Bunkering disputes

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Contract chains and the risk of paying twice

The structure of the bunker market produces a characteristic type of dispute. Because the buyer often contracts with a trader who buys from a physical supplier, three or more parties stand in a chain, each with its own contract and its own terms. When one of the intermediaries fails, the physical supplier remains unpaid while the buyer may already have paid the intermediary. The supplier then looks for another debtor. It may claim from the shipowner, arrest the ship or invoke a retention of title clause.

The collapse of the Danish group OW Bunker on 7 November 2014 showed the scale of the risk. OW Bunker had been described as the world's largest bunker supplier. Its failure left physical suppliers around the world unpaid for fuel that ships had received and consumed, while OW Bunker's assignee claimed payment from the same buyers.[1] In *The Res Cogitans* the UK Supreme Court held in 2016 that the contract between OW Bunker and the shipowner was not a contract of sale governed by the Sale of Goods Act 1979, given the retention of title clause and the expected consumption of the fuel before payment. [2] Many shipowners faced the prospect of paying twice for the same fuel. Bunker contracts were widely rewritten afterwards.

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Singapore experienced a similar dispute two years earlier. In *The "Bunga Melati 5"* a Singapore bunker supplier, Equatorial Marine Fuel Management Services, claimed more than US$21.7 million for bunkers supplied to ships of the Malaysian shipowner MISC. The bunkers had been ordered through an intermediary, Market Asia Link, which had agreed with MISC to supply 138,000 tonnes at a fixed price of US$475 per tonne. MISC argued that it had contracted only with Market Asia Link and had paid it in full. The supplier argued that the intermediary had acted as MISC's agent. On 21 August 2012 the Court of Appeal allowed the supplier's appeal against the striking out of its action and restored it for trial.[3] The case illustrates the central question of these disputes, which is who contracted with whom and on what terms.

Arrest of ships for bunker claims

The most powerful remedy of an unpaid bunker supplier is the arrest of the ship. Under the High Court (Admiralty Jurisdiction) Act, a claim in respect of goods or materials supplied to a ship for her operation or maintenance falls within the admiralty jurisdiction of the High Court. Bunkers fall within that category as goods supplied for the ship's operation.[4] For claims of this kind, an action in rem against the ship is available only if the person who would be liable on the claim was the owner or charterer of the ship, or in possession or control of it, when the cause of action arose. That person must also be the beneficial owner or demise charterer of the ship when the action is brought, unless the claimant proceeds against another ship that the same person then owns.[5]

The conditions have practical consequences. A supplier who delivered fuel to a ship ordered by a time charterer cannot arrest that ship for the charterer's debt, since the owner is not the person liable. It may be able to arrest another ship owned by the charterer, if there is one. A supplier who contracted with a trader has no claim in rem at all unless it can show that the trader acted as agent of the owner or charterer. The Court of Appeal held in *The "Bunga Melati 5"* that a plaintiff invoking admiralty jurisdiction must show an arguable case that its claim falls within the statutory

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categories and, if challenged, a good arguable case on the merits.[6] The availability of arrest in a port through which much of the world's fleet passes gives suppliers a security that few other ports can match.

Maritime liens and conflicts of laws

Bunker suppliers in Singapore do not enjoy a maritime lien. English law, which Singapore follows in this respect, limits maritime liens to a closed list of claims such as salvage, damage done by a ship and crew wages, while the supplier of necessaries has only a statutory right of action in rem.[7] United States law, by contrast, grants a maritime lien to a supplier of necessaries, including fuel, under certain conditions. The difference matters when an American supplier seeks to enforce its lien against a ship arrested in Singapore.

The Privy Council decided the question on appeal from Singapore in *The Halcyon Isle*. An American shipyard that had repaired the ship in New York claimed priority over the mortgagee bank after the ship was sold by order of the Singapore court. By a majority, the Privy Council held that the existence and priority of a maritime lien were governed by the law of the forum. Since Singapore law did not recognise a lien for necessaries, the shipyard ranked behind the mortgagee.[8] The decision remains the leading authority in Singapore. For a bunker supplier, it means that a lien acquired under American or other foreign law may not secure its claim when the ship is sold in Singapore. Suppliers with exposure to foreign ships often insist on payment security, credit insurance or choice of law clauses for that reason.

Quality and quantity claims

Disputes over quality and quantity follow a familiar pattern. The buyer alleges that the fuel was off-specification or that less was delivered than invoiced, while the supplier relies on its delivery note, its meter records and the samples sealed at delivery. The bunker contract usually fixes short time limits for notice of claims and determines which sample is decisive. Expert evidence from laboratories and engine manufacturers is often required to establish whether damage to an engine was caused by the fuel or by its handling on board.

