. In response, Amlin Corporate Member Ltd firmly rejected the definition of the loss of the Claimant as either actual or constructive total loss. The Defendant contended that the seizure of the vessel by Somali pirates did not satisfy the statutory threshold of an ATL under section 57(1) of the Marine Insurance Act of 1906.[191] It argued that the concept of irretrievable deprivation requires a legal and practical impossibility of recovery, not merely temporary dispossession, even where such dispossession is caused by criminal acts such as piracy.[192]

2. The Defendant submitted that, at the time the notice of abandonment was tendered, there existed a realistic and commercially recognised prospect of recovery. By 2 September 2008, the Malaysian navy had sent two naval vessels to the area, the obvious implication being that the vessels carried the ransom payments and would be used to escort back the two MISC vessels. Even without the exchanges and press

[190] *Ibid.*

[191] *Ibid*, Marine Insurance Act 1906 (6 Edw 7 c. 41), s 57(1).

[192] *Ibid.*

reports, much was known about the modus operandi of Somali pirates. It is clear that they take vessels in order to ransom them and invariably negotiate with the shipowner or other interested party for the release of the vessel, cargo and crew, in exchange for a payment which represents an economic proportion of the value of the property at stake. The Defendant emphasised that negotiations for the release of the *Bunga Melati Dua* were ongoing and that there was no evidential basis for concluding that the cargo would never be recovered. Accordingly, the insured had not been irretrievably deprived of the goods within the meaning of section 57(1).[193]

3. The Defendant further argued that the alternative reliance of the Claimant on section 60(1) (CTL) was equally unsustainable. Under the statutory framework, a CTL arises only where the subject matter is reasonably abandoned because its ATL appears unavoidable, or because the cost of recovery would exceed its value. Amlin Corporate Member Ltd contended that neither condition was satisfied. The cargo remained physically intact, and the established commercial practice of ransom negotiation indicated that recovery was not merely speculative but probable within a reasonable timeframe.[194]

4. In this context, the Defendant maintained that the abandonment notice was premature and legally ineffective. A reasonable uninsured owner, properly advised and acting prudently, would have awaited the outcome of negotiations rather than treating the cargo as effectively lost. The Defendant stressed that the Marine Insurance Act does not convert serious uncertainty or commercial risk into total loss; the statutory test requires a far higher threshold than mere difficulty, delay, or anxiety concerning recovery.[195]

5. The Defendant submitted that, in assessing irretrievable deprivation under section 57 of the Marine Insurance Act of 1906, the Court must take into account the factual reality that vessels seized by Somali pirates were commonly released upon payment of

[193] *Ibid.*

[194] *Ibid*, Marine Insurance Act 1906 (6 Edw 7 c. 41), s 60(1).

[195] *Ibid,* Marine Insurance Act 1906 (6 Edw 7 c. 41).

ransom. In those circumstances, the cargo could not be said to be irretrievably lost at the time of the notice of abandonment.[196]

6. Finally, the Defendant relied on procedural and evidential considerations, including the timing and validity of the abandonment notice and the burden resting on the insured to demonstrate that the statutory criteria for total loss were met. Amlin maintained that the Claimant had failed to discharge that burden and that the refusal to indemnify was fully consistent with both the terms of the policy and the Marine Insurance Act of 1906.[197]

7. On this basis, the Defendant requested that the Court:

-Declare that the cargo had not been lost as an ATL under s 57(1) of the Marine Insurance Act of 1906;

-Declare that the cargo had not been lost as a CTL under s 60(1) of the same Act;

-Dismiss the claims of the Claimant for indemnity, interest, and costs associated with the proceedings.

D. Matters to Be Addressed in The Judgement

1. What constitutes "irretrievable deprivation" for the purposes of Actual Total Loss (ATL)?
2. Does seizure by pirates automatically amount to ATL, or must the deprivation be legally and factually permanent?
3. What is the distinction between ATL and CTL under the Marine Insurance Act of 1906?[198]
4. Where does the ownership of the insured end when cargo is seized by pirates?
5. Do prior cases like *The Atlantic Star* [1974] AC 436 (House of Lords) affect CTL decisions?[199]

[196] *Ibid,* Marine Insurance Act 1906 (6 Edw 7 c. 41), s 57(1).

[197] *Ibid,* Marine Insurance Act 1906 (6 Edw 7 c. 41).

[198] Marine Insurance Act 1906 (6 Edw 7 c. 41).

[199] *The Atlantic Star* [1974] AC 436 (House of Lords).

6. At what point does prolonged detention cross the threshold from temporary loss to constructive total loss?
7. At what moment must the existence of total loss be determined? Should the assessment be made at the time of notice of abandonment, or can subsequent events (e.g. successful ransom negotiations) influence the classification?
8. Is detention by pirates properly characterised as permanent loss, temporary capture, or mere delay? How does this classification affect the operation of ATL and CTL?
9. Are ransom payments contrary to public policy? Does recognising ransom as a legitimate recovery mechanism indirectly legitimise criminal conduct?
10. Should the availability of ransom negotiations prevent a finding of total loss? If payment of ransom is common and commercially effective, does this undermine arguments for irretrievable deprivation?
11. Can the financial burden of ransom contribute to a claim of constructive total loss? When, if ever, would ransom costs be considered disproportionate to the value of the insured cargo?
12. What is the evidential burden on the assured when claiming CTL? Must the assured prove that recovery was improbable, or merely uncertain?
13. Was notice of abandonment properly and timely given, and how central is this procedural step to the legal analysis?

VI. APPLICABLE LAW

A. International Law

1. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention), 1988 [200]

Article 3 [201]

Any person commits an offence if that person unlawfully and intentionally:

[200] Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (opened for signature 10 March 1988, 1678 UNTS 201).

[201] Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (opened for signature 10 March 1988, 1678 UNTS 201), art 3.

