

YOUNG MARITIME LAWYERS ASSOCIATION



HAMBURG SEMINAR 2019



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Welcome

YMLA Seminar 2019 in Hamburg, 21 & 22 June 2019

Dear Colleagues,

On behalf of the German Maritime Law Association (Deutscher Verein für Internationales Seerecht – DVIS) and the organising committee, we would like to welcome you to the 14th YMLA seminar in Hamburg.

We are very happy that you have decided to join us and we are honoured to host the YMLA seminar in Hamburg for the third time already. The YMLA seminar has proven to be a perfect opportunity to meet other young maritime lawyers from neighbouring countries with a focus on both – a high-level academic exchange between colleagues and an informal networking platform. We hope that this year's edition will continue this great tradition and that our efforts to add another remarkable seminar in the YMLA tradition will pay off.

This year's seminar venues somehow represent the spirit the YMLA seminars stand for. On Friday, the event starts in the International Maritime Museum Hamburg, which is located in the protected "Kaispeicher B", one of the oldest warehouses in Hamburg's historic harbour area. The International Maritime Museum contains a tremendous collection of maritime artefacts, which mirrors the development of seafaring from the ancient world to the modern age and which reminds the visitor where seafaring comes from and how it might develop in future. A perfect place for an academic exchange between colleagues working in the maritime sector.

Afterwards you will have the opportunity to join us for a tour through the newly built "Hafencity" which establishes modern architecture in the historic harbour area of Hamburg, followed by a reception in Hamburg's most recent trademark building, the "Elbphilharmonie" concert hall. Its remarkable glass facade is a reminiscent of waves and sails. Here you will have the possibility of enjoying spectacular views over Hamburg and deepening your relationships with other participants.

As to the seminar itself, the organising committee has decided to change the format and conduct a moot court on Friday, which will hopefully stimulate lively discussions on various topical legal issues. Our thanks for this go especially to Prof. Dr. Henning Jessen, who will take the role of presiding judge. On Saturday the recently established practice will be continued, according to which two speakers of each participating country will present recent landmark court decisions of their respective jurisdictions.

Finally yet importantly, we would like to thank the members of the organising committee for their efforts as well as all of our sponsors, without whom the organisation of this seminar would not have been possible.

We hope that you will enjoy this year's edition of the YMLA seminar in the beautiful city of Hamburg!



Dr. Klaus Ramming
(Chairman of the Board of DVIS)



Prof. Dr. Dieter Schwampe
(Chairman of the Board of DVIS)

The organising committee

Dr. Jan Albers

Dr. Jenny Buchner

Jutta Fastert-Hillegeist

Jette Gustafsson

Dr. Eva-Maria Harm

Thorben Klemt

Dr. Justin Kotthaus

Tobias Nesemann

Tammo Schwerdt

Tilo Wallrabenstein

Event programme

Friday 21 June 2019 YMLA Seminar Day 1

from 11:30 Registration at the **International Maritime Museum Hamburg**
 until 13:00 Optional: Guided tours in groups through the **International Maritime Museum Hamburg**

Lunch

13:00 Welcome and opening YMLA 2019 seminar by Prof. Dr. Dieter Schwampe
 Start of seminar day 1, Moot Court, Presiding Judge Prf. Dr. Henning Jessen

14:30 Coffee break

15:00 Continuation of Moot Court

16:00 Coffee break

16:15 Continuation of Moot Court

17:15 End of Seminar

17:30 Joint walk through Hafencity

18:00 Reception at **Plaza Elbphilharmonie**

20:30 Evening event including dinner at
International Maritime Museum Hamburg

Saturday 22 June 2019 YMLA Seminar Day 2

from 09:15 Morning coffee at **Hafen-Klub Hamburg**
 Welcome, start of seminar day 2, Landmark Cases

09:45 Presentation Landmark Cases – Part 1

11:00 Coffee break

11:15 Presentation Landmark Cases – Part 2

12:30 Lunch

13:15 End of YMLA 2019 seminar



Venues

Friday 21 June 2019

International Maritime Museum Hamburg

Koreastraße 1,
20457 Hamburg

Elbphilharmonie

Platz der Deutschen Einheit 1,
20457 Hamburg

Saturday 22 June 2019

Hafen-Klub Hamburg

Bei den St. Pauli-Landungsbrücken 3,
20359 Hamburg

TAXI SERVICE

Hansa Taxi

+49 (0)40 211 211

HOTELS

25hours Hotel HafenCity

www.25hours-hotels.com
Überseeallee 5 · 20457 Hamburg · ~2,5 km
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www.alster-hof.de
Esplanade 12 · 20354 Hamburg · ~1,8 km
+49 4904 0350070

