Neutral Citation Number: [2021] EWHC 2565 (Comm)

Case No: CL-2020-000690

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Rolls Building, Fetter Lane,
London, EC4A 1NL

Date: 24/09/2021

Before :

THE HONOURABLE MR JUSTICE HENSHAW

- -

Between :

EURONAV N.V.	**Claimant/ Owners**
- and -	
REPSOL TRADING S.A.	**Defendant Charterers**

m.t. "MARIA"
Voyage Charter dated 23 October 2019

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- -

Richard Sarll (instructed by **Lax & Co LLP**) for the **Claimant**
Michael Coburn QC (instructed by **Meana Green Maura & Asociados S.L.P.**) for the **Defendant**

JUDGMENT

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic

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Hearing date: 10 June 2021
Draft judgment circulated to the parties: 7 September 2021

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Mr Justice Henshaw:

(A) INTRODUCTION

1. The Claimants ("***Owners***") apply for summary judgment, alternatively the striking out of the Defendants' ("***Charterers***"') defence, in respect of Owners' claim for demurrage under a voyage charterparty dated 23 October 2019 ("***the Charterparty***"). The Charterparty was for the carriage of a cargo of crude oil from Brazil to a range of ports upon the US West Coast: in the event, to Long Beach, California. Charterers have taken the position that the claim is time-barred due to late notification of the claim. Owners maintain that this defence is misconceived. Owners' claim is for US$ 487,183.12 plus interest.

2. The parties agree that Charterers are to be treated as having issued a "mirror-image" application with the result that, if Owners should fail in their application, it is accepted that judgment should be entered against them on their claim.

3. It is also common ground that, for the purposes of both applications, the court should determine the legal issue between the parties applying usual trial standards, despite the fact that CPR 24 and CPR 3.4 have been invoked. As the parties point out, this in any event reflects the approach to be taken on a summary judgment application where a short point of law or construction arises, in which case the court should "*grasp the nettle and decide it*" (see, e.g., *Easyair Ltd (t/a Openair) v Opal Telecom* [2009] EWHC 339 (Ch) § 15).

4. The essential issue between the parties is whether Owners' claim for demurrage is barred by clause 15(3) of the Shellvoy 6 form, which requires notification to be made of a demurrage claim *"within 30 days after completion of discharge"* failing which the claim becomes time-barred.

5. The dispute between the parties is about which time zone should be used to determine the date of completion of discharge for these purposes. In particular:

   i) should the date be ascertained according to local time in California, where discharge took place, in which case the claim is time-barred?

   ii) or should one instead ascertain the date of completion of discharge according to either (a) the time zone of the recipient of the required notice (here, Spanish time, that of Charterers), (b) the time zone of the giver of the required notice (here, Belgian time, that of Owners) or (c) GMT, given that the contract applied English law? On each of these approaches the claim is not time-barred.

6. Owners submit that the correct approach is the one outlined by Professor D. Rhidian Thomas in a commentary on the proper operation of anti-technicality clauses in time charterparties (by which owners must first send notices to charterers to alert them to their non-payment of hire, affording them a prescribed 'grace period' before the vessel may be withdrawn). On that approach, Owners say, the right approach is to (a) apply a single time zone to both the beginning and end of the period, and (b) use the time zone which has the closest and most real connection with the provision in question. Owners' primary submission is that the time zone with the closest and most real connection is not Californian time, where neither Owners' nor Charterers' administrative staff (by whom and to whom the notice was due to be given) were located , but a European time zone.

7. Charterers submit that the date of completion of discharge should be determined using local time at the place where discharge took place. The use of local time is, they say, the natural approach, reflects the information stated in the Statement of Facts and Owners' laytime statement, and provides a clear, single date of discharge for use not only for clause 15(3) purposes but also in other contexts where the date of discharge is material, e.g. the Hague-Visby Rules limitation period for cargo claims.

8. As set out below, I conclude that Charterers are correct: the date of completion of discharge is to be determined according to the time zone applicable at the place where discharge occurred. The demurrage claim was therefore notified out of time.

(B) THE CHARTERPARTY

9. The charterparty is evidenced by a recap made by email on 23 October 2019, based on an amended Shellvoy 6 form, for the carriage of crude oil from Brazil (intention Santos) to 1 or 2 ports on the West Coast of the USA, from Los Angeles to San Francisco.

10. The Charterers are identified as such in the recap and as having their address in Madrid, Spain. The Owners are identified as the commercial operators of the ship, but it is common ground that they were also the contracting owners. They are stated as having their address in Antwerp, Belgium. The broker is stated to be Brazilship/ScanBrasil.

11. Clause 15(3) provides for two distinct time bars, as follows:

> "Owners shall notify Charterers within **~~60~~ 30** days after completion of discharge if demurrage has been incurred and any demurrage claim shall be fully ~~and correctly~~ documented and received by Charterers, within 90 days after

> completion. If Owners fail to give notice of or to submit any such claim with Documentation **provided available**, as required herein, within the limits aforesaid, Charterers' liability for such demurrage shall be extinguished."

12. The Charterparty is governed by English law and provides for the exclusive jurisdiction of the English High Court (clause 54). It also includes the following provisions:

    i) There are specific provisions governing how demurrage notices and supporting documents are to be sent. It is contemplated that supporting documents will be served on brokers *("…SUPPORTING DOCUMENTS TO BE PRESENTED AS IS CUSTOMARY WITH THE USUAL RULES OF AGENCY TO APPLY. I.E. CHARTERER'S BROKER TO BE SERVED WITH THE DOCUMENTS SUPPORTING THE DEMURRAGE CLAIM…"*)

    ii) Pursuant to clause 6 of Part II, there is a further 90-day time-limit for claims other than demurrage, running again from the date of the completion of discharge.

    iii) By clause 32(3)(b), cargo claims (including such claims made by the Charterers) are subject to the Hague-Visby or Hague Rules. Article III.6 of those rules discharges the owner from liability in respect of the goods:

    > "…unless suit is brought within one year of their delivery or of the date when they should have been delivered."