(a) *seizes or exercises control over a ship by force or threat thereof, or by any other form of intimidation; or*

(b) *performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or*

(c) *destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship; or*

(d) *places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship or cause damage to it or to its cargo; or*

(e) *destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if such act is likely to endanger the safe navigation of a ship; or*

(f) *communicates information which he knows to be false, thereby endangering the safe navigation of a ship. or*

(g) *injures or kills any person, i n connection with the commission or the attempted commission of any of the offences set forth in subparagraphs (a) to (f).*

Any person also commits an offence if that person:

(a) *attempts to commit any of the offences set forth i n paragraph 1; or*

(b) *abets the commission of any of the offences set forth in paragraph 1perpetrated by any person or i s otherwise an accomplice of a person who commits such an offence; or*

(c) *threatens, with or without a condition, as i s provided for under-national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question.*

Article 4 [202]

1- *This Convention applies i f the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States.*

[202] Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (opened for signature 10 March 1988, 1678 UNTS 201), art 4.

2 *- In cases where the Convention does not apply pursuant to paragraph 1, it nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State referred to in paragraph 1.*

Article 5 [203]

Each State Party shall make the offences set forth in article 3 punishable by appropriate penalties which take into account the grave nature of those offences.

Article 6 [204]

1- *Each State Party shall 'take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 when the offence is committed:*
(a) *against or on board a ship flying the flag of the State at the time the offence i s committed; or*
(b) *in the territory of that State, including its territorial sea; or*
(c) *by a national of that State.*
2- *A State Party may also establish its jurisdiction over any such offence when:*
(a) It is committed by a stateless person whose habitual residence is in that State; or
(b) during its commission a national of that State is seized, threatened, injured or killed; or
(c) it is committed i n an attempt to compel that State to do or abstain from doing any act.

3- *Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the International Maritime Organization (hereinafter referred to as "the Secretary-General"). If such State Party subsequently rescinds that jurisdiction , its hall notify the Secretary-General.*

[203] Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (opened for signature 10 March 1988, 1678 UNTS 201), art 5.
[204] Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (opened for signature 10 March 1988, 1678 UNTS 201), art 6.

4- Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 and 2 of this article .

5- This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

2. Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID)[205]

Article 54 [206]

***(1)** Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state.*

***(2)** A party seeking recognition or enforcement in the territories of a Contracting State shall furnish to a competent court or other authority which such State shall have designated for this purpose a copy of the award certified by the Secretary-General. Each Contracting State shall notify the Secretary-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation.*

***(3)** Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought.*

[205] Convention on the Settlement of Investment Disputes between States and Nationals of Other States (opened for signature 18 March 1965, 575 UNTS 159).

[206] Convention on the Settlement of Investment Disputes between States and Nationals of Other States (opened for signature 18 March 1965, 575 UNTS 159), art 54.

3. United Nations Convention on the Law of the Sea (UNCLOS), 1982 [207]

Article 100 Duty to Cooperate in the Repression of Piracy [208]

All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.

Article 101 Definition of Piracy [209]

Piracy consists of any of the following acts:
(a) *Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or aircraft, and directed:*
(i) *On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;*
(ii) *Against a ship, aircraft, persons, or property in a place outside the jurisdiction of any State;*
(b) *Any act of voluntary participation in the operation of a ship or aircraft with knowledge of facts making it a pirate ship or aircraft;*
(c) *Any act inciting or of intentionally facilitating an act described in subparagraph (a) or (b).*

Article 102 Piracy by a warship, government ship or government aircraft whose crew has mutinied [210]

The acts of piracy, as defined in article 101, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship or aircraft.

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[207] United Nations Convention on the Law of the Sea (opened for signature 10 December 1982, 1833 UNTS 3).

[208] United Nations Convention on the Law of the Sea (opened for signature 10 December 1982, 1833 UNTS 3), art 100.

[209] United Nations Convention on the Law of the Sea (opened for signature 10 December 1982, 1833 UNTS 3), art 101.

[210] United Nations Convention on the Law of the Sea (opened for signature 10 December 1982, 1833 UNTS 3), art 102.

Article 103 Definition of a pirate ship or aircraft [211]

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in article 101. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

Article 104 Retention or loss of the nationality of a pirate ship or aircraft [212]

A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived.

Article 105 Seizure of a Pirate Ship or Aircraft [213]

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State that carried out the seizure may decide upon the penalties to be imposed and determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

[211] United Nations Convention on the Law of the Sea (opened for signature 10 December 1982, 1833 UNTS 3), art 103.

[212] United Nations Convention on the Law of the Sea (opened for signature 10 December 1982, 1833 UNTS 3), art 104.

[213] United Nations Convention on the Law of the Sea (opened for signature 10 December 1982, 1833 UNTS 3), art 105.

B. Domestic Law

1. Acts and Codes

1. Arbitration Act of 1996 [214]

Section 1 General Principles [215]

The provisions of this Part are founded on the following principles, and shall be construed accordingly-

(a) *The object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense.*

(b) *The parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest.*

(c) *In matters governed by this Part the court should not intervene except as provided by this Part.*

Section 67 Challenging the award: Substantive Jurisdiction [216]

(1) *A party to arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the court-*

(a) *challenging any award of the arbitral tribunal as to its substantive jurisdiction; or*

(b) *challenging an award made by the tribunal on the merits because the tribunal did not have substantive jurisdiction.*

A party may lose the right to object (see section 73) and the right to apply is subject to the restrictions in section 70(2) and (3).

(2) *The arbitral tribunal may continue the arbitral proceedings and make a further award while an application to the court under this section is pending in relation to an award as to jurisdiction.*

(3) *On an application under this section, the court may by order-*

[214] Arbitration Act 1996, c 23.

[215] Arbitration Act 1996, c. 23, s 1.

[216] Arbitration Act 1996(c. 23), s 67.

