



# UCTshiplaw.com *bulletin*

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IN keeping with our undertaking to send [UCTshiplaw.com](http://UCTshiplaw.com) *bulletin* on a regular basis the students of the shipping law masters programme have compiled the following exciting issue. In this issue we have included various articles and links to websites which have recently been added to the UCT Shiplaw website. You may access these directly by clicking on the hyperlink provided or please take the time to browse through our website which may be found at [www.uctshiplaw.com](http://www.uctshiplaw.com). As always we would welcome any suggestions you may have on how we can improve the Bulletin or our website. Please e-mail your comments to [shiplaw@law.uct.ac.za](mailto:shiplaw@law.uct.ac.za)

## \* SHIPPING LAW UNIT NEWS

The Faculty of Law is pleased to confirm the appointment of Dr Steven Girvin as **Visiting Professor of Shipping Law** from July through to September of this year. Prof. Girvin hails from Nottingham University and will be teaching the LLM course in the [Carriage of Goods by Sea](#) and the LLB caput in Maritime Law. We look forward to his arrival and valuable input in the unit. He is, of course, no stranger to the Unit. For further details see [www.uctshiplaw.com/staff.htm](http://www.uctshiplaw.com/staff.htm)

We are immensely proud of our new Faculty facility — *The Oliver Tambo Moot Court*. This splendid venue accommodates a bench of three, registrar, recorder, up to 12 counsel and a gallery seating 38. The court is intended to speak out loud to confirm ongoing transformation of the Faculty, to promote debate and discussion in the Faculty, and to expose our students to a court environment. The court will be formally opened later this year, but it is already available on a limited basis for hire for arbitrations and mediations. It is fully equipped with audio and audio-visual record/playback, audio-visual and video conferencing facilities. Perhaps the comments of Booysen J in this week's *Stella Tingas* judgement (see below) are appropriate:

*The Master testified in Greece on video. He was on screen visible and audible to us and we, including Counsel who examined and cross-examined him, were visible and audible to him. ...*

*It is a most sensible way of dealing with the evidence of witnesses who are not available to testify in Court. It is a procedure which should in my view be incorporated in the Rules of Court.*

## \* RECENT & UNREPORTED CASES

An updated list of recent judgements in the Supreme Court of Appeal and the High Courts at Durban and Cape Town may be found at

[www.uctshiplaw.com/unrepcas.htm](http://www.uctshiplaw.com/unrepcas.htm)

as well as a brief summary of each case. By clicking on the name of the vessel you will get a short synopsis of each case. Full text judgements are available in PDF format.

The most recent decision to appear on the site is that of **The MV “STELLA TINGAS”**, in which judgement was delivered by the Durban & Coast Local Division (Case No: A.224/97) just a few days ago. The case dealt with a collision in Durban harbour caused by a vessel entering the harbour on the wrong heading and at excessive speed while under compulsory pilotage. The court ruled that owners of a vessel could not be held liable for the negligence of a pilot while their vessel was under compulsory pilotage. Also that S 35 of the United Kingdom Pilotage Act of 1983 was not applicable by virtue of S 6 of the Admiralty Jurisdiction Regulation Act 105 of 1983 in that it did not apply outside the geographical area of the United Kingdom. It was held that Portnet was liable for the collision caused by the *gross* negligence of the pilot and could not avail itself of the statutory exclusion of liability for pilot error. The full text of this judgement will soon be available on our website at [www.uctshiplaw.com/unrepcas.htm](http://www.uctshiplaw.com/unrepcas.htm)

## \* LEGISLATION

The following draft Regulations have recently been published for comment:-

- The Draft Merchant Shipping (INF Code) Regulations (Government Gazette Notice 480 of 2001)
- Draft Merchant Shipping (Licensing of Vessels) Regulations (Government Gazette Notice 746 of 2001)

## \* UCTSHIPLAW RESEARCH DATABASE

We continuously update our research dissertation database at [www.uctshiplaw.com/rschdiss.htm](http://www.uctshiplaw.com/rschdiss.htm) and most of the newer works are available on request via e-mail.

## \* ARTICLES

### **COMMENTARY ON THE IMPLEMENTATION OF THE ISM CODE**

It remains unclear how successful or otherwise the implementation of the ISM Code has been since the final compliance date for phase 1 which was 1<sup>st</sup> July 1998. Captain Anderson, VP of the Nautical Institute, has therefore decided to take this on himself as a registered doctoral research project. We would like to draw our readers' attention to the dedicated website of Captain Anderson which contains details of his doctoral research into the state of the implementation of the ISM Code. This may be found at [www.ismcode.net](http://www.ismcode.net) The site contains questionnaires that may be completed on-line and

Captain Anderson would appreciate feedback from readers towards this project by filling in the questionnaires. The site also presents an active debating room where readers may air their views on the issue.

