FIFTEENTH ANNUAL INTERNATIONAL MARITIME LAW ARBITRATION MOOT COMPETITION 2014

MURDOCH UNIVERSITY
PERTH, WESTERN AUSTRALIA

IN THE MATTER OF AN ARBITRATION HELD IN HONG KONG

Claimant/Owner	**Respondent/Charterer**
Reliable Tankers Inc	Super Charters Inc
AND	
Claimant/Charterers	**Respondent/Owner**
Super Charters Inc	Reliable Holdings Inc

MEMORANDUM FOR THE CHARTERERS

TEAM NO. 8

Hannah Bailey
Lachlan Conroy
Michael Olds
Collin Ong

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LIST OF ABBREVIATIONS

Asbatankvoy	:	ASBATANKVOY Charter Party
Bunkerport	:	Redland Bunker Port
Charterers	:	Super Charters Inc
Charterers' Standard Terms	:	Super Charters Inc's Standard Terms
Charterparty	:	The Charterparty
first reference	:	Reliable Tankers Inc's notice of arbitration
Owners	:	Reliable Holdings Inc
Owners' Standard Terms	:	Reliable Tankers Inc's Standard Terms
Rider Clauses	:	Super Charters Inc's Single Voyage Charter Party Rider Clauses
second reference	:	Super Charters Inc's notice of arbitration
Tankers	:	Reliable Tankers Inc
Vessel	:	The Reliable Butterfly

STATEMENT OF FACTS

THE CHARTERPARTY

1. On 19 November 2011 Reliable Tankers Inc (***Tankers***) entered into a charterparty (***Charterparty***) with Super Charters Inc (***Charterers***) to transport 260,000 mt of crude oil from Blueland to Indigoland on the Reliable Butterfly (***Vessel***).
2. The Charterparty was attached to the Fixture Recap and comprised of an ASBATANKVOY Charter Party (***Asbatankvoy***), the Charterers' Rider clauses (***Rider Clauses***), Intertanko's Standard Tanker Chartering Questionnaire 88, Tankers' Standard Terms (***Owners' Standard Terms***) and the Charterers' Standard Terms (***Charterers' Standard Terms***).

THE ARREST

3. Between 19 and 22 November 2011 the Vessel arrived at the Redland Bunker Port (***Bunkerport***) to acquire bunkers for the voyage. Tankers knew that the Vessel had to sail by 25 November 2011 in order to discharge and disembark from the disport terminal before it closed on 15 January 2012.
4. On 22 November 2011 the Charterers discovered via back channels that the Vessel had been arrested at the Bunkerport. They urgently wrote to Tankers to confirm what had happened and reminded them of the importance of sailing by 25 November 2011.
5. On 23 November 2011 Tankers confirmed that the Vessel had been arrested at the Bunkerport. The Vessel had been arrested because of Tankers' failure to pay fees and security to the bunker suppliers. Tankers was 'in no rush' to agree to the price of payment and did not submit a P&I claim for assistance.

CANCELLATION

6. On 25 November 2011 Tankers notified the Charterers that the Vessel was still under arrest and would not meet the laycan. The Charterers cancelled the Charterparty

because the Vessel would not be able to complete the voyage before the disport terminal closed the Charterers cancelled the Charterparty.

7. The Charterers organised two alternative vessels from Sure Light Tankers LLC to transport the cargo at the additional cost of US$824,000.

THE MERGER

8. On 3 January 2012 it was reported in a newspaper that Tankers had merged with Reliable Holdings Inc (***Owners***). The Owners were the surviving entity.

ARBITRAL PROCEEDINGS

9. On 28 January 2012 Tankers notified the Charterers that they were referring the dispute to arbitration (***first reference***) pursuant to Clause 24 of the Asbatankvoy. The Charterers disputed the validity of this reference because Tankers no longer existed. However, without prejudice to this, the Charterers counterclaimed and issued their own notice of arbitration to the Owners on 12 February 2012 (***second reference***).

PART ONE: JURISDICTION

1. The Charterers argue that this Tribunal has jurisdiction to hear the merits of this dispute because: (A) this Tribunal has the power to rule on its own jurisdiction; and (B) the Charterparty is subject to English law. Further, the Charterers argue that the first reference is not valid because: (C) it was commenced in the name of a non-existent entity; (D) alternatively the Owners could not yet exercise Tankers' rights, duties and liabilities; and further (E) it is time-barred.

A. This Tribunal has the power to rule on its own jurisdiction

2. An arbitral tribunal has the power to decide on its own jurisdiction.[1] The Charterers argue that this Tribunal has the power to rule on its own jurisdiction.

B. The Charterparty is subject to English law

3. Parties to an arbitration agreement may choose which law governs the validity of that agreement.[2] When the parties fail to do so either the law of the seat or the law applicable to the underlying contract will apply.[3]
4. The parties have expressly chosen English law to apply to the contract and specified London as the seat of arbitration.[4] Therefore both arbitral procedure and the merits of this dispute are governed by English law.

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[1] *Arbitration Act 1996* (UK) c 23, s 30; Gary B Born, *International Commercial Arbitration* (Kluwer Law International, 2009) vol I, 856.
[2] *Arbitration Act 1996* (UK) c 23, s 3; *Peterson Farms Inc v C&M Farming Ltd* [2004] 1 Lloyd's Rep 603, 609 (Langley J); *XL Insurance v Owens Corning* [2000] 2 Lloyd's Rep 500, 506 (Toulson J); Born, above n 1, 436.
[3] *Compagnie Tuniesienne de Navigation SA v Compagnie d'Armement Maritime SA* [1970] 2 Lloyd's Rep 99, 116 (Lord Diplock); *Tzortziz and Sykias v Monark Line A/B* [1968] 1 Lloyd's Rep 337, 340 (Lord Denning MR); *Kiwk Hoo Tong Handel Maatsohappij v James Finley & Co* [1927] AC 604, 608 (Viscount Dunedin); *Spurrier v La Cloche* [1902] AC 446, 450 (Lord Lindley); Gary B Born, *International Commercial Arbitration* (Kluwer Law International, 2009) vol II, 2123.
[4] Moot Problem, 6, 13, 49, 56, 101, 103.

C. The first reference was commenced in the name of a non-existent entity

5. The Charterers argue that the first reference is invalid because it was deliberately issued on the 'Reliable Tankers Inc' letterhead. The Charterers argue that this is not a misnomer and cannot be corrected.