(a) *confirm the award,*

(b) *vary the award,*

(c) *remit the award to the tribunal, in whole or in part, for reconsideration,*

(d) *set aside the award, in whole or in part, or*

(e) *declare the award to be of no effect, in whole or in part.*

(3A) *The court must not exercise its power to set aside or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.*

(3B) *Rules of court about the procedure to be followed on an application under this section may, in particular, include provision within subsection (3C) in relation to a case where the application-*

(a) *relates to an objection as to the arbitral tribunal's substantive jurisdiction on which the tribunal has already ruled, and*

(b) *is made by a party that took part in the arbitral proceedings.*

(3C) *Provision is within this subsection if it provides that subject to the court ruling otherwise in the interests of justice-*

(a) *a ground for the objection that was not raised before the arbitral tribunal must not be raised before the court unless the applicant shows that, at the time the applicant took part in the proceedings, the applicant did not know and could not with reasonable diligence have discovered the ground;*

(b) *evidence that was not put before the tribunal must not be considered by the court unless the applicant shows that, at the time the applicant took part in the proceedings, the applicant could not with reasonable diligence have put the evidence before the tribunal;*

(c)evidence that was heard by the tribunal must not be re-heard by the court.

(3D) *Subsection (3B) does not limit the generality of the power to make rules of court.*

(4) *The leave of the court is required for any appeal from a decision of the court under this section.*

2. Civil Procedure Rules of 1998 [217]

Practice Direction 58 The Commercial Court [218]

General

Paragraph 1.1

This practice direction applies to commercial claims proceeding in the commercial list of the Queen's Bench Division. It supersedes all previous practice directions and practice statements in the Commercial Court.

Paragraph 1.2

All proceedings in the commercial list, including any appeal from a judgment, order or decision of a master or district judge before the proceedings were transferred to the Commercial Court, will be heard or determined by a Commercial Court judge, except that –

(1) *another judge of the Queen's Bench Division or Chancery Division may hear urgent applications if no Commercial Court judge is available; and*

(2) *unless the court otherwise orders, any application relating to the enforcement of a Commercial Court judgment or order for the payment of money will be dealt with by a master of the Queen's Bench Division or a district judge.*

Paragraph 1.3

Provisions in other practice directions which refer to a master or district judge are to be read, in relation to claims in the commercial list, as if they referred to a Commercial Court judge.

Paragraph 1.4

[217] Civil Procedure Rules 1998, SI 1998/3132.

[218] Practice Direction 58 – Commercial Court, supplementing CPR Part 58, under the Civil Procedure Rules 1998, SI 1998/3132.

The Admiralty and Commercial Registry in the Rolls Building is the administrative office of the court for all proceedings in the commercial list.

Evidence for applications

Paragraph 13.1

The general requirement is that, unless the court orders otherwise –

(1) *evidence in support of an application must be filed and served with the application (see rule 23.7(3));*

(2) *evidence in answer must be filed and served within 14 days after the application is served; and*

(3) *evidence in reply must be filed and served within 7 days of the service of evidence in answer.*

3. Constitutional Reform Act of 2005 [219]

Section 3 Guarantee of Continued Judicial Independence [220]

(1) *The Lord Chancellor, other Ministers of the Crown, and all who have responsibility for matters relating to the judiciary or the administration of justice must uphold the continued independence of the judiciary.*
(2) *Subsection (1) does not impose any duty which it would be within the legislative competence of the Scottish Parliament to impose.*

(3) *A person is not subject to the duty imposed by subsection (1) if he is subject to the duty imposed by section 1(1) of the Justice (Northern Ireland) Act 2002 (c. 26).*

(4) *The following particular duties are imposed for the purpose of upholding that independence.*

[219] Constitutional Reform Act 2005, c 4.

[220] Constitutional Reform Act 2005, c 4, s 3.

(5) *The Lord Chancellor and other Ministers of the Crown must not seek to influence particular judicial decisions through any special access to the judiciary.*

(6) *The Lord Chancellor must have regard to*

(a) *the need to defend that independence;*
(b) *the need for the judiciary to have the support necessary to enable them to exercise their functions; and*
(c) *the need for the public interest to be properly represented in matters relating to the administration of justice.*

4. Human Rights Act of 1998 [221]

Section 6 Acts of Public Authorities [222]

(1) *It is unlawful for a public authority to act in a way which is incompatible with a Convention right.*
(2) *Subsection (1) does not apply to an act if-*

(a) *as the result of one or more provisions of primary legislation, the authority could not have acted differently; or*

(b) *in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.*

(3) *In this section "public authority" includes—*

(a) *a court or tribunal, and*

(b) *any person certain of whose functions are functions of a public nature,*

but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.

(4) *In subsection (3) "Parliament" does not include the House of Lords in its judicial capacity.*

[221] Human Rights Act 1998, c 42.

[222] Human Rights Act 1998, c 42, s 6.

(5) *In relation to a particular act, a person is not a public authority by virtue only of subsection (3)(b) if the nature of the act is private.*

(6) *"An act" includes a failure to act but does not include a failure to-*

(a) *introduce in, or lay before, Parliament a proposal for legislation; or*

(b) *make any primary legislation or remedial order.*

Schedule 1 The European Convention on Human Rights, Article 6 [223]

1- *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

5. Judicature Act of 1873 [224]

Section 3 Union of existing Courts into one Supreme Court[225]

From and after the time appointed for the commencement of this Act, the several Courts hereinafter mentioned, (that is to say,) the High Court of Chancery of England, the Court of Queen's Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, the Court for Divorce and Matrimonial Causes, and the London Court of Bankruptcy, shall be united and consolidated together, and shall constitute, under and subject to the provisions of this Act, one Supreme Court of Judicature in England.

[223] Human Rights Act 1998, c 42, Sch 1, art 6.

[224] Judicature Act 1873 (36 & 37 Vict c. 66).

[225] Judicature Act 1873 (36 & 37 Vict c. 66), s 3.