13. The charterparty contains no general provision regarding dates and times.

(C) FACTS

14. The Vessel spent a total amount of time on demurrage at Santos, Brazil, and Long Beach, California, of 151 hours 48 minutes. This equates to the sum of USD487,183.12, as per Owners' demurrage invoice.

15. The Vessel discharged at Long Beach and disconnected hoses at 21:54 local time (PST – Pacific Standard Time) on 24 December 2019, as noted in the Statement of Facts and laytime statement. Both documents give a slightly earlier time of 20:54 for "completion of discharge", but the difference is immaterial for present purposes.

16. At the time of disconnection of hoses, it was 21:54 on 24 December 2019 in Long Beach. It was 25 December 2019 in Europe, by reference to:

    i) Central European Time (CET), being PST + 9, in which time zone both Owners and Charterers are based, and

    ii) GMT/UTC, being PST + 8.

    Applying CET, discharge occurred at 06:54 on 25 December 2019 and applying GMT, it occurred at 05:54 on 25 December 2019.

17. On 24 January 2020, the Charterers received (from brokers rather than the Owners themselves) an email stating that:

> "According to owners, demurrage has incurred on above [subject] voyage.
>
> Hence, please take this email as demurrage notice".

This is the email on which Owners rely as constituting the notification required by clause 15(3). It is timed at 12:42 CET, and in any conceivably relevant time zone the email was sent and received on 24 January 2020. For example, it was received by Charterers in Spain at 12:42 on 24 January 2020 CET.

18. A dispute then arose about whether the notice had been sent in time. Charterers' position was and is that:

    i) discharge was completed on 24 December 2019;

    ii) the last day for notification was therefore 23 January 2020, being 'day 30', counting from 25 December 2019 as 'day 1'; and

    iii) the notification made on 24 January 2020 was thus out of time.

19. In Owners' submission, step (1) above is incorrect. They say that:

    (1) discharge was completed on 25 December 2019;

    (2) the last day for notification was therefore 24 January 2020, that being 'day 30', counting from 26 December 2019 as 'day 1'; and

    (3) the notification made on 24 January 2020 was therefore in time.

(D) PRINCIPLES

(1) Contractual interpretation: general

20. As a commercial agreement between two enterprises, the charterparty falls to be construed in accordance with the principles generally applicable to the interpretation of commercial contracts. Following *Wood v Capita Insurance Services* [2017] UKSC 24 these may be summarised as follows:-

    i) The court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. This is not a literalist exercise focused solely on parsing the wording of the particular clause: the court must consider the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to that objective meaning.

    ii) Where there are rival meanings, the court can give weight to the implications of rival constructions by reaching a view as to which construction is more consistent with business common sense. Each suggested interpretation should be checked against the provisions of the contract and its commercial consequences.

iii) In striking a balance between the indications given by the language and the implications of the competing constructions, the court must consider the quality of drafting of the clause, the possibility that one side may have agreed to something which with hindsight did not serve his interest, and the possibility that a provision may be a negotiated compromise or that the negotiators were not able to agree more precise terms.

iv) Some agreements may be successfully interpreted principally by textual analysis, for example because of their sophistication and complexity and because they have been negotiated and prepared with the assistance of skilled professionals. But negotiators even of complex formal contracts may often not achieve a logical and coherent text because of, for example, the conflicting aims of the parties, failures of communication, differing drafting practices, or deadlines which require the parties to compromise in order to reach agreement. Where provisions in a detailed professionally drawn contract lack clarity, the lawyer or judge in interpreting such provisions may be particularly helped by considering the factual matrix and the purpose of similar provisions in contracts of the same type.

21. Lords Hamblen and Leggatt (with whom Lord Reed agreed) summarised the position concisely in *Financial Conduct Authority v Arch Insurance (UK) Ltd* [2021] UKSC 1, [2021] 2 WLR 123:

> "There is no doubt or dispute about the principles of English law that apply in interpreting the policies. They were most recently authoritatively discussed by this court in *Wood v Capita Insurance Services Ltd* [2017] UKSC 24; [2017] AC 1173 in the judgment of Lord Hodge and are set out in the judgment of the court below at paras 62-66. The core principle is that an insurance policy, like any other contract, must be interpreted objectively by asking what a reasonable person, with all the background knowledge which would reasonably have been available to the parties when they entered into the contract, would have understood the language of the contract to mean. Evidence about what the parties subjectively intended or understood the contract to mean is not relevant to the court's task." (§ 47)

22. Specifically in relation to charterparties, *Carver on Charterparties* (2nd ed.) § 2-088 refers to "*the paramount desirability for certainty"* as a guiding influence in the construction of a charterparty, and suggests that the court *"should adopt a construction which favours certainty and avoids unnecessary expense and inquiries"*.

23. The approach to considering demurrage time bar provisions was recently considered in *The Amalie Essberger* [2019] EWHC 3402 (Comm), [2020] 1 Lloyd's Rep. 393. Peter MacDonald Eggers QC (sitting as a Deputy High Court Judge) there noted as follows:

i) The aim of construing a commercial contract, such as a charterparty, is to identify the meaning of a contractual provision having regard to the language of the provision, often by reference to the natural and ordinary meaning and the business sense of such language, but also in the context of the commercial

purpose of the contractual provision and the relevant factual background of the contract known, or knowledge of which was reasonably available, to the parties (§ 10).

ii) The purpose of notification is to allow the recipient of the demurrage claim, the charterers, to investigate and verify or dispute the claim, soon after the events giving rise to the claim (§ 13).

iii) Demurrage time bar provisions should be construed with the object of clarity and certainty, to ensure that the owners are in a position to know what will be required to be done in accordance with the provision (§ 14).

iv) Given that the demurrage time bar provision has the potential to bar the making of an otherwise valid claim if not presented in a timely way, both the time bar and the conditions for the application of the time bar must be clearly stated. It follows that if there is any genuine ambiguity in the meaning of the provision, it should be construed restrictively against the charterers and in favour of the owners (§ 15).