6. A misnomer is a mistake in name by giving an incorrect name to a person in a document.[5] When there is a clear misnomer on the face of the document, considered in context, the court may correct the error by reading the document to include the correct name.[6] To determine what correction ought to be made the court will interpret the agreement in its context in order to give force to the meaning that the parties intended.[7]

7. The first reference was made in a message containing the 'Reliable Tankers Inc' letterhead.[8] In response to the Charterers' objection that Tankers did not exist Holdings explained that they believed Tankers to be the current name of the party.[9] This is clear evidence that the use of the 'Reliable Tankers Inc' letterhead was deliberate and purposeful. The Charterers argue that the mistake was of a legal not a clerical nature. Therefore it is not a misnomer and cannot be corrected. As the first reference was issued in the name of a non-existent party it is invalid.

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[5] Bryan A Garner, *Black's Law Dictionary* (Thomson Reuters, 9th ed, 2009), 1090.
[6] *Davies v Elsby Brothers Ltd* [1961] 1 WLR 170, 176 (Devlin LJ); *Whittam v W J Daniel & Co Ltd* [1962] 1 QB 271, 275-82 (Donovan LJ); *Nittan (UK) Ltd v Solent Steel Fabrication Ltd trading as Sargrove Automation and Cornhill Insurance Company Ltd* [1981] 1 Lloyd's Rep 633, 639 (Brightman LJ); *Harper Versicherungs AG v Indemnity Marine Assurance Co Ltd* [2006] EWHC 1500 (QB), [50] (Tomlinson J); *SEB Trygg Holding AB v Manches* [2006] 1 CLC 849, 872-3 (Buxton, Tuckey and Kay LJJ).
[7] *Liberty Mercian Ltd v Cuddy Civil Engineering Ltd, Cuddy Demolition and Dismantling Ltd* [2013] EWHC 2688 (TCC), [65]-[92] (Ramsey J); *Dumford Trading AG v OAO Atlantrybflot* [2005] 1 Lloyd's Rep 289, 292 (Rix LJ); *East v Pantiles (Plant Hire)* (1982) 263 EG 61 (Brightman LJ); *Chartbrook Ltd v Persimmon Homes Ltd* [2009] 1 AC 1101, 1114 (Hoffman LJ); *KPMG v Network Rail Infrastructure Ltd* [2007] Bus LR 1336, 1351 (Carnwath LJ).
[8] Moot Problem, 101.
[9] Ibid, 104.

D. Alternatively the Owners could not yet exercise Tankers' rights, duties and liabilities

8. The Charterers accept that universal succession is valid under Fruitland law.[10] However for the first reference to be valid it must comply with the procedural law of London as the seat of arbitration. The Charterers argue that the first reference is not valid because the Owners did not comply with English notice requirements until 24 February 2012 and therefore did not exercise Tankers' rights, duties and liabilities at the time of the alleged commencement.

9. The effect of universal succession is the automatic transfer of the assets, liabilities, rights and obligations of the previously existing entity to its successor.[11] This includes legal relationships such as an arbitration agreement.[12]

10. Under English law the transfer of rights and obligations in a merger occurs by assignment not automatically.[13] Express written notice must be given to the other party for an assignee to inherit an assignor's legal rights to a 'debt or thing in action',[14] including a right to arbitrate.[15]

11. The Charterers argue that the first reference did not comply with English law and is therefore not a valid commencement of arbitration. In order for the Owners to

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[10] See Moot Problem, 113.
[11] *Republic of Kazakhstan v Istil Group Inc (No 2)* [2008] 1 Lloyd's Rep 382; *Siemens Schweiz AG v Thorn Security Ltd* [2009] Bus LR D67, [75]-[76] (Mummery LJ); *Hans Brochier Holdings Ltd v Exner* [2006] EWHC 2594 (Ch), [5] (Warren J); *Harper Versicherungs AG v Indemnity Marine Assurance Co Ltd* [2006] EWHC 1500 (QB), [40]-[42] (Tomlinson J); *Eurosteel Ltd v Stinnes AG* [2000] CLC 470, 472-5 (Longmore J).
[12] *SEB Trygg Holding AB v Manches* [2006] 1 CLC 849, 872-3 (Buxton, Tuckey and Kay LJJ); *Republic of Kazakhstan v Istil Group Inc (No 2)* [2008] 1 Lloyd's Rep 382, 388 (Tomlinson J); *Harper Versicherungs AG v Indemnity Marine Assurance Co Ltd* [2006] EWHC 1500 (QB), 275-6 (Tomlinson J).
[13] *Law of Property Act 1925* (UK) s 136. See also *Baytur SA v Finagro Holding SA* [1992] 1 Lloyd's Rep 134, 150-2 (Lloyd LJ); *Dry Bulk Handy Holding Inc v Fayette International Holdings Ltd* [2013] 1 CLC 535, 559 (Smith J); *W F Harrison & Co Ltd v Burke* [1956] 1 WLR 419, 420-2 (Denning and Morris LJJ).
[14] *Law of Property Act 1925* (UK) s 136.
[15] *Montedipe SpA v JTP-RO Jugotanker* ('*The Jordan Nicolov*') [1990] 2 Lloyd's Rep 11, 15-6 (Hobhouse J); *Baytur SA v Finagro Holding SA* [1992] 1 Lloyd's Rep 134, 141 (Lloyd LJ); *Nisshin Shipping Co Ltd v Cleaves & Company Ltd* [2003] 2 CLC 1097, 1109-11 (Colman J); *Cottage Club Estates Ltd v Woodside Estates Co (Amersham) Ltd* [1928] 2 KB 463, 464 (Wright J).

commence arbitration they must have inherited Tankers' rights, duties and liabilities. This did not occur until they satisfied English notice requirements by giving express notice of the transfer. The incomplete newspaper article published on 3 January 2012[16] does not constitute valid notice. Valid notice was not given until 24 February 2012 one month after the first reference was issued.[17] Therefore the first reference was invalid because the Owners could not yet exercise Tankers' right to arbitrate.

E. The first reference is time-barred

12. The Charterers argue that the first reference is time-barred because: (I) it was issued after the time-bar expired. Further the Charterers argue that the second reference is not time-barred because: (II) the time-bar does not apply to the Charterers. In any event: (III) the Charterers' claims are also counterclaims.