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www.thegeorge-hotel.de
Barcastr. 3 · 22087 Hamburg · ~3,3 km
040 2800300

Ruby Lotti

www.ruby-hotels.com
Düsternstr. 1-3 · 20355 Hamburg · ~1,2 km
040 696322890

Ibis Hamburg City

Amsinckstrasse 3 · 20097 Hamburg
Phone: 040 3099860

BELGIAN Delegates



01	Beeckx, Véronique	Elegis	v.beeckx@elegis.com
02	Biscop, Véronique	Marcon & Rubens	veronique.biscop@marcon-rubens.com
03	Blok, Kiki	Astrea	kbl@astrealaw.be
04	Chavez Arestegui, Jorge	Eric van Hooydonk Advocaten	jorge@ericvanhooydonk.be
05	Couvreur, Seb	Fransen Luyten	sc@fransenluyten.com
06	De Keye, Siel	B.D.M. NV	sieldekeye@bdmantwerp.be
07	De Roeck, Nina	Kegels & Co	nina.deroeck@kegels-co.be
08	De Ruyck, Michael	D'Hoine & Mackay	michael.deruyck@dm-law.be
09	Delen, Jan	Kegels & Co	jan.delen@kegels-co.be
10	Denis, Evelien	D'Hoine & Mackay	evelien.denis@dm-law.be
11	Depypere, Karl	Roosendaal Keyzer	Karl.Depypere@roosendaal-keyzer.be
12	Drofmans, Wim	Kegels & Co	wim.drofmans@kegels-co.be

13	Goovaerts, Tom	Fransen Luyten	tg@fransenluyten.com
14	Kriekemans, Bart	Roosendaal Keyzer	bart.kriekemans@roosendaal-keyzer.be
15	Mottie, Thibaut	Van Doosselaere Advocaten	t_mottie@vandoosselaere.be
16	Olyslager, Kristof	Proteus RS NV	kristof.ollyslager@proteusrs.com
17	Persyn, Dries	Marcon & Rubens	dries.persyn@marcon-rubens.com
18	Sprengers, Daphné	Fransen Luyten	ds@fransenluyten.com
19	Van Mechelen, Christophe	Van laer van Mechelen Advocaten	christophe.vanmechelen@vlvm.be
20	Vangeneugden, Nick	Bettens de Cocker van Hemelen	nick.vangeneugden@bdvlaw.be
21	Vanstaen, Chanel	Roosendaal Keyzer	chanel.vanstaen@roosendaal-keyzer.be
22	Verplancke, Dorien	Ponet & LVP Advocaten	D.Verplancke@Ponet-Law.be
23	Vertongen, Fien	Elegis	f.vertongen@elegis.com

DUTCH Delegates



01	Dekker, Evert	Cox Ten Bruggencate	e.dekker@cxtb.nl
02	Flaming, Hans	Smallegange	flaming@smalaw.nl
03	Holsbrink, Tom	Van Traa Advocaten	holsbrink@vantraa.nl
04	Hoovers, Jennifer	Van Steenderen Mainport Lawyers	jennifer.hoovers@mainportlawyers.com
05	Komen, Daan	Nautilex	komen@nautilex.nl
06	Koppenol, Mark	Deck Advocaten	koppenol@deckadvocaten.nl
07	Meijer, Liselotte	AKD	lmeijer@akd.nl
08	Neureiter di Torréro, Bas	Smallegange	neureiter@smalaw.nl
09	Regtien, Iris	Van Traa Advocaten	regtien@vantraa.nl
10	Roose, Stefanie	AKD	sroose@akd.nl
11	Stein, Sophie	Dock Legal Experts	stein@docklaw.nl
12	van Besouw, Diederik	Wiersma Mensonides	vanbesouw@wmlaw.nl
13	Wilbrink, Babara	AKD	bwilbrink@akd.nl
14	Zwanikken, Alicia	EVOFenedex	a.zwanikken@evofenedex.nl