24. The latter paragraph of *Amelie Essberger* also points out the limited circumstances in which a *contra proferentem* approach may be appropriate:

> "… However, as Mr John Robb, who appeared on behalf of the Charterers, made clear, this principle of construction should be applied as a last resort, meaning that there must be a real ambiguity which remains after the analysis of the language, the commercial purpose and factual background, and should be applied less rigorously than a full exemption clause (Lewison, *The Interpretation of Contracts*, (6th ed., 2015), para. 12-16 - 12-17). The position was summarised by Gloster, J in *The Sabrewing* [2007] EWHC 2482 (Comm); [2008] 1 Lloyd's Rep 286, at paragraph 15:
>
> > "It was common ground between counsel that a demurrage time bar clause must be clear and unambiguous if effect is to be given to it. Thus, if there is any residual doubt about the matter, the ambiguity is to be resolved in such a way as not to prevent an otherwise legitimate claim from being pursued; see *Pera Shipping Corporation v Petroship SA (The Pera)* [1985] 2 Lloyd's Rep. 103 at page 106 per Lloyd LJ, and at page 108 per Slade and Griffiths LJJ. However, the words in a time bar provision must be given their ordinary and natural meaning. A time bar provision is, or is closely analogous to, a limitation clause. Thus, the especially exacting principles of construction that apply to exemption clauses probably do not apply to time bar provisions; see Lewison, *The Interpretation of Contracts*, 2nd Edition, para 11.15. The contra proferentem rule is only invoked as a last resort if the meaning of the words is so finely balanced that the contra proferentem rule should be applied in favour of owners; see *Mira Oil Resources of*

Tortola v Bocimar NV (The Obo Venture) [1999] 2 Lloyd's Rep. 101 per Colman J at page 104."" (§ 15)

(2) Periods of time

25. The following general propositions were not controversial between the parties:

i) When computing a period of time within which a certain thing must be done, the first day is not ordinarily counted (see, e.g., *Lester v Garland* (1808) 15 Ves Jun 248, 257; 33 ER 748, 752). Hence it is common ground in the present case that the date of discharge – whichever date it was – was 'day 0' and not counted as one of the 30 days within which notification had to be given.

ii) In the absence of any contrary indication, a 'day' means a calendar day, i.e. the period of twenty-four hours beginning and ending at midnight; it does not mean merely a period of twenty-four consecutive hours (see, e.g., *Cartwright v MacCormack* [1963] 1 W.L.R. 18). It is common ground in the present case that the latter, "*elapsed time*", approach does not apply. If it were applied, then Owners' notification would have been out of time, since it was given more than 30 x 24 hours from the time of discharge (measuring the start and end of the period using any single time zone, as one must when adopting an 'elapsed time' approach).

iii) Except when it is necessary to settle which of two acts done on the same day was done first, the law does not recognise fractions of a day. Days are regarded as points or brief periods of time deemed to coincide in duration with the events themselves. To determine the duration of a period one therefore goes forward to midnight on the day of the event before starting to count the days (see, e.g., *Lester v Garland* (*supra*)).

iv) A special application of these principles arises in cases of midnight deadlines (see *Matthew v Sedman* [2021] UKSC 19, noting among other things that the reason for the general rule which directs that the day of accrual of the cause of action should be excluded from the reckoning of time is that the law rejects a fraction of a day (§ 47)).

26. The parties agree, however, that these principles do not determine the question of which time zone should be applied when allocating an event to a particular calendar day.

(3) Service of notices

27. Owners refer to the following principles relevant to service of notices:

i) General principles of construction require one to interpret the contractual provision contextually with its commercial purpose. The commercial purpose here is primarily for the recipient (i.e. the charterers) to be notified. This, Owners contend, would suggest that the relevant time zone to apply is that of the Charterers. The recap identified them as having an address in Spain.

ii) Where a payment must be received within a prescribed period, it would ordinarily be appropriate to compute time according to the time zone where the

recipient is located (see the article by Professor Rhidian Thomas referred to below). The same approach to anti-technicality notices is also noted in *Carver on Charterparties* (2nd ed.) § 7-547.

iii) *Chitty on Contracts* (33rd dd.) vol. 1 at § 21-023 summarises the law as being that:

> "If a notice must be received by a specified person by a prescribed day, it must be received at a time when, as an ordinary matter of routine, it will convey the relevant information to that person or his agent, e.g. in the case of an office address, during normal offices hours."

iv) For example, in *Rightside Properties v Gray* [1975] Ch 72, a conveyancing case involving the receipt of a 'notice to complete', Walton J observed:

> "It would seem to me to be the height of absurdity if a notice, whose function is always to draw some fact to the attention of another party, for action or information, could be served at a time when it would, as a matter of ordinary routine, be utterly impossible for it to convey any information to anyone." (p.80)

Receipt of the notice by the solicitor on a Saturday morning did not therefore constitute effective delivery on that day (p.78).

v) *Lewison on Contracts* (7th ed.) § 15.15 expresses doubt as to whether it remains the case that a notice must be given within normal working hours, given the decision of the House of Lords in *Afovos Shipping Co SA v Pagnan* [1983] 1 W.L.R. 195. There it was held that, where hire under a charterparty had to be paid to a bank on a particular day, the payer would have until midnight on the last day of the period to make the payment. According to Lord Hailsham, this was said to result from:

> "a general principle of law not requiring authority that where a person under an obligation to do a particular act has to do it on or before a particular date he has the whole of that day to perform his duty." (p. 201)

vi) However, it was held in *The Pamela* [1995] 2 Lloyd's Rep. 249 that a notice which arrived at the charterers' offices at 23:41 on a Friday night did not achieve notification on that day. Instead, the court upheld the tribunal's decision that a notice arriving at such a time is not to be expected to be read before opening hours on the following Monday (see p. 252 rhc).