I. The first reference was issued after the time-bar expired

13. The Charterers argue that the first reference is time-barred because: (a) it was issued after the ten days required by Clause 4 of the Charterers' Standard Terms; and (b) the time-bar was not extended.

a. The first reference was not issued within the required ten days

14. A time-bar is a clause that limits the time within which a legal action may be commenced.[18]

[16] Moot Problem, 100.
[17] Ibid, 104.
[18] H G Beale, *Chitty on Contracts* (Sweet & Maxwell, 30th ed, 2008) vol 1, 1771 [28-001]; Garner, above n 5, 1620.

15. Clause 4 of the Charterers' Standard Terms provides that the Charterers must be notified of all claims against them within ten days of discharge/redelivery and/or when discharge/redelivery would have occurred.[19]

16. The cargo was scheduled to be discharged by 10 January 2012.[20] Under Clause 4 the Charterers must have been notified of any claims against them by 20 January 2012.[21] Notice, in the form of the first reference, was not issued until 28 January 2012, eight days after the time-bar required.[22] Therefore the first reference is invalid.

b. The time-bar was not extended

17. The Charterers argue that any extension of the time-bar to 30 days is invalid because it was not agreed to in writing.

18. Clause 5 of the Charterers' Standard Terms states that any variations to the terms of the Charterparty must be agreed in writing.[23]

19. On 20 November 2012 the Owners filed an internal memorandum stating the time-bar was too strict and that the Charterers had verbally agreed to extend the time-bar to 30 days to commence a suit.[24] This was a verbal agreement and not confirmed in writing. Therefore it does not satisfy the requirements of Clause 5 and the extension was not validly incorporated into the Charterparty. As there was no extension to the time-bar, the first reference is invalid.

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[19] Moot Problem, 45, 88.
[20] Ibid, 89.
[21] Ibid, 45, 88, 89.
[22] Ibid, 101.
[23] Ibid, 45, 88.
[24] Ibid, 91.

II. The second reference is not time-barred because the time-bar does not apply to the Charterers

20. Clause 4 of the Charterers' Standard Terms only requires that all claims against the Charterers be notified to the Charterers.[25] It does not make any reference to claims against the Owners. Therefore the time-bar does not apply to the Charterers and the second reference is valid.

III. In any event the Charterers claims are also counterclaims

21. In the event that the first reference is a valid commencement of arbitration the Charterers argue that this Tribunal can still hear their claims because they are also counterclaims. The Charterers' submissions were titled 'Defence and Counterclaim submissions (1st Reference)' and 'Claim Submissions (2nd Reference)'.[26] Therefore the Charterers argue that, if the first reference is valid, their claims are to be treated as counterclaims and can still be heard by this Tribunal.

PART TWO: LIABILITY FOR FREIGHT

22. The Charterers argue that they are not liable to the Owners for freight because: (A) the Charterers are entitled to equitable set-off for the full amount of freight; and (B) alternatively the payment of freight would amount to unjust enrichment.

[25] Ibid, 45, 88.
[26] Ibid, 108.

A. The Charterers are entitled to equitable set-off for the full amount of freight

23. The Charterers argue that they are entitled to equitable set-off for the full amount of freight because: (I) the Owners did not earn the freight; and (II) the claim for equitable set-off is not barred.

I. The Owners did not earn the freight

24. Freight is the consideration payable for the carriage of goods to and their delivery at the destination.[27] A shipowner does not earn freight until the service for which freight is owed has been substantially performed.[28]

25. The Charterers argue that the Owners did not substantially perform the promised service because the cargo was never loaded and the voyage was not made. Therefore the Owners have not earned freight.

II. The claim for equitable set-off is not barred

26. Set-off is a deduction from freight due to cargo damage or short delivery.[29] There is a general rule that bars a party from claiming equitable set-off from freight for cross-claims under voyage charters.[30] Equitable set-off will only apply to voyage charters where there is some ground for equitable intervention other than the mere existence of a cross-claim.[31]

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[27] *Compania Naviera General SA v Kerametal Ltd* (‘*The Lorna I*’) [1983] 1 Lloyd’s Rep 373, 374 (Sir John Donaldson MR); *Kirchner v Venus* (1859) 12 Moo PC 361, 390 (Lord Kingsdown); Sir Bernard Eder et al, *Scrutton on Charterparties and Bills of Lading* (Sweet & Maxwell, 22nd ed, 2011) 323 [15-001].
[28] Eder et al, above n 27, 323 [15-001]; *Dakin v Oxley* (1864) 15 CB(NS) 646, 664-5 (Willes J); *Kirchner v Venus* (1859) 12 Moo PC 361, 390 (Lord Kingsdown).
[29] *Aries v Total Transport* (‘*The Aries*’) [1977] 1 Lloyd’s Rep 334, 338 (Lord Simon).
[30] *Aries v Total Transport* (‘*The Aries*’) [1977] 1 Lloyd’s Rep 334, 339 (Lord Simon); *Colonial Bank v European Grain & Shipping Ltd* (‘*The Dominique*’) [1989] 1 Lloyd’s Rep 431, 436 (Lord Brandon); *Dakin v Oxley* (1864) 15 CB(NS) 646, 667 (Willes J); *A/S Gunstein & Co K/S v Jensen, Krebs and Nielsen* (‘*The Alfa Nord*’) [1977] 2 Lloyd's Rep 434, 436 (Roskill LJ).
[31] *Aries v Total Transport* (‘*The Aries*’) [1977] 1 Lloyd’s Rep 334, 338 (Lord Wilberforce).

27. In *Cleobulous Shipping Co Ltd v Intertanker Ltd* ('*The Cleon*')[32] the charterer argued that freight was not earned and therefore it was more than a mere cross-claim for damages.[33] The Court rejected this argument because the voyage had been completed and freight was earned.[34] However Lord Justice Ackner stated that if freight had not been earned that did give rise to equitable set-off.[35]

28. The Charterers argue that this case is factually distinguished from the decision in *The Cleon* because the Vessel never made the voyage and therefore freight was not earned. Accordingly this does give rise to equitable set-off. Therefore the Charterers are entitled to equitable set-off because the cargo was never delivered.

B. Alternatively, the payment of freight would amount to unjust enrichment

29. The Charterers argue for the sum of the freight as restitution because the payment of the freight would amount to an unjust enrichment.