Captain Anderson believes that the implementation of the ISM Code has left many areas unclear and that this has contributed to the delay in implementing good Safety Management Systems. This being due to a fear on the part of Masters and ship operators of fully implementing a working safety management system. He believes the turning point for the ISM Code will come once a court has had to address questions as to whether or not documentation created within a working safety management system can be used against the ship owner or Master. Captain Anderson is promoting a “no-blame” open reporting system in order to encourage ship owners and Masters to make their safety management systems work. This will include the production of much potentially self-incriminating documentation which will eventually lead to safer ships and cleaner seas. Captain Anderson fears that if the courts allow the paperwork to incriminate the ship owner this will lead to the death of the ISM Code. Captain Anderson’s paper presented at the London Shipping Law Centre in January 2001, titled “The ISM Code: A Seafarers Perspective”. can be found via [www.uctshiplaw.com/shiplink.htm](http://www.uctshiplaw.com/shiplink.htm)

Also in this regard Peter Morris of the International Commission on Shipping (ICONS) released the Commission’s report and recommendation at the APEC International Symposium on Ship Safety in Sydney in March 2001. The report of 258 pages is dramatically titled [“Ships, Slaves and Competition”](#). In it, 43 recommendations are made to better international shipping, some being more practical than others. This title has stirred many emotions as anyone can well imagine. The main aim of the report is find new ways to eliminate sub-standard shipping. Sub-standard ships persist despite the best efforts of regulators and there is no sign of deficient operators (who, say the report, could account for up to 15% of global shipping) going away. ICONS wish to counter this with more coastal state intervention. The reason for this is because flag states remain lax in their responsibilities. The trend has been occurring in North America for some time following the Erika incident. Europe is now following suit. The intended effect is to commercially marginalize non-performing flags. In this way the financial benefits of ship-owners operating sub-standard vessels are eroded. However the IMO risks being increasingly sidelined in the process.

The report mentions a few measures including: states to review training and labour supply arrangements to ensure compliance with IMO and the ILO; P&I clubs consolidate statistics on loss of life and injury of crew on ships; more transparency by publishing information on charterers, major ship-owners, beneficial ship owners etc.; Increasing Port State Control; imposing severe penalties.

The commission believes most of the recommendations can be implemented in 12-18 months by Port State authorities without the need for international agreements.

The reaction to report is mixed. It was not well received by the ICS and IFS while Port State control officials welcomed it. We will watch this space for future developments in this regard. The report may be accessed [through our links page](#).

The Shipping Law Unit would like to thank Mr Peter Morris for donating a copy of the report to our library.

\* **INTERESTING WEBLINKS**

Lloyd's register: [www.lr.org/](http://www.lr.org/) is a rich source of maritime information. The website contains, inter alia, historical and actual maritime information, the publications of Lloyd's register, the recent Maritime Bulletin of Lloyd's Register and a link to the online register of Lloyd's. There is also a list of links, related to the activities of Lloyd's register, and reaching from classification through maritime, engineering and insurance links. There is still much more to explore, so visit [uctshiplaw.com](http://uctshiplaw.com) for the link to Lloyd's Register.

The shipping weather forecast of the met office of the UK for the seas around the UK as well as between Iceland and Gibraltar at <http://www.met-office.gov.uk/datafiles/offshore.html>

The Shipping Times at <http://business-times.asia1.com.sg/shippingtimes>  
If you have not got this URL on your list of websites you maybe should think about adding this: The Shipping Times as part of the online Singapore based Business Times. It appears with Business Times daily from Monday to Friday. It provides the latest news, stories and features on shipping, air and land transport and logistics. You also can find on the page 'The Shipping Guide', which is a list of the vessels, in alphabetical order of their ports of origin, coming to or departing from Singapore. So have a look at the online Shipping Times, to which a link is provided at [www.uctshiplaw.com/shiplink.htm](http://www.uctshiplaw.com/shiplink.htm)

The British Chamber of Shipping site at [www.british-shipping.org/](http://www.british-shipping.org/) has lot of information related to British Shipping.

A database of the Tacoma Public Library contains a searchable index of more than 13,000 ships. It provides full text information on 1,000 ships built on the Pacific Coast and ships with a connection to the Pacific Northwest. The database includes the names (and former names) of vessels, their builders, careers, and disposition. It is available at [www.tpl.lib.wa.us/v2/nwroom/ships.htm](http://www.tpl.lib.wa.us/v2/nwroom/ships.htm)

Indonesia Shipping Gazette online at [www.indoshippinggazette.com/home/home.asp](http://www.indoshippinggazette.com/home/home.asp)  
Lots of links, not only related to the Far East, but of course most valuable for everyone involved in shipping with Indonesia.

For more than 800+ links to maritime-related companies and organisations see: [www.mglobal.com/](http://www.mglobal.com/)

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