vii) Given that the notice in the present case was received by Charterers at 12:42 C.E.T. on 24 January 2020, it does not affect the result whether one understands clause 15(3) of the Shellvoy 6 form as requiring that the notice be received within normal office hours or else by midnight. The point Owners make, though, is that the cases mentioned above indicate a requirement that a notice should be received by the recipient within normal office hours or else by midnight. The question then arises, normal office hours / midnight in which

time zone? Owners say that answer to that question is, wherever the recipient is reasonably understood according to the contract to be located, since it is the recipient who is due to receive the notice. That is the time zone with the closest and most real connection with the provision in question.

viii) As an alternative, the general principle referred to in *Afovos Shipping Co SA v Pagnan* (quoted in (v) above) that where a person under an obligation to do a particular act has to do it on or before a particular date he has the whole of that day to perform his duty, would mean that Owners had until the end of the day in Belgium to perform the act of notifying Charterers. Since a single time zone must be identified to govern the computation of time, in order to avoid serious confusion Belgian time should also used for the purposes of reckoning the date on which discharge was completed.

28. I am not, however, persuaded that the cases and principles referred to above are helpful in resolving the issue in the present case. I would agree that the commercial objective of achieving timely notification of the charterer would tend to suggest (though I need not decide the point) that the notice should be received by the charterer by the end of its day, or working day, according to the charterer's own time zone. However, the event which starts the notification period, namely discharge, is an event that has occurred in a particular place in its own time zone. Considerations relating to adequate and timely notification of the charterer do not necessarily have any effect on the date at which discharge, an event some time ago in a different location, should be taken to have occurred. In this sense the provision, clause 15(3), cannot be said to have a 'closest connection': it requires a notice to be given, by one party to another, within a period after a particular event, including in circumstances where the two parties and the event (discharge) may be in three different time zones. For the same reasons, the notion (if correct) that the Owner may have until the end of the day, using its local time, to serve the notice in my view has no real bearing on the date on which the historical fact of completion of discharge must be taken to have occurred.

(4) Time as a local concept

29. There is some authority supporting the view that time is an essentially local concept to be determined using the time zone of the place where the event in question occurs.

30. In *Curtis v March* (1858) 157 ER 719 the Court of Exchequer had to consider whether a trial in Dorchester had started at the correct time, which involved considering whether Dorchester time or Greenwich time applied. At that time, GMT had not yet been uniformly adopted across Great Britain, so local time could vary from place to place. Chief Baron Pollock (with whom Channell B. agreed) held that Dorchester time applied, as being the time of the relevant place:

> "Ten o'clock is 10 o'clock according to the time of the place, and the town council cannot say that it is not, but that it is 10 o'clock by Greenwich time. A person hearing that the Court would sit at 10 o'clock would naturally understand that to mean 10 o'clock by the time of the place, unless the contrary was expressed."

31. Pollock CB also observed:

> "I cannot assent to the argument that the town council of any place may by their resolution declare that Greenwich, or any other time, shall be the time of the place; for I cannot help seeing the consequences. The difference between Greenwich time and the real time at Carlisle is several minutes, and therefore if a town council might determine the time, they might make a man born on a different day from that on which he was really born."

32. The particular problem that arose in *Curtis v March*, involving local variations in time within Great Britain, was eliminated by the adoption of GMT throughout Great Britain. This was put on a statutory footing by the Statutes (Definition of Time) Act 1880, section 1 of which provided that:

> "Whenever any expression of time occurs in any Act of Parliament, deed, or other legal instrument, the time referred shall, unless it is otherwise specifically stated, be held in the case of Great Britain to be Greenwich mean time, and in the case of Ireland, Dublin mean time."

33. In *R v Logan* [1957] 2 Q.B. 589, some British soldiers stationed in Hong Kong appealed against their convictions, for assaults, under an Act which had come into force both in England and in Hong Kong on 1 January 1957. The offences had been committed at 02:30 local time in Hong Kong. The soldiers appealed on the ground that GMT should be applied, and that at the time of the assaults it was not yet 1 January 1957 GMT. Their argument was founded on the Statutes (Definition of Time) Act 1880, mentioned above, which was said to require GMT to be applied. Lord Goddard CJ dismissed the appeal, stating:

> "If an Act is said to come into force on January 1, it comes into force on the day which is January 1 in the particular place where the Act has to be applied... [T]he fact that it became January 1 in Hong Kong a few hours before the clock would actually show January 1 in England does not make any difference. As the Act comes into force on January 1, 1957, in Hong Kong, it comes into force on the day which is January 1 in Hong Kong." (p.591)

Thus the offence was held to have occurred on 1 January because it was already that date at the place of the offence.

34. *Prowse v McIntyre* [1961] HCA 79, a decision of the High Court of Australia, concerned a limitation period for a personal injury claim. A statute postponed the limitation period while the claimant remained a minor, and the question was how long after attaining full age the claimant had issued his claim. He had been born on 28 November 1930, celebrated his twenty first birthday on 28 November 1951, and sued on 27 November 1957. However, by reason of an artificial but established rule of law, the claimant was deemed to have attained the age of 21 at midnight at the beginning of the day preceding his coming of age, i.e. the midnight dividing 26 and 27 November 1951 (see p.36 *per* McTiernan J). As a result, the claim was out of time. Windeyer J observed:

> "A day, the period of the earth's axial rotation, is the natural and fundamental division of time. A day for legal purposes is the mean solar day, a period of twenty-four hours. These hours are reckoned from midnight to midnight, the instant of midnight being both the end of one day and the beginning of the next, for there are no rests in time, and as each instant comes it goes. A day has a significance for law in two ways: first, as a division of time, that is the space of time within which an event happened or is to happen, or something was done or is to be done: secondly, as a measure of the passage of time, a unit in a period of time. The distinction tends to become blurred because the passage of time is sometimes spoken of as itself an event, as if it were of the same order as an event that occurs in time. But this is misleading. The birth of a man is an event. His attaining twenty-one is not, in the same sense, an event. It is merely a way of saying that a certain period of time, twenty-one years, has passed since he was born. The importance of this distinction will become apparent.
>
> Time is a local phenomenon. An interesting discussion of this occurred in *Curtis v March* (1858) 3 H & N 866 (157 ER 719). ... Practical difficulties arising from differences in mean solar time at different places are, however, largely overcome by the statutory adoption for legal purposes of Greenwich mean time, or of standard zone times related to Greenwich mean time (with, in some places and seasons, distortions by "summer time"): see for New South Wales the Standard Time Act, 1902, consolidating the Standard Time Act of 1894. So that the date and time of an event or of an act are ordinarily the date and time determined by the calendar and clock at the place where the event happens or act is done, notwithstanding that the actual occurrence is at different times in different parts of the world. When effluxion of time has to be considered, a somewhat similar result occurs. Suppose twins born at Greenwich on the same day; the elder, born just before his brother, remains in England; the younger comes to Sydney, and immediately on coming of age speaks by telephone to his elder brother in England. He is an adult, his brother is still an infant. Yet the duration of their infancy is computed from the same moment, namely the beginning of the day they were born. …" (p. 40)

35. In the specific context of charterparties, the textbooks favour a local time approach in relation to events such as the delivery of the ship and the payment of hire. In relation to delivery, *Carver on Charterparties* states:

> "The charter may specify the particular time zone by which the relevant time is to be determined, e.g. GMT or UTC. If not, local mean time should be used." (§ 7-015)

In relation to payment, *Time Charters* (7th ed.) states:

> "It is suggested that, again in the absence of express agreement, the last moment for timely payment should be calculated by reference to the place where payment is to be made so that (for example) a payment to be made in New York and due on 30 April is timely if effected late in the afternoon that day in New York even if the ship is then in the Far East so that for her it is 1 May." (§ 16.22)

36. In a different context, the Court of Appeal in *Unwired Planet International v Huawei Technologies Co Ltd* [2017] EWCA Civ 266 considered the date of filing and validity of a patent application. One of the issues was whether a publication destroys the novelty of the patent where it is put into the public domain on a date that is before the priority date in some time zones but not in the time zone where the patent application is filed.

37. Under Article 54 ('*Novelty*') of the European Patent Convention, an invention is considered new if it does not form part of the *"state of the art"*. The latter concept comprises everything made available to the public *"before the date of filing of the European patent application"*, and also the content of European patent applications filed before that date but published after it. The text of Article 54 is as follows:

> "(1) An invention shall be considered to be new if it does not form part of the state of the art.
>
> (2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the European patent application.
>
> (3) Additionally, the content of European patent applications as filed, the dates of filing of which are prior to the date referred to in paragraph 2 and which were published on or after that date, shall be considered as comprised in the state of the art."

In addition, where an applicant enjoys a right of priority from an earlier application, the date of priority from that application counts as the filing date for the later application (Article 89).

38. The relevant document placed in the public domain in *Unwired Planet* was referred to as the 'Ericsson document'. The Court of Appeal noted the chronology and the judgment below:

> "141. The table shows that the Ericsson document was uploaded to the ETSI server some 14 hours before the priority document was filed. As one travels to the west (to the right in the table) the time of uploading gets earlier. When one gets to Hawaii, it is the previous day. The same would be true in California.
>
> …
>
> 142. The judge held that it was necessary to answer two questions, firstly what was the priority date and secondly

> whether the document was available before that date. To answer the first question it was necessary to adopt a frame of reference, and the only sensible frame of reference was that of the patent office where the priority document was filed. That meant that the priority date was the whole of 8 January in the time frame of the USPTO. One then answered the second question by reference to that day, in that time frame, as well. On that basis, the Ericsson document was made available within that day, not before that date, and was therefore not part of the state of the art."

The court recorded Unwired Planet's submissions that:

> "151. In the present case, the publication took place 14 hours before the patent was filed. There was, however, nothing anomalous about that. The system recognised that the applicant might publish at 00.01 in the morning and later file his patent at 23.59 that night without jeopardising his patent.
>
> 152. Huawei's time-based approach would have the consequence that one would not be protected against prior publication if the publication took place on the same day as filing. One would have to delay publishing until it was clear that it was not still the previous day in any country where the publication might be made available. That was the major anomaly with Huawei's approach." (§§ 151-152)

and reasoned as follows:

> "156. … Article 54 takes as the state of the art everything made available to the public before a date. It is common ground that the date in question is the date on which the document was filed at the patent office. The conclusion that the date is determined in the time reference of that patent office is in any event inescapable. It follows that the filing/priority date is the 24 hour period in that time zone during which the filing occurred.
>
> 157. Article 54(2) does not in terms refer to any other date. In that connection it is different from Article 54(3) which refers to the two filing dates of the competing applications. Article 54(2) simply asks whether the prior publication occurred before the filing/priority date. As a matter of language, it would seem to me to follow that the prior publication must occur at a time which falls outside and before the commencement of the 24 hour period which constitutes the priority date.
>
> 158. I can see no justification in the language of Article 54(2) for introducing a concept of publication date. If that had been the intention of the authors of the EPC, they could easily have expressed themselves by saying that the document must be made available "*on a date which is earlier than the date of filing*". That would have at least opened the door to the argument based on

> local time zones which Huawei now advances. The contrast with Article 54(3) which uses exclusively date-based language, is telling.
>
> 159. I agree with the judge that the policy considerations behind Article 54(3) are different. An exclusively date-based system makes sense and is workable where every document will bear a date and a record of where it was filed. Article 54(3) is dealing with deemed publication, so no question of it being made available in fact in different time zones can arise. A date-based system is much more troublesome in the context of actual prior publications which will bear one date but which may have been made available elsewhere on another.
>
> 160. I think the drafting of Article 54(2) provides a clear answer. The various examples discussed in argument are no more than the consequences of adopting one scheme or the other. If one is to have regard to consequences, I think Mr Speck is right that the most serious consequence is that of Huawei's construction. If it were right it would be possible for a patent to be prior published by something which happened after filing.
>
> 161. In summary, a publication is not part of the state of the art unless it was published before the priority date. The priority date is the 24 hour period of the day on which filing took place, in the time zone of the patent office where it was filed. The publication must occur before that day, on a time basis, by reference to the time zone of the patent office of filing.
>
> 162. It follows that allegation of lack of novelty was correctly rejected by the judge."