Section 5 Constitution of High Court of Justice.[226]

Her Majesty's High Court of Justice shall be constituted as follows:-The first Judges thereof shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, the several Vice-Chancellors of the High Court of Chancery, the Judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes, the several Puisne Justices of the Courts of Queen's Bench and Common Pleas respectively, the several Junior Barons of the Court of Exchequer, and the Judge of the High Court of Admiralty, except such, if any, of the aforesaid Judges as shall be appointed ordinary Judges of the Court of Appeal.

Subject to the provisions herein-after contained, whenever the office of a Judge of the said High Court shall become vacant, a new Judge may be appointed thereto by Her Majesty, by Letters Patent. All persons to be hereafter appointed to fill the places of the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron, and their successors respectively, shall continue to be appointed to the same respective offices, with the same precedence, and by the same respective titles, and in the same manner, respectively, as heretofore. Every Judge who shall be appointed to fill the place of any other Judge of the said High Court of Justice shall be styled in his appointment 'Judge of Her Majesty's High Court of Justice,' and shall be appointed in the same manner in which the Puisne Justices and Junior Barons of the Superior Courts of Common Law have been heretofore appointed: Provided always, that if at the commencement of this Act the number of Puisne Justices and Junior Barons who shall become Judges of the said High Court shall exceed twelve in the whole, no new Judge of the said High Court shall be appointed in the place of any such Puisne Justice or Junior Baron who shall die or resign while such whole number shall exceed twelve, it being intended that the permanent number of Judges of the said High Court shall not exceed twenty-one.

All the Judges of the said Court shall have in all respects, save as in this Act is otherwise expressly provided, equal power, authority, and jurisdiction; and shall be addressed in the manner which is now customary in addressing the Judges of the Superior Courts of Common Law.

[226] Judicature Act 1873 (36 & 37 Vict c. 66), s 5.

The Lord Chief Justice of England for the time being shall be President of the said High Court of Justice in the absence of the Lord Chancellor.

Section 16 Jurisdiction of the High Court [227]

The High Court of Justice shall be a Superior Court of Record, and, subject as in this Act mentioned, there shall be transferred to and vested in the said High Court of Justice the jurisdiction which, at the commencement of this Act, was vested in, or of being exercised by, all or any of the courts following; (that is to say,)

(1) *The High Court of Chancery, as a common law court as well as a court of equity, including the jurisdiction of the Master of the Rolls, as a judge or master of the Court of Chancery, and any jurisdiction exercised by him in relation to the Court of Chancery as a common law court;*

(2) *The Court of Queen's Bench;*

(3) *The Court of Common Pleas at Westminster;*

(4) *The Court of Exchequer, as a court of revenue, as well as a common law court;*

(5) *The High Court of Admiralty;*

(6) *The Court of Probate;*

(7) *The Court for Divorce and Matrimonial Causes;*

(8) *The London Court of Bankruptcy;*

(9) *The Court of Common Pleas at Lancaster;*

(10) *The Court of Pleas at Durham;*

(11) *The courts created by commissions of assize, of oyer and terminer, and of gaol delivery, or any of such commissions:*

The jurisdiction by this Act transferred to the High Court of Justice shall include, (subject to the exceptions herein-after contained,) the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any one or more of the judges of the said courts respectively, sitting in court or chambers, or elsewhere, when acting as judges or a judge, in pursuance of any statute, law, or custom, and all powers given to any such court, or to any such judges or judge, by any statute; and also all ministerial powers, duties, and authorities incident to any and every part of the jurisdictions so transferred.

[227] Judicature Act 1873 (36 & 37 Vict c. 66), s 16.

6. Limitation Act of 1980 [228]

Section 2 Time Limit for Actions Founded on Tort [229]

An action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued.

7. Marine Insurance Act of 1906 [230]

Section 57 Actual Total Loss [231]

(1) *Where the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof, there is an actual total loss.*
(2) *In the case of an actual total loss, no notice of abandonment need be given.*

Section 60 Constructive Total Loss [232]

(1) *Subject to any express provision in the policy, there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred.*
(2) *In particular, there is a constructive total loss-*
(i) *Where the assured is deprived of the possession of his ship or goods by a peril insured against, and (a) it is unlikely that he can recover the ship or goods, as the case may be, or (b) the cost of recovering the ship or goods, as the case may be, would exceed their value when recovered; or*

[228] Limitation Act 1980 c. 58.

[229] Limitation Act 1980 c. 58, s 2.

[230] Marine Insurance Act 1906 (6 Edw 7 c. 41).

[231] Marine Insurance Act 1906 (6 Edw 7 c. 41), s 57.

[232] Marine Insurance Act 1906 (6 Edw 7 c. 41), s 60.

(ii) *In the case of damage to a ship, where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired.*

In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any future general average contributions to which the ship would be liable if repaired; or

(iii)*In the case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival.*

Section 61 Effect of Constructive Total Loss [233]

Where there is a constructive total loss the assured may either treat the loss as a partial loss, or abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss.

Section 62 Notice of Abandonment [234]

(1) *Subject to the provisions of this section, where the assured elects to abandon the subject-matter insured to the insurer, he must give notice of abandonment. If he fails to do so the loss can only be treated as a partial loss.*

(2) *Notice of abandonment may be given in writing, or by word of mouth, or partly in writing and partly by word of mouth, and may be given in any terms which indicate the intention of the assured to abandon his insured interest in the subject-matter insured unconditionally to the insurer.*

(3) *Notice of abandonment must be given with reasonable diligence after the receipt of reliable information of the loss, but where the information is of a doubtful character the assured is entitled to a reasonable time to make inquiry.*

(4) *Where notice of abandonment is properly given, the rights of the assured are not prejudiced by the fact that the insurer refuses to accept the abandonment.*

[233] Marine Insurance Act 1906 (6 Edw 7 c. 41), s 61.