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In Singapore, the regulatory framework shapes the evidence. The MPA's standards define how samples are taken and witnessed. The mass flow meter records the quantity, while the electronic delivery note preserves the data in a form that the regulator can verify. A tribunal that must decide a quantity dispute can therefore start from records produced under a public standard. That reduces the scope for disputes and increases the predictability of their outcome.

Most bunker disputes are resolved by negotiation or arbitration. Many bunker contracts provide for arbitration in London or Singapore. The Singapore Chamber of Maritime Arbitration, examined in Chapter II of Part F, offers an expedited procedure suited to the modest sums that many bunker disputes involve. Larger disputes, particularly those involving insolvency, arrest or fraud, go to the High Court and occasionally to the Singapore International Commercial Court, which Chapter III of Part F examines.

Insolvency in the bunker chain

The insolvency of a supplier or trader poses particular problems. After Inter-Pacific Petroleum entered judicial management in 2019, the MPA revoked its licence because the company could no longer meet the licence conditions. Ocean Bunkering Services stopped deliveries in April 2020 when its parent Hin Leong collapsed with debts of US$3.85 billion. In both cases, buyers who had prepaid or who held claims for defective deliveries became unsecured creditors, while suppliers further up the chain sought to recover fuel or its proceeds. The judicial managers and liquidators had to sort out claims arising from thousands of deliveries.

The Hin Leong case also showed the interdependence of bunkering and trade finance. The bank lending to Hin Leong financed oil cargoes, some of which were sold to the group's own bunkering arm. The fraud that the founder of Hin Leong committed against HSBC, examined in Chapter I of Part B and Chapter II of Part H, concerned the discounting of receivables from oil sales. Bunker suppliers that belong to trading groups expose their buyers and financiers to the risks of the whole group. The MPA's licensing regime addresses the operational risks of bunkering. It does not, and cannot, guarantee the solvency of the groups that own the licensees.

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Notes

1. Wikipedia, "OW Bunker" (accessed November 2026): founded in 1980 and based in Nørresundby, Denmark; "the world's largest bunker supplier" until it collapsed and filed for bankruptcy on 7 November 2014; OWB's assignee and the physical supplier both pressed shipowners for payment. ↩
2. *PST Energy 7 Shipping LLC v O W Bunker Malta Ltd (The Res Cogitans)* [2016] UKSC 23 (Lord Neuberger, Lord Mance, Lord Clarke, Lord Hughes and Lord Toulson, 11 May 2016), case details on supremecourt.uk (accessed November 2026); Wikipedia, "OW Bunker" (accessed November 2026): the supply agreement was not a contract of sale of goods under s 2(1) of the Sale of Goods Act 1979; affected ships could be liable to pay twice. ↩
3. *The "Bunga Melati 5"* [2012] SGCA 46 (Chan Sek Keong CJ, Andrew Phang Boon Leong JA and V K Rajah JA, 21 August 2012): claim of over US$21.7 million for bunkers; MAL had agreed to supply 138,000 tonnes at US$475 per tonne (at [8]); the respondent maintained that it had contracted only with MAL and paid it in full; appeal allowed and action restored for trial. ↩
4. *The "Bunga Melati 5"* [2012] SGCA 46 at [122]: if bunkers were a consumable, the claim "would fall within s 3(1)(l) of the HCAJA as being goods supplied for the ship's operation". ↩
5. High Court (Admiralty Jurisdiction) Act 1961, s 4(4), applicable to claims under s 3(1)(d) to (q), as reproduced in *The "Bunga Melati 5"* [2012] SGCA 46 at [92]: the person liable in personam must, when the cause of action arose, have been the owner or charterer of, or in possession or control of, the ship; the action in rem lies against that ship if that person is its beneficial owner as respects all the shares or its demise charterer when the action is brought, or against any other ship then so owned by that person. ↩
6. *The "Bunga Melati 5"* [2012] SGCA 46 at [104], [111]–[113]: invoking admiralty jurisdiction does not require a merits test at the first stage, but a plaintiff must show a good arguable case on the merits if challenged; for disputed questions of law an arguable case suffices. ↩

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7. Wikipedia, "Maritime lien" (accessed November 2026): English law recognises maritime liens for a closed list of claims (salvage, seamen's wages, damage done by a ship, bottomry, master's remuneration and disbursements); bunker suppliers are not protected by a maritime lien under UK law but may have a lien in the United States if they satisfy the statutory requirements. ↩
8. *Bankers Trust International Ltd v Todd Shipyards Corporation (The Halcyon Isle)* [1981] AC 221 (PC, on appeal from Singapore), majority of three to two. ↩

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