39. Charterers submit that this case indicates, or illustrates, that:

    i) where an event is recorded in a dated official document, such as a filing at a patent office, it is appropriate to use the stated date as the date of the event;

    ii) where, as in the Article 54(3) situation, two events are recorded in dated official documents, then both those dates should be used and compared (see quoted paragraph 159 above); and

    iii) the date of an event recorded in a dated official document can be compared to the date of some other event, using the time zone applicable to the former event.

40. I do not find *Unwired Planet* to be of particular assistance in resolving the present case. The fact that the court considered it obvious that the date of filing of a patent application should be determined using the time zone of the place of filing (quoted paragraph 156 above) provides some support for the general proposition that a localised event – such as completion of discharge – should be dated according to local time where it occurred. Beyond that, the Court of Appeal's reasoning appears to me based essentially on the language of and policy underlying the particular legislation in question.

41. Nonetheless, the authorities and commentary referred to in §§ 30-35 above suggest that the starting point, at least, is that the date of an event should normally be determined using local time at the place where the event happened.

(5) The Interpretation Acts

42. Owners submit that some support for their position can be derived from section 9 of the Interpretation Act:

> "**References to time of day**.
>
> Subject to section 3 of the Summer Time Act 1972 (construction of references to points of time during the period of summer time), whenever an expression of time occurs in an Act, the time referred to shall, unless it is otherwise specifically stated, be held to be Greenwich mean time."

Section 23(3) of the act applies section 9 to "*deeds and other instruments and documents*".

43. Owners accept that the present case does not fall squarely within the statutory presumption, as clause 15(3) of the Shellvoy 6 form does not refer to a time of the day. Instead it uses the phrase, "*within 30 days*", the question being by what time zone those days are computed. However, Owners make the point that the formula "*within 30 days*" means 30 calendar days, i.e. a period of twenty-four hours beginning and ending at midnight; that for these purposes it is necessary to identify midnight; and that when considering which time zone the parties reasonably intended to apply, one answer could be GMT on the basis of their choice of English law. That would reflect the fact that the computation of time occurs according to the principles of English law.

44. Owners add that the use of GMT (or UTC) could recommend itself for its use as an international time and/or as a nautical time. For instance, in a tanker charterparty of another oil major, BPTime 3, clause 8.1 expressly provides that all calculations are to be made in UTC (as noted in *Carver on Charterparties* at § 7-546).

45. Quite apart from the point that clause 15(3) does not include an expression of time of the kind referred to in section 9 of the Interpretation Act, I agree with Charterers that the Act is not directed toward the ascertainment for contractual purposes of the dates of events occurring in other countries and time zones. It is appropriate briefly to consider its history.

46. As noted earlier, the Statutes (Definition of Time) Act 1880 addressed the problem that had arisen in *Curtis v March*. Its preamble made clear that its purpose was:

> "to remove certain doubts as to whether expressions of time occurring in Acts of Parliament, deeds, and other legal instruments relate in England and Scotland to Greenwich time, and in Ireland to Dublin time, or to the mean astronomical time in each locality".

47. Section 1 provided that:

> "Whenever any expression of time occurs in any Act of Parliament, deed, or other legal instrument, the time referred shall, unless it is otherwise specifically stated, be held in the case of Great Britain to be Greenwich mean time, and in the case of Ireland, Dublin mean time."

48. In 1916, Parliament decided that GMT would be used in both Great Britain and Ireland. The preamble to the Time (Ireland) Act 1916 stated that its purpose was to "*assimilate the Time adopted for use in Ireland to that adopted for use in Great Britain*". Section 1 of the 1916 Act provided:

> "As from [1 October 1916] the time for general purposes in Ireland shall be the same as the time for general purposes in Great Britain both during the periods when the Summer Time Act, 1916, is in force and at all other times, and accordingly the enactments mentioned in the schedule to this Act shall, as from the same date, be repealed to the extent specified in the third column to that schedule."

The schedule to the Act removed the distinction in the Statutes (Definition of Time) Act 1880 between Great Britain and Ireland by removing the references to Great Britain, Ireland and Dublin mean time.

49. Following Irish independence and the creation of Northern Ireland, the Time Act (Northern Ireland) 1924 made provision "*for the permanent adoption in Northern Ireland of the time adopted for use in Great Britain*".

50. In 1968 a 3-year experiment began during which GMT+1 was adopted throughout the year, pursuant to the British Standard Time Act 1968. Section 1 provided:

> "The time for general purposes in the United Kingdom (to be known as British standard time) shall be one hour in advance of Greenwich mean time throughout the year; and any reference to a specified point of time in any enactment or any legal document (whether passed or made before or after the passing of this Act) shall be construed accordingly unless it is otherwise expressly provided."

51. During this period the Statutes (Definition of Time) Act 1880 was temporarily repealed. Then, in 1972, Parliament enacted the summer time legislation which remains in force today. The Summer Time Act 1972, to which the Interpretation Act 1978 refers, provides:

> "**1 Advance of time during period of summer time**.
>
> (1) The time for general purposes in Great Britain shall, during the period of summertime, be one hour in advance of Greenwich mean time…
>
> **3 Interpretation of references**.