30. Arbitral tribunals have the 'same powers as the court to order a party to do or refrain from doing anything'.[36] This includes the power to award restitution.[37]

31. Unjust enrichment is an equitable principle recognised in restitution claims.[38] Unjust enrichment occurs when a defendant has been enriched by the receipt of a benefit, at the expense of the plaintiff, and it is unjust for the defendant to retain the benefit.[39] The Charterers argue that the payment of freight would amount to unjust enrichment

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[32] [1983] 1 Lloyd's Rep 586.
[33] Ibid, 589-91 (Ackner LJ).
[34] Ibid, 590-1 (Ackner LJ).
[35] Ibid, 591 (Ackner LJ).
[36] *Arbitration Act 1996* (UK) c 23, s 48(5)(a).
[37] Nigel Blackaby et al, *Redfern and Hunter on International Arbitration* (Oxford University Press, 5th ed, 2009) 532 [9.53].
[38] Lord Goff and Gareth Jones, *The Law of Restitution* (Sweet & Maxwell, 6th ed, 2002) 14 [1-012]; Peter Birks, *An Introduction to the Law of Restitution* (Oxford University Press, 1989) 17; *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd* [1942] 73 Ll L Rep 45, 53 (Lord Atkin).
[39] Goff and Jones, above n 38, 17 [1-016]; Birks, above n 38, 21; James Edelman and Simone Degeling, 'Introduction' in James Edelman and Simone Degeling (eds), *Unjust Enrichment in Commercial Law* (Thomson Reuters, 2008) 1, 2.

because the Owners would be enriched, at the Charterers' expense, and this enrichment would be unjust.

32. A party is inevitably enriched whenever they receive money.[40] Enrichment will occur at the plaintiff's expense when the wealth the defendant received reduced the plaintiff's wealth.[41] Enrichment may be unjust when there is a total failure of consideration.[42] If the plaintiff has paid money and the consideration for the payment has totally failed[43] he will recover that payment after the contract ends.[44] The performance of the promise is the consideration, not the promise itself.[45]

33. In this case freight amounts to US$4,935,368.75.[46] If this Tribunal ordered the Charterers to pay freight this amount would be at the Charterers' expense and to the Owners' benefit. The Charterers argue that the Owners were required to give consideration by performing the promised voyage. However the Vessel was arrested before it reached the loadport[47] resulting in the Charterparty being cancelled.[48] Therefore there was a total failure of consideration, and the Owners would be unjustly enriched if they were awarded freight.

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[40] Birks, above n 38, 109; *BP Exploration Co (Libya) Ltd v Hunt (No 2)* [1979] 1 WLR 783, 799 (Goff J); Goff and Jones, above n 38, 18 [1-018].
[41] Birks, above n 38, 132; Mitchell McInnes, 'Hambly v Trott and the Claimant's Expense: Professor Birks' Challenge' in Simone Degeling and James Edelman (eds), *Unjust Enrichment in Commercial Law* (Thomson Reuters, 2008) 105, 108.
[42] Birks, above n 38, 219-20; *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd* [1942] 73 Ll L Rep 45, 61 (Lord Wright).
[43] Goff and Jones, above n 38, 503 [20-008].
[44] Ibid, 503 [20-008], 506 [20-012].
[45] *Fibrosa Spolka Akcyjna v Fairburn Lawson Combe Barbour Ltd* [1942] 73 Ll L Rep 45, 50 (Viscount Simon LC).
[46] Moot Problem, 107, 112.
[47] Ibid, 92.
[48] Ibid, 96.

PART THREE: CONTRACTUAL CLAIMS

34. The Charterers argue that the Owners are liable to the Charterers for a breach of the Charterparty because: (A) the Owners breached the duty to proceed with all convenient dispatch; (B) the Owners breached the duty to notify of changes to the Vessel's ETA; (C) Clause 2 does not exempt the Owners from liability; and (D) the Charterers mitigated their loss. Further the Charterers argue for: (D) compound or simple interest on the amount owed.

A. The Owners breached the duty to proceed with all convenient dispatch

35. Clause 1 of the Asbatankvoy contains the duty to proceed with all convenient dispatch.[49] This is equivalent to the common law duty to proceed with reasonable dispatch.[50] The Charterers argue that the Owners breached the duty to proceed with all convenient dispatch because: (I) the Owners did not commence the approach voyage at an appropriate time to meet the laycan; (II) the Charterers did not do all that was reasonable and convenient; and (III) the delay caused by the arrest and detention of the Vessel frustrated the main purpose of the Charterparty.

I. The Owners did not commence the approach voyage at an appropriate time to meet the laycan

36. The duty to proceed with all convenient dispatch combined with an expected readiness to load clause imposes an obligation on the shipowner to ensure that the

[49] Ibid, 11, 54.
[50] *Fyffes Group Ltd and Caribbean Gold Ltd v Reefer Express Lines Pty Ltd and Reefkrit Shipping Inc* ('*The Kriti Rex*') [1996] 2 Lloyd's Rep 171, 191 (Moore Bick J); *Monroe Brothers Ltd v Ryan* [1935] 51 Ll L Rep 179, 182 (Greer LJ); *Evera SA Commercial v North Shipping Co Ltd* ('*The North Anglia*') [1956] 2 Lloyd's Rep 367, 373 (Devlin J); *President of India v Hariana Overseas Corporation* ('*The Takafa*') [1990] 1 Lloyd's Rep 536, 537 (Hirst J).

vessel begins its approach voyage by the day when, if it proceeds with all reasonable dispatch, it would arrive at the loading port by the expected date.[51]

37. An expected readiness to load clause is analogous to an ETA provision specifying the date the vessel is expected to arrive at the loadport.[52] The approach voyage commences when the vessel proceeds to the loadport for the purpose of loading the cargo.[53]

38. The Fixture Recap contains an ETA clause specifying 3 December 2011 as the estimated date of arrival at the loadport.[54] The Vessel was arrested at the Bunkerport in November 2011.[55] The Vessel would have missed the laycan of 5 December 2011.[56] The Charterers argue that the approach voyage never commenced because the Vessel never proceeded to the loadport for the purpose of loading the cargo. Therefore the Owners have breached the obligation to begin the approach voyage at an appropriate time to meet the laycan.