[234] Marine Insurance Act 1906 (6 Edw 7 c. 41), s 62.

(5) *The acceptance of an abandonment may be either express or implied from the conduct of the insurer. The mere silence of the insurer after notice is not an acceptance.*

(6) *Where notice of abandonment is accepted the abandonment is irrevocable. The acceptance of the notice conclusively admits liability for the loss and the sufficiency of the notice.*

(7) *Notice of abandonment is unnecessary where, at the time when the assured receives information of the loss, there would be no possibility of benefit to the insurer if notice were given to him.*

(8) *Notice of abandonment may be waived by the insurer.*

(9) *Where an insurer has re-insured his risk, no notice of abandonment need be given by him.*

Section 63 Effect of Abandonment [235]

(1) *Where there is a valid abandonment the insurer is entitled to take over the interest of the assured in whatever may remain of the subject-matter insured, and all proprietary rights incidental thereto.*

(2) *Upon the abandonment of a ship, the insurer thereof is entitled to any freight in course of being earned, and which is earned by her subsequent to the casualty causing the loss, less the expenses of earning it incurred after the casualty; and, where the ship is carrying the owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss.*

8. Senior Courts Act of 1981 [236]

Section 19 [237]

(1) *The High Court shall be a superior court of record.*

(2) *Subject to the provisions of this Act, there shall be exercisable by the High Court-*

[235] Marine Insurance Act 1906 (6 Edw 7 c. 41), s 63.

[236] Senior Courts Act 1981, c. 54.

[237] Senior Courts Act 1981, c. 54, s 19.

(a) *all such jurisdiction (whether civil or criminal) as is conferred on it by this or any other Act; and*

(b) *all such other jurisdiction (whether civil or criminal) as was exercisable by it immediately before the commencement of this Act (including jurisdiction conferred on a judge of the High Court by any statutory provision).*

(3) *Any jurisdiction of the High Court shall be exercised only by a single judge of that court, except in so far as it is-*

(a) *by or by virtue of rules of court or any other statutory provision required to be exercised by a divisional court; or*

(b) *by rules of court made exercisable by a master, registrar or other officer of the court, or by any other person.*

(4) *The specific mention elsewhere in this Act of any jurisdiction covered by subsection (2) shall not derogate from the generality of that subsection.*

Section 25 [238]

(1) *Subject to the provisions of Part V, the High Court shall, in accordance with section 19(2), have the following probate jurisdiction, that is to say all such jurisdiction in relation to probates and letters of administration as it had immediately before the commencement of this Act, and in particular all such contentious and non-contentious jurisdiction as it then had in relation to-*

(a) *testamentary causes or matters;*

(b) *the grant, amendment or revocation of probates and letters of administration; and*

(c) *the real and personal estate of deceased persons.*

(2) *Subject to the provisions of Part V, the High Court shall, in the exercise of its probate jurisdiction, perform all such duties with respect to the estates of deceased persons as fell to be performed by it immediately before the commencement of this Act.*

[238] Senior Courts Act 1981, c. 54, s 25.

2. Case Law

1. *AIG Capital Partners Inc v Republic of Kazakhstan* [2005] EWHC 2239 (Comm), [2006] 1 WLR 1420

This case concerns an application to recognise an International Centre for Settlement of Investment Disputes (ICSID) arbitral award obtained by AIG Capital Partners against the Republic of Kazakhstan. The dispute arose from an investment-related financial arrangement connected to post-Soviet economic restructuring of Kazakhstan and its efforts to attract foreign capital, particularly in sectors involving state-linked commercial activity. Following disagreements concerning the performance of financial obligations and the protection of the's economic interests of the investor, the claimant initiated arbitration proceedings under the auspices of the ICSID[239], relying on prior consent of Kazakhstan to investor–state arbitration. The arbitral tribunal ultimately rendered an award in favour of the investor. As voluntary compliance with the award did not occur, recognition proceedings were brought before the English Commercial Court so that the award could obtain the status of a domestic judgment and potentially facilitate enforcement measures.

The central issue before the Commercial Court was whether Kazakhstan could invoke state immunity under the State Immunity Act of 1978, *SIA of 1978,*[240] to resist recognition proceedings. Kazakhstan argued that recognition proceedings fall within the scope of adjudicative immunity preserved under the SIA of 1978.[241] However, the claimants contended that consent of Kazakhstan to the ICSID arbitration constituted an implied waiver of such immunity, a position supported by leading scholarship emphasising the sovereignty-limiting effect of ICSID consent.[242] Tomlinson J accepted this reasoning and held that by voluntarily agreeing to ICSID arbitration, Kazakhstan had necessarily waived adjudicative immunity for the limited purpose of recognition.[243]

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[239] Convention on the Settlement of Investment Disputes between States and Nationals of Other States (opened for signature 18 March 1965, 575 UNTS 159).

[240] State Immunity Act 1978, c 33.

[241] State Immunity Act 1978, c 33.

[242] August Reinisch, 'European Court Practice Concerning State Immunity from Enforcement Measures' (2006) 17 *EJIL* 803.

[243] Convention on the Settlement of Investment Disputes between States and Nationals of Other States (opened for signature 18 March 1965, 575 UNTS 159).

Nevertheless, the judgment underscored that execution immunity remains separate and intact. While the ICSID awards must be recognised, their enforcement against state property still requires compliance with domestic immunity rules, particularly those concerning property *in use for commercial purposes* under the SIA of 1978.[244] This mirrors the approach endorsed in comparative arbitration scholarship, which stresses that automatic recognition of the ICSID regime does not eliminate execution barriers.[245]

Therefore, the significance of the decision lies in its confirmation that ICSID consent constitutes a limited but consequential waiver of adjudicative immunity, ensuring that recognition cannot be resisted on sovereign immunity grounds. The interpretation of Tomlinson J aligns with the conceptual distinction widely drawn in the literature between adjudication and execution, whereby recognition engages only the former.[246]At the same time, the court reaffirmed the protective threshold applied to enforcement against state assets, thereby maintaining the traditional balance between investor protection and sovereign prerogatives, a balance consistently emphasised in the ICSID commentary and public international law.[247]

The ICSID awards occupy a distinctive position within international investment law, as Article 54 of the ICSID Convention obliges Contracting States to recognise awards as though they were final domestic judgments.[248] This provision has long been interpreted as creating a strong presumption in favour of judicial recognition.[249]

[244] Convention on the Settlement of Investment Disputes between States and Nationals of Other States (opened for signature 18 March 1965, 575 UNTS 159), State Immunity Act 1978, c 33.