> (1) Subject to subsection (2) below, wherever any reference to a point of time occurs in any enactment, Order in Council, order, regulation, rule, byelaw, deed, notice or other document whatsoever, the time referred to shall, during the period of summer time, be taken to be the time as fixed for general purposes by...this Act".

52. Sections 9 and 23(3) of the Interpretation Act are evidently the successors to the provisions referred to above. The consistent theme of all this legislation is that it provides for the time to be used *"in"* Great Britain and Ireland/Northern Ireland. It is not directed to the time of day (or date) to be allocated to events occurring abroad. That view is also supported by the presumption that legislation is generally not intended to have extra-territorial effect (see, e.g., *R (on the application of KBR, Inc) v Director of the Serious Fraud Office* [2021] UKSC 2 §§ 21-22). In the absence of any indication to the contrary, Parliament must be taken to have legislated for standard time within the UK, not outside it. I do not therefore consider that, in enacting the 1978 Act, Parliament can be taken to have intended to provide – even in relation to contracts governed by English law – that events occurring abroad should be timed or dated by the application of GMT rather than local time.

53. As to Owners' broader point about the use of GMT or UTC as an international or nautical time, it appears to me that express contractual agreement would be required in order to depart from the natural starting point that events should be timed in accordance with local time. Otherwise, for example, notices might have to be served or payments made in countries west of the UK many hours earlier than would otherwise be the case. It would be surprising to impute any such intention to contracting parties absent clear agreement.

(6) Professor Thomas's article

54. Owners cite an article entitled "*Time Charterparty Hire: Contractual Remedies for Default*" published in "*Legal Issues Relating to Time Charterparties*" (Prof. D. Rhidian Thomas, ed., 2008) which includes commentary on the proper operation of 'anti-technicality' clauses in time charterparties, pursuant to which before withdrawing a vessel from hire an owners must first send notice to the charterers to alert them to their non-payment of hire and provide a prescribed 'grace period'. For example, clause 9 of Shelltime 4 reads:

> "In default of such proper and timely payment,
>
> (a) Owners shall notify Charterers of such default and Charterers shall within seven days of receipt of such notice pay to Owners the amount due including interest, failing which Owners may withdraw the vessel from the service of Charterers without prejudice to any other rights Owners may have under this charter or otherwise. …"

55. Professor Thomas's commentary includes the following paragraphs:

> "7.50 When an anti-technicality notice is communicated to defaulting charterers, the principal parties, time charterers,

> owners and the bank to which payment is to be made may be located in different time zones. Where payment of hire is to be made in USD dollars there is also the requirement that the dollars pass through New York. In these circumstances, precisely how is the grace period to be measured in terms of time? The question could be answered by the express terms of the charterparty but this rarely (if ever) occurs. In the absence of express provision, it would appear that a single time zone must be identified to govern the computation of time if serious confusion is to be avoided. The time zone which appears to have the closest and most real connection with the grace period is that relating to the bank which is to receive payment. This association appears to be reinforced when the anti-technicality clause alludes to "banking days" or "clear banking days", and more so still when the contract expressly indicates that "banking days" are to be "as recognised at the agreed place of payment". If this analysis is correct it means that for the purpose of anti-technicality clauses, in the absence of an express provision to the contrary, all local time must be adjusted to corresponding time in the time zone of the bank to which payment is to be made. In managing payments this is a fact charterers must be acutely aware of.
>
> 7.51 The second problem is again connected with the question as to how precisely the grace period is to be computed. In the first place what is meant by a "day"? Does it mean a clear day, that is, a calendar day, or is it to be interpreted as a period of 24 consecutive hours running from 0000 hours to 2400 hours, with any part of a day counted pro rata. In the absence of an indication to the contrary, it is suggested that the latter is the correct approach. On this interpretation, a grace period of three days effectively means a period of 72 consecutive hours commencing from the time when the default notice is communicated to the charterers. The problem does not arise when the grace period is defined in hours, which is to be interpreted, presumably, as running hours, and commences to run from the time the default notice is communicated to the charterers. Presumably, in all instances, time runs without interruption except where the contract indicates otherwise. A reference to "banking days" or "banking hours" would seem to be a contrary indication, with non-banking days and hours and bank holidays not counting. Where, however, the contractual words refer to "clear days", as in the phrase "clear banking days", it is probable that the grace period begins to run at 0000 hours on the first counting day following the communication of the default notice and terminates at 2400 hours on the last counting day stipulated." (footnotes omitted)

56. On this basis, Owners submit, when computing time for such purposes, one should (a) apply a single time zone to both the beginning and end of the period, and (b) use the time zone which has the closest and most real connection with the provision in question.

As noted earlier, Owners submit that that is not the time in California, where neither the administrative staff of Owners nor of Charterers (by whom and to whom the notice was due to be given) were located. Instead on Owners' primary case, applying Professor Thomas's rationale – with receipt of notification taking the place of receipt of monies – the most fitting solution, which the parties are most likely reasonably to have intended, is that the time zone of the recipient of the notice should be applied for all purposes. Owners further note that *Carver on Charterparties* cites with approval Professor Thomas's article, stating that *"[w]here different time zones are involved, any relevant time periods should therefore be calculated in the local time of that bank unless otherwise stipulated"* (§ 7-546).

57. I do not, however, find the analogy persuasive. The second paragraph quoted above from the Thomas commentary in substance proposes an 'elapsed time' rather than a calendar approach, treating a 'day' as a period of 24 hours starting from the initiating event. On that approach, there is logic in using the same time zone for the beginning and end of the period. However, it is common ground that an elapsed time approach is not appropriate in the present case, and would in any event result in Owners' demurrage claim being out of time.