II. The Charterers did not do all that was reasonable and convenient

39. The duty to proceed with all convenient dispatch requires a shipowner to make reasonable speed to meet the laycan.[57] In exercising convenient dispatch the

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[51] *Geogas SA v Trammo Gas Ltd* (‘*The Baleares*’) [1993] 1 Lloyd’s Rep 215, 225 (Neill LJ); *Mitsui OSK Lines v Garnac Grain Co Inc* (‘*The Myrtos*’) [1984] 2 Lloyd’s Rep 449, 452-3 (Leggatt J); *Evera SA Commercial v North Shipping Co Ltd* (‘*The North Anglia*’) [1956] 2 Lloyd’s Rep 367, 372 (Devlin J); *Louis Dreyfus & Co v Lauro* (1938) 60 Ll L Rep 94, 97 (Branson J).
[52] *Geogas SA v Trammo Gas Ltd* (‘*The Baleares*’) [1993] 1 Lloyd’s Rep 215, 225 (Neill LJ); *Mitsui OSK Lines v Garnac Grain Co Inc* (‘*The Myrtos*’) [1984] 2 Lloyd’s Rep 449, 452-3 (Leggatt J); Julian Cooke et al, *Voyage Charters* (Informa Law, 3rd ed, 2007) 95-96 [4.11]-[4.12].
[53] Cooke et al, above n 52, 98 [4.17]. See *Barker v M’Andrew* (1856) 18 CB(NS) 759; *Harrison v Garthorne* (1872) 26 LT(NS) 508; *Hudson v Hill* (1874) 43 LJCP 273.
[54] Moot Problem, 4, 47.
[55] Ibid, 92.
[56] Ibid, 95.
[57] *Geogas SA v Trammo Gas Ltd* (‘*The Baleares*’) [1993] 1 Lloyd’s Rep 215, 225 (Neill LJ); *Ease Faith Ltd v Leonis Marine Management Ltd* [2006] EWHC 232 (Comm), 697 (Smith J); *President of India v Hariana Overseas Corporation* (‘*The Takafa*’) [1990] 1 Lloyd’s Rep 536; 538 (Hirst J); Eder et al, above n 27, 124-26 [7-033]-[7-037].

shipowner is required to avail himself of the means in his power and avoid unreasonable delay.[58]

40. The Charterers argue that the Owners did not do all that was reasonable to ensure the Vessel met its laycan. The Vessel was arrested after arriving at the Bunkerport for unpaid fees.[59] Instead of submitting a claim to their P&I club for a letter of indemnity to ensure the Vessel's release, the Owners chose to 'play the game' and negotiate the figure.[60] The Owners knew that it was essential that the Vessel leave the Bunkerport by 25 November 2011 in order to meet the laycan but were in 'no rush' to ensure its release.[61] This resulted in the Vessel missing its laycan.[62]
41. The Charterers argue that the Owners' failure to avail themselves of the opportunity to secure the Vessel's release through a P&I claim resulted in unreasonable delay because the Vessel missed its laycan. Therefore the Owners have breached the duty to proceed with all convenient dispatch.

III. The delay caused by the arrest and detention of the Vessel frustrated the main purpose of the Charterparty

42. The Charterers argue that the delay caused by the arrest and detention of the Vessel frustrated the main purpose of the Charterparty and therefore entitled them to terminate the Charterparty and claim damages.
43. A breach of a condition or a serious breach of an intermediate term goes to the root of the contract and entitles the innocent party to terminate the contract and claim

[58] *The Wilhelm* (1866) 14 LT 636; *Monarch Steamship Co Ltd v Karlshamns Oljefabriker (A/B)* [1949] AC 196.
[59] Moot Problem, 93.
[60] Ibid.
[61] Ibid, 93, 94.
[62] Ibid, 95.

damages.[63] In maritime voyages time is of the essence.[64] A breach causing delay goes to the root of the contract when it deprives the charterer of the benefit of the contract or entirely frustrates the object of the charterparty.[65]

44. The Charterers argue that the Owners' breach of the duty to proceed with all convenient dispatch goes to the root of the charterparty because it entirely frustrated the object of the Charterparty. The Charterers argue that the purpose of the Charterparty was the delivery of the cargo from Blueland to Indigoland by 10 January 2012 so it could discharge and disembark before the terminal closed on 15 January 2012. Due to the Vessel's continued arrest it would not have arrived at the discharge port and discharged by 10 January 2012.[66] Therefore the main purpose of the Charterparty was frustrated and the Charterers are entitled to damages.

B. The Owners breached the duty to notify of changes to the Vessel's ETA

45. The Charterers argue that the Owners have breached the duty to notify of changes to the Vessel's ETA because the Owners failed to give notice immediately following a change to the Vessel's ETA due to the arrest of the Vessel.

46. The Charterparty contains three different ETA provisions: Clause 27 of the Rider Clauses;[67] Clause 1 of the Owners' Standard Terms;[68] and Clause 3 of the Charterers' Standard Terms.[69] Effort should be made to give effect to every clause in the

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[63] *Hongkong Fir Shipping Company Ltd v Kawasaki Kisen Kaisha Ltd* [1961] 2 Lloyd's Rep 478, 493-4 (Diplock LJ); *Decro-Wall International SA v Practitioners in Marketing Ltd* [1971] 1 WLR 361, 380 (Buckley LJ); Beale, above n 18, 824-25 [12-019]-[12-020].
[64] *United Scientific v Burnley Council* [1978] AC 904, 924 (Lord Diplock); *Bunge Corporation v Tradax Export SA* [1980] 1 Lloyd's Rep 294, 306 (Megaw LJ); *Kuwait Rocks Co v AMN Bulkcarriers Inc* ('*The Astra*') [2013] 2 Lloyd's Rep 69, 89 (Flaux J).
[65] *EL Oldendorff & Co GmbH v Tradax Export SA* ('*The Johanna Oldendorff*') [1974] AC 479, 555-7 (Lord Diplock); *MacAndrew v Chapple* (1866) LR 1 CP 643, 648 (Willes and Byles JJ); *Universal Cargo Carriers v Citati* [1957] 1 Lloyd's Rep 174, 186 (Devlin J).
[66] Moot Problem, 92, 95.
[67] Ibid, 24, 67.
[68] Ibid, 44, 87.
[69] Ibid, 45, 88.

agreement.[70] The Charterers argue that these three provisions do not contradict each other but combined to create an onerous notification requirement on the Owners to reflect the importance of time in this voyage.

47. Clause 3 of the Charterers' Standard Terms requires the Owners to give notice of the Vessel's ETA immediately, and every 5 days, and then every 96, 72, 48, 24 and 12 hours.[71] In addition to this Clause 27 of the Rider Clauses requires the Owners to report the Vessel's ETA on a daily basis and to advise the Charterers immediately if the Vessel's ETA changed by more than six hours.[72] Clause 1 of the Owners' Standard Terms also contains these requirements.[73] As a result the Owners were required to notify the Charterers immediately if the Vessel's ETA changed by more than six hours.