[245] Julian D M Lew, Loukas A Mistelis and Stefan Kröll, *Comparative International Commercial Arbitration* (Kluwer Law International 2003).

[246] Hazel Fox and Philippa Webb, *The Law of State Immunity* (3rd edn, OUP 2013).

[247] N Jansen Calamita, 'Dispute Settlement Transparency in Europe's Evolving Investment Treaty Policy' (2014) 15. J World Inv & Trade 645, 672.

[248] Convention on the Settlement of Investment Disputes between States and Nationals of Other States (opened for signature 18 March 1965, 575 UNTS 159), art 54.

[249] Christoph H Schreuer with Loretta Malintoppi, August Reinisch, Anthony Sinclair, *The ICSID Convention: A Commentary* (2nd edn, CUP 2009).

2. *Johnson v Gore Wood & Co* [2002] 2 AC 1 (House of Lords)

This landmark House of Lords judgment reshaped the doctrine of abuse of process in English civil procedure, particularly the scope of the *Henderson v Henderson* principle.[250] Mr Johnson was a businessman whose company had previously brought professional negligence proceedings against the solicitors' firm Gore Wood & Co in relation to allegedly negligent legal advice given in the context of commercial transactions. The dispute later arose when Mr Johnson himself initiated a separate personal claim based on substantially the same factual matrix after the earlier corporate proceedings had been concluded.

The core question before the House of Lords was whether this subsequent claim constituted an abuse of process under the Henderson v Henderson principle, on the basis that the matters relied upon could and should have been raised in the earlier proceedings.

Lord Bingham rejected a rigid, mechanistic application of *Henderson*, emphasising that abuse of process is a *flexible, equitable concept* aimed at preventing oppression and protecting the integrity of judicial proceedings. He stressed that the doctrine must be applied with sensitivity to context rather than through formulaic criteria.[251] Thus, the mere fact that a claim *could* have been litigated earlier does not automatically render later proceedings abusive. The inquiry is *fact-dependent* and focuses on whether pursuing the claim later would be *unjust,* having regard to fairness between the parties and to efficient administration of justice.[252]

In academic commentary, *Johnson v Gore Wood* is widely regarded as a turning point that recalibrated the *Henderson v Henderson principle* by anchoring it firmly within the flexible doctrine of abuse of process.[253]

The decision, therefore, restored a *balanced and principled approach,* and it affirms that courts retain a discretionary moral authority to prevent oppressive litigation strategies, while ensuring that genuine claims are not prematurely extinguished. *Johnson* remains the leading precedent

[250] *Henderson v Henderson* (1843) 3 Hare 100.

[251] Adrian Zuckerman, *Zuckerman on Civil Procedure: Principles of Practice* (3rd edn, Sweet & Maxwell 2013).

[252] Neil Andrews, *English Civil Procedure* (OUP 2018).

[253] Paul Roberts, 'Abuse of Process in Civil Litigation' (2003) *Cambridge Law Journal* 498.

anchoring the abuse of process doctrine in considerations of justice rather than procedural technicality.[254]

3. *Mareva Compania Naviera SA v International Bulkcarriers SA* [1980] 1 All ER 213

This foundational Court of Appeal decision established the modern freezing injunction, marking a turning point in English civil procedure. The dispute arose from a maritime commercial transaction in which the claimant shipowning company alleged that charter hire payments owed by the defendant charterers had not been honoured and that substantial funds belonging to the defendant were held in bank accounts in London. Concerned that these assets might be transferred out of the jurisdiction before a judgment could be obtained, thereby undermining the effectiveness of any eventual award, the claimants sought urgent interlocutory relief restraining the disposal of those assets.[255]

The central question before the Court of Appeal was whether the court possessed authority to grant such preventive relief in the absence of a final judgment and, if so, under what conditions such relief could properly be justified. The court recognised an inherent authority to grant such preventive relief where necessary to avoid injustice.[256]

Lord Denning MR held that the court may intervene pre-emptively when the claimant demonstrates *a good arguable case and a real risk of asset dissipation.* This dual threshold, subsequently reaffirmed in numerous authorities, is widely discussed in arbitration and commercial law literature.[257] The reasoning of the court reflected the procedural evolution from a system focused solely on adjudication to one concerned with the *effectiveness and integrity of judgments*.[258] *Mareva* played a major role in aligning English law with emerging transnational mechanisms for asset preservation. It laid the foundations for worldwide freezing orders, now routinely used to support international arbitration and cross-border litigation. The decision exemplifies pragmatic approach the judiciary to equitable intervention: *protective,*

[254] Adrian Zuckerman, *Zuckerman on Civil Procedure: Principles of Practice* (3rd edn, Sweet & Maxwell 2013).

[255] Mareva Compania Naviera SA v International Bulkcarriers SA [1980] 1 All ER 213 (CA); see also Adrian Briggs, *Civil Jurisdiction and Judgments* (6th edn, Informa 2015) 487–490.

[256] Paul Michell, The Mareva Injunction in Aid of Foreign Proceedings, 1996 34-4 *Osgoode Hall Law Journal* 741.

[257] Steven Gee, *Commercial Injunctions* (7th edn, Sweet & Maxwell 2021).