58. The first paragraph quoted above from the Thomas commentary is not confined to an 'elapsed time' approach. However, if a calendar days approach is used, then it is far from obvious that a single time zone must be applied to the events comprising the start and end of the period even if they are in different locations. Further, it is not clear what analogy should be drawn between a grace period under an 'anti-technicality' clause and the provision in the present case for notification of demurrage claims. A grace period begins when charterers receive owners' default notice and ends when payment is made. The notification period in the present case starts on completion of discharge and ends on service of a notice of claim. Owners submit that it is appropriate, in these two situations, to apply (respectively) the time zone of the place of payment, and the time zone of the recipient of the claim notice. However, it is unclear why the appropriate analogy could not equally be between the place of payment and the place of discharge.

59. It is also notable that the Thomas commentary does not advocate the place of receipt of the payment default notice as determining the applicable time zone. Moreover, the underlying basis of the Thomas approach appears to be, in his words, the avoidance of "*serious confusion*". However, an approach in the present case which – for the purposes of clause 15(3) only – attributed to a significant physical event such as completion of discharge a date derived by reference to a different zone would seem likely to create rather than reduce the scope for confusion.

(7) The *contra proferentem* principle

60. Owners make the alternative submission, citing *The Amalie Essberger*, that clause 15(3), if in any way ambiguous, should be construed restrictively against the Charterers because the clause could otherwise preclude an otherwise valid claim presented in a timely manner. I do not, however, consider clause 15(3) to be ambiguous, still less to give rise to two finely balanced possible interpretations.

(E) APPLICATION

61. In my judgment, the date of completion of discharge is to be determined applying local time at the place of discharge.

i) The ordinary and natural approach is to allocate to an event (e.g. a historical event, or a person's birth, marriage or death) the date that was current in the place where the event occurred.

ii) That approach gains some support from the authorities and commentary referred to in §§ 30-35 above.

iii) The discharge of cargo from a vessel is a tangible physical event, which occurs at a specific location and in a particular time zone. It will in the ordinary course be recorded in documents, such as the Statement of Facts and any laytime statement, as having occurred at the time and date current applying local time. A contracting party would naturally expect the date stated in such documents to be the date of completion of discharge for contractual purposes.

iv) The date of discharge of the cargo is significant not only for the purpose of notification of demurrage claims, but also for other purposes. It represents the end of the contractual service to the shipper, and ends the running of laytime or demurrage. Under clause 15(3) itself it is also the start date for the separate 90-day period for service of supporting documents. It is generally the starting point for the time limit under the Hague-Visby rules for cargo claims. It would be unnatural and illogical either (a) for there to be more than one date of discharge, used for different purposes, or (b) for the date of discharge pursuant to (say) the Hague-Visby rules to be determined by something as potentially arbitrary and non-transparent as the place of receipt (or, even, potential receipt) of a notice of any demurrage claim. Whether the date of delivery for Hague-Visby purposes is determined using local time at the place of discharge (which I am inclined to consider the obvious approach) or using the relevant court's own time zone (as was mooted during submissions but appears to me less attractive), Owners' case creates the prospect of the same event being differently dated for different purposes.

v) The use of local time at the place of discharge gives rise to a single, clear and easily ascertainable date and time of completion of discharge. It tends to promote certainty and reduce the risk of confusion.

vi) It is inherent in a date based system that different time zones may apply to the events which define the start and end of the period, if they are in different countries.

vii) The point that it is not essential to apply the same time zone to the beginning and end of the 30 day period under clause 15(3) is illustrated by a case where daylight saving time changes during the period. If, for example, discharge is completed on a particular day in the UK, and a notice is served at half past midnight on day 31, the notice would be out of time even if the clocks had gone forward an hour to GMT + 1 in the meantime (so that half past midnight was 11.30pm on day 30 GMT).

viii) If it were appropriate to determine both dates using a single time zone, it would be more logical for that to be the time zone of the place of discharge. As already noted, the completion of discharge is a significant physical event, with a natural

date, usually recorded in contemporaneous documents, and with several consequences under the contracts relating to the voyage.

ix) The considerations discussed in section (D) above give no compelling or sufficient to depart from the natural approach.

x) There is no ambiguity in clause 15(3) that might justify a *contra proferentem* interpretation.

62. Owners developed during oral submissions the point that dating completion of discharge using local (California) time has the effect of shortening the first day of the 30-day notification period. On this approach, 'day 0' (the day of discharge) ends at midnight California time (PST), which is 9am the following day in central Europe where the parties are based. 'Day 1' is thus shortened by 9 hours. That erodes the entitlement to a 30-day period in order to serve the notice under clause 15(3).

63. I do not accept that submission. On the footing that the requirement is to serve notice within 30 calendar days, that period may naturally equate to a number of hours more or less than 30x24 hours of 'elapsed time', depending on where the notice needs to be served compared to the place of discharge. That is simply a feature, rather than an erosion, of a notice period framed in terms of calendar days rather than 'elapsed time'. Moreover, even in the most extreme case, the period would not be shortened by more than about 23 hours. In the context of a 30 day notice period, any such difference does not in my view fundamentally alter, or undermine, the entitlement of both parties to a 30-day notice period. It is not germane to consider whether the position could be different if the notice period were a much shorter one (e.g. two or three days). As Megaw LJ said in *Carapanayoti v Comptoir Commercial Andre* [1972] 1 Lloyd's Rep 139, 144,

> "I would venture also to suggest in that same context that the test of substituting a period of one day for the longer period in fact provided by the relevant clause under consideration is a test which, while it has its usefulness has to be treated with great care. It would be dangerous to construe a 21-day notice clause in a particular way because of the absurd or difficult commercial consequences of a one-day notice clause, if in fact no sensible commercial man would be likely to agree to a one-day notice clause".

The fact that borderline cases might arise does not affect the essential validity of this point.

(F) CONCLUSION

64. The date of discharge should be determined, for the purposes of the clause 15(3) period for notification of demurrage claims, using local time at the place of discharge, here Pacific Standard Time. On that basis, the notification in the present case was out of time, and the Charterers are entitled to judgment.