48. The Vessel was arrested at the Bunkerport.[74] The Vessel remained under arrest for at least three days.[75] The Charterers argue that the arrest changed the Vessel's ETA by more than six hours and the Owners were required to give immediate notice. The Owners did not notify the Charterers that the Vessel had been arrested.[76] The Charterers learnt of it through other sources and requested confirmation from the Owners.[77] Therefore the Owners breached the duty to notify and the Charterers are entitled to damages.

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[70] Beale, above n 18, 855 [12.078].
[71] Moot Problem, 45, 88.
[72] Ibid, 24, 67.
[73] Ibid, 44, 87.
[74] Ibid, 92, 93.
[75] Ibid, 92-5.
[76] Ibid, 92.
[77] Ibid.

C. Clause 2 does not exempt the Owners from liability

49. The Charterers argue that Clause 2 does not exempt the Owners from liability because: (I) the Charterparty was not cancelled under Clause 2; and (II) alternatively Clause 2 does not bar the Charterers from claiming damages.

I. The Charterparty was not cancelled under Clause 2

50. The Charterers argue that the Charterparty was not cancelled under Clause 2 because: (a) the right to cancel under Clause 2 had not yet accrued; and therefore (b) the Charterparty was cancelled under common law as a result of the Owners' contractual breaches.

a. The right to cancel under Clause 2 had not yet accrued

51. A cancellation clause gives the charterer an absolute right to terminate the charterparty regardless of whether the owner has breached the charterparty.[78] This right accrues in accordance with the requirements laid out in the clause.[79] Cancellation clauses must be strictly complied with.[80]

52. Clause 2 provides that the Charterers have the right to cancel the Charterparty when it becomes evident that the Vessel will not meet the laycan and the Charterers decline the revised ETA and laycan provided.[81]

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[78] *Marbienes Compania Naviera SA v Ferrostaal AG* ('*The Democritos*') [1976] 2 Lloyd's Rep 149, 152 (Lord Denning MR); *Smith v Dart & Son* (1884) 14 QBD 105, 110 (Smith J); Eder et al, above n 27, 149 [9-006].
[79] *Newland Shipping and Forwarding Ltd v Toba Trading FZC* [2014] EWHC 661 (Comm), [49] (Longmore J); *Cheikh Boutros Selim El-Khoury v Ceylon Shipping Lines Ltd* ('*The Madeleine*') [1967] 2 Lloyd's Rep 224, 237-8 (Roskill J).
[80] *Noemijulia Steamship Co Ltd v Minister of Food* ('*The San George*') [1950] 83 Ll L Rep 500, 507 (Devlin J); *Georgian Maritime Corporation Plc v Sealand Industries (Bermuda) Ltd* ('*The North Sea*') [1999] 1 Lloyd's Rep 21, 23 (Hobhouse LJ).
[81] Moot Problem, 44, 87.

53. Laycan is the time between the earliest date that the vessel is expected to begin loading and the date after which the charterers have the right to cancel the charterparty.[82]

54. It became evident that the Vessel could not meet the laycan on the 25 November 2011.[83] In their notification to the Charterers, the Owners stated that they were unable to provide a revised laycan until the Vessel was released from arrest.[84] On 27 November 2011 the Charterers cancelled the Charterparty.[85] As the Owners had not provided a revised laycan the right to cancel under Clause 2 had not yet accrued.

b. The Charterparty was cancelled under common law as a result of the Owners' contractual breaches

55. A party has the right to cancel a contract under common law when there is a breach that goes to the root of the contract.[86] As stated above the Owners' breach of the duty to proceed with all convenient dispatch goes to the root of the contract.[87] Therefore the Charterers were entitled to exercise their common law cancellation rights and did so on 27 November 2011 when they notified the Owners of the cancellation.[88] This cancellation only invoked their common law rights and not Clause 2.

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[82] *ERG Raffinerie Mediterranee SPA v Chevron USA Inc* ('*The Luxmar*') [2007] 2 Lloyd's Rep 542, 546 (Longmore J); *Tidebrook Maritime Corporation v Vitol SA of Geneva* ('*The Front Commander*') [2006] 2 Lloyd's Rep 251, 257 (Rix LJ); *SHV Gas Supply and Trading SAS v Naftomar Shipping & Trading Co Ltd Inc* ('*The Azur Gaz*') [2006] 1 Lloyd's Rep 163, 165 (Clarke J).
[83] Moot Problem, 95.
[84] Ibid.
[85] Ibid, 96.
[86] *Decro-Wall International SA v Practitioners in Marketing Ltd* [1971] 1 WLR 361, 380 (Buckley LJ); *Hongkong Fir Shipping Company Ltd v Kawasaki Kisen Kaisha Ltd* [1961] 2 Lloyd's Rep 478, 493-4 (Diplock LJ); Beale, above n 18, 827-28 [12-026].
[87] Paragraphs [42]-[44] above.
[88] Moot Problem, 96.

II. Alternatively, Clause 2 does not bar the Charterers from claiming damages

56. Alternatively if this Tribunal finds that the Charterparty was cancelled under Clause 2 the Charterers argue that it was not cancelled without recourse to either party whatsoever because: (a) the words 'to either party whatsoever' were not included in Clause 2; and (b) in any event Clause 2 does not cover damages arising before cancellation.

a. The words 'to either party whatsoever' were not included in Clause 2

57. The Charterers argue that Clause 2 must be interpreted without the words 'to either party whatsoever' because: (i) the words were included by common mistake; and (ii) alternatively the words were included by unilateral mistake.

i. The words 'to either party whatsoever' were included in Clause 2 by common mistake

58. A common mistake occurs when both parties are mistaken about a term of their agreement.[89] Rectification is available when a document does not reflect the parties' common intention.[90] This requires convincing proof that the parties had a continuing common intention at the execution of the document.[91] An outward expression of the parties' common intention is sufficient to prove that the document failed to record the

[89] *Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd* ('*The Great Peace*') [2002] 2 Lloyd's Rep 653, 658 (Lord Phillips MR); *Solle v Butcher* [1950] 1 KB 671, 695 (Denning LJ); Beale, above n 18, 438 [5-001].
[90] *Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd* ('*The Great Peace*') [2002] 2 Lloyd's Rep 653, 658 (Lord Phillips MR); *Frederick E Rose (London) Ltd v William H Pim Junior & Co Ltd* [1953] 2 QB 450, 461 (Denning LJ); Beale, above n 18, 488 [5-108].
[91] *Joscelyne v Nissen* [1970] 2 QB 86, 98 (Russell LJ); *Pukallus v Cameron* (1982) 180 CLR 447, 452 (Wilson J); *Mangistaumunaigaz Oil Production Association v United World Trade Inc* [1995] 1 Lloyd's Rep 617, 621 (Potter J); Beale, above n 18, 497 [5-122].