[258] Graham Virgo, *The Principles of Equity* (4th edn, OUP 2020).

flexible, and oriented toward preventing judgment frustration rather than punishing wrongdoing.[259]

4. Melli Bank plc v Holbud Ltd [2013] EWCA Civ 1506, [2014] 1 WLR 2191

This Court of Appeal decision concerns the scope of state immunity in enforcement proceedings, particularly regarding state-owned commercial entities and the meaning of *separate entities* under the State Immunity Act of 1978 (SIA).[260] The dispute arose when Melli Bank, an Iranian state-owned bank, sought to enforce *debts*[261] owed by Holbud Ltd.

Holbud argued that enforcement measures, particularly a charging order, were barred by state immunity because Melli Bank was wholly owned and controlled by the Government of Iran.

The central issue was whether Melli Bank constituted a separate entity under s 14(1) SIA, and if so, whether it was entitled to immunity for acts done in the course of commercial activity.[262] The Court of Appeal, affirming the High Court, held that a state-owned company carrying out commercial banking functions is indeed a separate entity and cannot rely on state immunity unless it is exercising sovereign authority, *jure imperii*[263]. Since the activities of Melli Bank were purely commercial *jure gestionis*[264], it could not invoke immunity to resist enforcement.

Longmore LJ emphasised the legislative intention behind the SIA to strike a balance between respecting state sovereignty and ensuring accountability for states acting as market participants. Importantly, the court clarified that state ownership alone is insufficient for immunity; there must be a functional nexus to sovereign acts. This reflects the dominant view in academic

[259] Roy Goode, Herbert Kronke and Ewan McKendrick *Transnational Commercial Law: Text, Cases, and Materials* (2nd edn, OUP 2015); see also Lawrence Collins (ed), *Dicey, Morris & Collins on the Conflict of Laws* (16th edn, Sweet & Maxwell 2022) para 11-116.

[260] State Immunity Act 1978, c 33.

[261] *Debts* refers to fixed, legally enforceable monetary obligations owed by Holbud to the bank, constituting assets capable of being affected by the applicable sanctions regime.

[262] State Immunity Act 1978, c 33, ss 3, 14.

[263] *Jure imperii* refers to acts performed by a state in the exercise of its sovereign authority, characteristic of public governmental power.

[264] *Jure gestionis* refers to acts performed by a state in a commercial or private capacity, resembling the conduct of a non-sovereign private actor.

commentary that modern state immunity in commercial contexts follows a restrictive doctrine.[265] The judgment has been widely discussed in the context of international finance, sanctions, and enforcement against state-linked financial institutions. Scholars note that the decision reinforces the commitment of the court to functional analysis, rejecting attempts by states to shield commercially active entities from ordinary legal processes.[266] Others view the case as part of a broader jurisprudential trend affirming that state-owned banks, when acting commercially, are to be treated as any other market actor, particularly in enforcement and insolvency contexts.[267]

Overall, *Melli Bank v Holbud* strengthens the commercially oriented approach of English courts by ensuring that state-owned enterprises cannot use sovereign immunity as a shield when engaging in routine commercial transactions. It remains a leading authority on the commercial activity exception under the SIA and on the treatment of state-owned corporations in enforcement proceedings.[268]

5. *The Atlantic Star* [1974] AC 436 (House of Lords)[269]

The Atlantic Star is a foundational decision of the House of Lords *on forum non conveniens* and the discretionary power of English courts to stay proceedings in favour of a more appropriate foreign forum.[270] The dispute arose from a maritime collision occurring outside English territorial waters between vessels owned by foreign commercial interests. Although the underlying events had only limited connections with England, proceedings were initiated in London, largely because English procedural rules and remedies were perceived as advantageous for the claimant. The defendants challenged jurisdiction and sought a stay of

[265] Hazel Fox and Philippa Webb, *The Law of State Immunity* (3rd edn, OUP 2013).

[266] Andrew Dickinson, 'State Immunity and Commercial Activity' (2015) *Law Quarterly Review* 218.

[267] Richard Garnett, 'State Entities and Commercial Liability in English Law' (2016) *International and Comparative Law Quarterly* 25.

[268] State Immunity Act 1978, c 33.

[269] Historically, the House of Lords served as the highest court of the United Kingdom appeal until 2009, when that judicial role was transferred to the Supreme Court of the United Kingdom.

[270] Dicey, Morris & Collins on the Conflict of Laws (16th edn, Sweet & Maxwell 2022) paras 12-025–12-032.

proceedings, arguing that another foreign forum had closer factual links to the dispute, including the location of the accident, the parties involved, and the relevant evidence.[271]

The central issue before the House of Lords was therefore whether English courts should exercise jurisdiction merely because service of process had been validly effected within England, or whether they possessed a discretionary power to decline jurisdiction when England was not the natural or most appropriate forum for resolving the dispute. The case thus raised broader questions about judicial restraint, international comity, and the prevention of opportunistic forum shopping in transnational maritime litigation.

Lord Reid and Lord Diplock stressed that the English courts must prevent *exorbitant jurisdiction* and should not allow litigants to forum shop purely for tactical advantage.[272] The House of Lords confirmed that the court has an inherent discretionary power to decline jurisdiction when another forum is clearly more appropriate for resolving the dispute. Academic commentary has noted that *The Atlantic Star* contributed significantly to the gradual evolution of English private international law toward a more flexible, policy-oriented approach to jurisdictional discretion.[273]

6. *Yukos Capital SARL v OJSC Rosneft Oil Co* [2014] EWHC 2188 (Comm), [2014] 2 Lloyd's Rep 435

The decision in *Yukos Capital SARL v OJSC Rosneft Oil Co [2014] EWHC 2188 (Comm), [2014] 2 Lloyd's Rep 435* emerged from a dispute embedded in the wider political dismantling of the Yukos oil group in the Russian Federation during the middle of 2000s. Yukos Capital SARL, a Luxembourg-incorporated financing entity within the Yukos structure, had concluded loan agreements with OJSC Rosneft Oil Company, providing for arbitration before the International Commercial Arbitration Court in Moscow. In 2006, four arbitral awards were

[271] Adrian Briggs, Civil Jurisdiction and Judgments (6th edn, Informa 2015) 393–398.

[272] Jonathan Hill, 'Jurisdiction in Civil and Commercial Matters' (1992) 42 ICLQ 71.

[273] Wendy Kennett, 'Forum Non Conveniens in Europe' (1995) 54 *Cambridge Law Journal* 552.

rendered in favour of Yukos Capital ordering repayment of substantial sums.[274] However, in 2007, *the Russian arbitrazh courts* [275] annulled those awards.[276]

The annulment occurred against the backdrop of state measures directed against Yukos, including tax enforcement proceedings, criminal prosecutions, and corporate liquidation. Before the English Commercial Court, Yukos Capital argued that the Russian set-aside proceedings were conducted by a judiciary lacking structural independence and subject to executive influence. Enforcement was sought in England under Part III of the Arbitration Act of 1996. Rosneft relied on section 103(2)(f), which permits refusal of recognition where an award "has been set aside" at the seat.[277] The central question was whether annulment at the seat automatically bars enforcement abroad.

Knowles J held that section 103(2)(f) confers a discretion rather than imposing a mandatory rule.[278] While comity requires serious weight to be given to a decision of the supervisory court, it does not oblige enforcement courts to recognise judgments that are fundamentally unfair. This approach reflects a broader doctrinal debate concerning the status of annulled awards under Article V(1)(e) of the New York Convention of 1958.[279] Emmanuel Gaillard has argued that enforcement courts may adopt a transnational perspective, treating awards as part of an autonomous legal order rather than as wholly dependent on the seat.[280] Similarly, Albert Jan van den Berg has acknowledged that exceptional circumstances may justify enforcement notwithstanding annulment.[281]

Having examined extensive expert evidence, the Court concluded that the Russian annulment decisions were the product of a partial and dependent judiciary and therefore not entitled to

[274] *Yukos Capital SARL v OJSC Rosneft Oil Co* [2014] EWHC 2188 (Comm), [2014] 2 Lloyd's Rep 435 [14]–[20].

[275] Ankara Court ruled that the Saint Petersburg and Leningrad Region "Arbitrazh" Court was a commercial court, which had jurisdiction to hear disputes related to commercial and economic activities.

[276] *ibid* [34]–[51].

[277] Arbitration Act 1996, c 23, s 103(2)(f).

[278] *ibid, Yukos Capital* (n 1) [151-158].

[279] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (opened for signature 10 June 1958, 330 UNTS 38), art V(1)(e), art V(1)(e).

[280] Emmanuel Gaillard, 'The Enforcement of Awards Set Aside in the Country of Origin' (1999) 14(1) *ICSID Review – Foreign Investment Law Journal* 16.

[281] Albert Jan van den Berg, 'Enforcement of Annulled Awards' (1998) 14(2) *Arbitration International* 197.

recognition in England.[282] The judgment thus exemplifies a substantive conception of public policy, prioritising judicial integrity over formal deference to the seat. Academic commentary has characterised the case as reinforcing arbitration-friendly stance of England while carefully balancing comity and fundamental justice.[283]

VII. CONCLUSION

Masefield AG v Amlin Corporate Member Ltd (2010) EWHC 280 (Comm) revolves around the legal characterisation of loss arising from maritime piracy and the conceptual boundaries between actual total loss (ATL) and constructive total loss (CTL) under the Marine Insurance Act of 1906.[284] The seizure of insured cargo by Somali pirates in the Gulf of Aden raised fundamental questions as to whether capture by pirates, accompanied by uncertainty and delay, amounts to an irretrievable deprivation of property or merely a temporary detention within the ordinary perils of maritime adventure.

At the heart of the dispute lay the distinction between ATL and CTL. The Claimant implicitly framed piracy-induced detention as tantamount to permanent loss, arguing that the uncertainty surrounding recovery rendered the deprivation effectively total. Conversely, focused on whether the assured had truly been "irretrievably deprived" of the cargo, as required for ATL, or whether the circumstances satisfied the statutory criteria for CTL—particularly whether recovery was reasonably unlikely or would involve expenditure disproportionate to the value of the subject matter insured. The case therefore foregrounded the objective assessment of likelihood of recovery at the relevant time, rather than the mere presence of risk or commercial inconvenience.

A further key concept concerned ransom payments. The widespread practice of negotiating ransom in Somali piracy cases complicated the legal evaluation of loss. If ransom payments are treated as legally permissible and commercially routine, then seizure by pirates may not necessarily render property irrecoverable. Instead, detention becomes part of a predictable, if unlawful, risk environment in which release is commonly secured through negotiation. The

[282] *Yukos Capital* (n 1) [559]–[567].

[283] Maximilian Goldstein, 'Enforcement of Annulled Arbitral Awards: The English Approach after Yukos Capital' (2015) 81 *Arbitration* 55.

[284] Marine Insurance Act of 1906, c 41.

case thus sits at the intersection of legal doctrine and commercial reality, highlighting how established market practices influence the assessment of insurance loss.

Also, piracy itself functioned in the litigation not merely as a factual background, but as a catalyst for doctrinal clarification. The case illustrates how modern patterns of maritime violence test classical insurance concepts developed in earlier eras. It underscores the need to distinguish between permanent loss, prolonged detention, and recoverable seizure, and to analyse each within the structured framework of ATL and CTL rather than through the lens of commercial anxiety.

Ultimately, the dispute demonstrates that piracy-related claims must be evaluated through a rigorous application of established marine insurance principles. The key issues are not the dramatic nature of the peril, but whether the assured can demonstrate irretrievable deprivation (ATL) or satisfy the statutory thresholds for constructive total loss (CTL).

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