parties' intention.[92] An entire agreement clause does not prevent extrinsic evidence from being relied on to prove mistake.[93]

59. During negotiations the Charterers sought to have Clause 2 amended to remove the words 'to either party whatsoever'.[94] The words were removed from the draft charterparty sent on 17 November 2011.[95] However the final Charterparty circulated for signature on 19 November 2011 did not contain this amendment.[96] The Charterers argue that this was a common mistake because the parties had agreed to remove the words 'to either party whatsoever'. Therefore Clause 2 should be rectified to remove those words.

ii. Alternatively the words 'to either party whatsoever' were included by unilateral mistake

60. Alternatively the Charterers argue that Clause 2 should be rectified because the words 'to either party whatsoever' were included in Clause 2 by unilateral mistake.

61. A unilateral mistake occurs when one party is mistaken about the term of a contract and the other party is aware of the mistake.[97] A party is deemed to have knowledge of a mistake where they have actual or constructive knowledge of the mistake.[98] A

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[92] *Frederick E Rose (London) Ltd v William H Pim Junior & Co Ltd* [1953] 2 QB 450, 462 (Denning LJ); *Joscelyne v Nissen* [1970] 2 QB 86, 98 (Russell LJ); *Munt v Beasley* [2006] EWCA Civ 370, [36] (Mummery LJ); Beale, above n 18, 490-91 [5-114].
[93] *Surgicraft Ltd v Paradigm Biodevices Inc* [2010] EWHC 1291 (Ch), [73] (Pymont QC); Beale, above n 18, 489 [5-112].
[94] Moot Problem, 3.
[95] Ibid, 8.
[96] Ibid, 51.
[97] *Traditional Structures Ltd v HW Construction Ltd* [2010] EWHC 1530 (TCC), [25] (Grant J); Beale, above n 18, 492 [5-115].
[98] *Agip SpA v Navigazione Alta Italia SpA* [1984] 1 Lloyd's Rep 353, 360 (Slade LJ); *Traditional Structures Ltd v HW Construction Ltd* [2010] EWHC 1530 (TCC), [33] (Grant J); *Statoil ASA v Louis Dreyfus Energy Services LP* ('*The Harriette N*') [2008] EWHC 2257 (Comm), [87] (Aikens J).

unilateral mistake can be remedied in equity when it would be unfair, inequitable or unconscionable for the non-mistaken party to take advantage of the mistake.[99]

62. The Owners drafted both copies of the Charterparty.[100] They knew that the Charterers wanted Clause 2 amended to remove the words 'to either party whatsoever' and agreed to remove them.[101] The Charterers argue that it would be unfair to allow the Owners to avoid liability because of their failure to honour this agreement. Therefore the Charterers argue that the inclusion of the words in the final copy of the Charterparty was a unilateral mistake known to the Owners and should be rectified. The exclusion of the words 'to either party whatsoever' strengthens the argument below regarding the effect of Clause 2.[102] Accordingly the words 'to either party whatsoever' are not included in Clause 2.

b. In any event Clause 2 does not cover damages arising before cancellation

63. In any event the Charterers argue that Clause 2 does not exempt the contractual damages they seek because these damages arose before the cancellation.

64. Exemption clauses must be interpreted with the general principles of contractual interpretation.[103] Words must be construed in accordance with their ordinary and

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[99] *Thomas Bates & Son Ltd v Windhams (Lingerie) Ltd* [1981] 1 WLR 505, 515 (Buckley LJ); *Agip SpA v Navigazione Alta Italia SpA* [1984] 1 Lloyd's Rep 353, 360 (Slade LJ); *Traditional Structures Ltd v HW Construction Ltd* [2010] EWHC 1530 (TCC), [33] (Grant J).
[100] Moot Problem, 4, 47.
[101] Ibid, 3.
[102] Paragraphs [63]-[66] below.
[103] *Ailsa Craig Fishing Co Ltd v Malvern Fishing Co Ltd and Securicor (Scotland) Ltd* ('*The Strathallan*') [1983] 1 Lloyd's Rep 183, 186 (Lord Fraser); *Photo Production Ltd v Securicor Transport Ltd* [1980] 1 Lloyd's Rep 545, 551 (Lord Wilberforce); Beale, above n 18, 912 [14-005].

natural meaning.[104] Recourse is a legal right to demand payment or compensation.[105] The ordinary and natural meaning of whatsoever is 'no matter what'.[106]

65. An ambiguous clause will be read against the party seeking to rely on it.[107] When a term in a commercial contract is ambiguous the court will apply the interpretation that makes the most commercial sense.[108] An exemption clause must retain the legal characteristics of a contract.[109] The court will not interpret an exemption clause to enable a party to disregard its main obligations.[110] Cancellation clauses do not prevent charterers from claiming damages when the owner's breach results in the vessel missing the cancelling date.[111] This includes a breach of the duty to proceed with reasonable dispatch until the right to cancel is exercised.[112]

66. The Charterers argue that Clause 2 is ambiguous because 'without recourse to either party whatsoever' does not specify the time from which liability is exempt. To interpret Clause 2 to exempt all liability would allow the Owners to disregard their

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[104] *Chartbrook Ltd v Persimmon Homes Ltd* [2009] 1 AC 1101, 1135 (Lord Walker); *Prenn v Simmonds* [1971] 1 WLR 1381, 1385 (Lord Wilberforce); Beale, above n 18, 841-42 [14-005].
[105] J A Simpson and E S C Weiner (eds), *Oxford English Dictionary* (Oxford University Press, 2nd ed, 1989) 366; Susan Butler (ed), *Macquarie Dictionary* (Macquarie Dictionary Publishers, 5th ed, 2009) 1385.
[106] Butler (ed), above n 105, 1877.
[107] *Investors Compensation Scheme v West Bromwich Building Society* [1998] 1 All ER 98, 118 (Lord Hoffman); *Photo Production Ltd v Securicor Transport Ltd* [1980] 1 Lloyd's Rep 545, 551 (Lord Wilberforce).
[108] *Rainy Sky v Kookmin Bank* [2011] 1 WLR 2900, 2908 (Lord Clarke); *Investors Compensation Scheme v West Bromwich Building Society* [1998] 1 All ER 98, 118 (Lord Hoffman); *L Schuler AG v Wickman Machine Tool Sales Ltd* [1974] AC 235, 251 (Lord Reid); *Dolphin Tanker Srl v Westport Petroleum Inc* [2011] 1 Lloyd's Rep 550, 558 (Simon J).
[109] *Photo Production Ltd v Securicor Transport Ltd* [1980] 1 Lloyd's Rep 545, 553 (Lord Diplock); *Kudos Catering Ltd v Manchester Central Convention Complex Ltd* [2013] 2 Lloyd's Rep 270, 276-7 (Tomlinson LJ); *Fujitsu Services Ltd v IBM United Kingdom Ltd* [2014] EWHC 752 (TCC), [24] (Carr J); Beale, above n 18, 914 [14-007].
[110] *Sze Hai Tong Bank Ltd v Rambler Cycle Co Ltd* [1959] 2 Lloyd's Rep 114, 121 (Lord Denning); *Suisse Atlantique Société d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale* [1966] 1 Lloyd's Rep 529, 544 (Lord Reid); *Tor Line AB v Alltrans Group of Canada Ltd* [1984] 1 Lloyd's Rep 123, 130-1 (Lord Roskill); *Motis v Dampskibsselskabet* [2000] 1 Lloyd's Rep 211, 215-6 (Stuart-Smith LJ); Beale, above n 18, 914 [14-007].
[111] Eder et al, above n 27, 149 [9-008]; Cooke et al, above n 52, 537 [19.3]. See, eg, *Marbienes Compania Naviera SA v Ferrostaal AG* ('*The Democritos*') [1976] 2 Lloyd's Rep 149, 152 (Lord Denning MR).
[112] Cooke et al, above n 52, 537 [19.3]. See, eg, *Geogas SA v Trammo Gas Ltd* ('*The Baleares*') [1993] 1 Lloyd's Rep 215, 225 (Neill LJ); *Marbienes Compania Naviera SA v Ferrostaal AG* ('*The Democritos*') [1976] 2 Lloyd's Rep 149, 152 (Lord Denning MR).

main obligation of delivering the cargo. The Charterers are seeking damages for the breach of the duty to proceed with all convenient dispatch and the breach of the duty to notify.[113] These were ongoing obligations until the Charterparty was cancelled. The Owners breached these duties prior to cancellation.[114] Therefore the Charterers argue that these damages are not exempt under Clause 2.

D. The Charterers mitigated their loss

67. Mitigation requires a plaintiff to take reasonable steps to reduce the loss incurred by the defendant's breach.[115] A failure to mitigate restricts a plaintiff's right to recover damages.[116] The party in breach cannot suggest other measures that could have been taken in order to disentitle the other party from damages.[117]

68. The Charterers argue that they took all reasonable steps to mitigate their loss. After the Charterers were informed that the Vessel would not meet the laycan they hired two alternative vessels to complete the voyage.[118] The Charterers believed that the additional freight would be less than the penalty costs they would incur if they allowed the Vessel to continue.[119]

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[113] Paragraphs [45]-[48] above.
[114] Paragraphs [35]-[48] above.
[115] *British Westinghouse Electric and Manufacturing Co Ltd v Underground Electric Railways Co of London Ltd* [1912] AC 673, 690 (Viscount Haldane LC); *The "Asia Star"* [2010] 2 Lloyd's Rep 121, 127 (Rajah JA); Harvey McGregor, *McGregor on Damages* (Sweet & Maxwell, 17th ed, 2003) 217 [7-004]; Beale, above n 18, 1599 [26-001A].
[116] *British Westinghouse Electric and Manufacturing Co Ltd v Underground Electric Railways Co of London Ltd* [1912] AC 673, 689 (Viscount Haldane LC); *The "Asia Star"* [2010] 2 Lloyd's Rep 121, 127 (Rajah JA); McGregor, above n 115, 217 [7-004].
[117] *Banco de Portugal v Waterlow & Sons Ltd* [1932] AC 452, 506 (Lord Macmillan); *Moore v DER Ltd* [1971] 2 Lloyd's Rep 359, 362 (Davies LJ); Beale, above n 18, 1668 [26-104].
[118] Moot Problem, 98.
[119] Ibid.

E. The Charterers are entitled to compound or simple interest on the amount owed

69. The Charterers argue that if they are entitled to damages then they are also entitled to interest on the amount awarded.

70. An arbitral tribunal has a discretionary power to award simple or compound interest.[120] The award of interest may be on the whole or part of any amount awarded by the tribunal in respect of any period up to the award.[121]

71. In *Man Nutzfahrzeuge AG v Freightliner Ltd*[122] Lord Justice Moore-Bick said that simple interest does not adequately compensate the injured party, or reflect the benefits obtained by the wrongdoer.[123] Therefore arbitrators commonly award compound interest.[124]

72. The Charterers argue that compound interest should be paid on the damages claimed in order to fully compensate the Charterers for the loss of the money since the cancellation of the Charterparty. Alternatively the Charterers argue that they are entitled to simple interest on the amount.

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[120] *Arbitration Act 1996* (UK) c 23, s 49.
[121] Ibid, s 49(3)(a).
[122] [2005] EWHC 2347 (Comm).
[123] *Man Nutzfahrzeuge AG v Freightliner Ltd* [2005] EWHC 2347 (Comm), [321] (Moore-Bick LJ).
[124] Blackaby et al, above n 37, 543 [9.80]; *Man Nutzfahrzeuge AG v Freightliner Ltd* [2005] EWHC 2347 (Comm), [321] (Moore-Bick LJ); *LG&E Energy Corp, LG&E Capital Corp, and LG&E International Inc v The Argentine Republic* (Award, ICSID Case No ARB/02/1; IIC 295, 25 July 2007), 29; *Seimens AG v The Argentine Republic* (Award, ICSID Case No ARB/02/8; IIC 227, 6 February 2007), 127.

PRAYER FOR RELEF

For the reasons set out above, the Charterers request this Tribunal to:

(I) **DECLARE** that this Tribunal does not have jurisdiction to hear the Owners' claims;

(II) **DECLARE** that this Tribunal has jurisdiction to hear the Charterers' claims;

(III) **FIND** that the Charterers are not liable to the Owners for freight;

(IV) **FIND** that the Owners are liable to the Charterers for breaches of the Charterparty; and therefore

(V) **AWARD** damages to the Charterers and interest on the amounts claimed.