GERMAN Delegates



01	Albers, Dr. Jan	Segelken & Suchopar	albers@sesu.de
02	Bischoff, Dr. Jan Asmus	Rechtsanwaltskanzlei	info@ra-drbischoff.de
03	Blumberg, Isabel	Blaum Dettmers Rabstein	blumberg@bdr-legal.de
04	Buchner, Dr. Jenny	CMS Hasche Sigle	jenny.buchner@cms-hs.com
05	Eiken, Neele Katharina	ADM Germany GmbH	neele.eiken@adm.com
06	Falk, Anna	Clyde & Co (Deutschland) LLP	anna.falk@clydeco.com
07	Fastert-Hillegeist, Jutta	Arnecke Sibeth Dabelstein	j.fastert-hillegeist@asd-law.com
08	Gahlen, Dr. Sarah	Lebuhn & Puchta	sarah.gahlen@lebuhn.de
09	Gustafsson, Jette	Blaum Dettmers Rabstein	gustafsson@bdr-legal.de
10	Haas, Jakob	Clyde & Co (Deutschland) LLP	jakob.haas@clydeco.com
11	Harm, Dr. Eva Maria	Ahlers & Vogel	harm@ahlers-vogel.de
12	Herrmann, Hendrikje	Ahlers & Vogel	herrmann@ahlers-vogel.de
13	Hinkelmann, Marja Helena	Ince & Co. Germany LLP	marjahinkelmann@incegd.com
14	Kleindienst, Dr. Jan-Martin	CMS Hasche Sigle	jan-martin.kleindienst@cms-hs.com
15	Klemt, Thorben	Marine Assekuranz GmbH	thorben.klemt@marine-assekuranz.de

16	Klotz, Johannes	Hapag-Lloyd AG	johannes.klotz@hlag.com
17	Kotthaus, Dr. Justin	Arnecke Sibeth Dabelstein	j.kotthaus@asd-law.com
18	Kube, Martin	Arnecke Sibeth Dabelstein	m.kube@asd-law.com
19	Marr, Dr. Ulf	Ahlers & Vogel	marr@ahlers-vogel.de
20	Meka, Benjamin	Skuld Germany GmbH	benjamin.meka@skuld.com
21	Nesemann, Tobias	Fleet Hamburg LLP	t.nesemann@fleet-hamburg.com
22	Pietsch, Thyra Katharina	Studentin	pietsch@reederverband.de
23	Pombo, Daniela	Ince & Co. Germany LLP	danielapombo@incegd.com
24	Reid, Philippa	Clyde & Co (Deutschland) LLP	philippa.reid@clydeco.com
25	Reußner, Dr. Martin	REMÉ Rechtsanwälte	m.reussner@reme.de
26	Rohrbeck, Lutz	Dr. Schackow & Partner	l.rohrbeck@schackow.de
27	Schüngel, Nicolas	Lebuhn & Puchta	nicolas.schuengel@lebuhn.de
28	Schwerdt, Tammo	Ahlers & Vogel	schwerdt@ahlers-vogel.de
29	Sielaff, Lena	REMÉ Rechtsanwälte	l.sielaff@reme.de
30	Steinkamp, Robert	Lebuhn & Puchta	robert.steinkamp@lebuhn.de
31	Tappe, Johanna	Koch Duken Boës	j.tappe@kdb.legal
32	Terhoeven, Philipp	Dr. Schackow & Partner	p.terhoeven@schackow.de
33	Tevelein, Justin	Fleet Hamburg LLP	j.tevelein@fleet-hamburg.com
34	Thies, Marko	Ince & Co. Germany LLP	markothies@incegd.com
35	Waldmann, Anna-Sophie	Clyde & Co (Deutschland) LLP	anna-sophie.waldmann@clydeco.com
36	Wendt, Malte	Schutzverein Deutscher Rheder	malte.wendt@shipdefence.de
37	Wülbern, Anna Lena	Arnecke Sibeth Dabelstein	a.wuelbern@asd-law.com
38	Zink, Dr. Andreas	REMÉ Rechtsanwälte	a.zink@reme.de

YOUNG CMI Delegates



01	Hardis, Andreas	Hafnia Law Firm	anh@hafnialaw.com
02	Kafka, Despoina	Steamship Mutual	despoinakafka@gmail.com
03	Oxholm, Andreas	Hafnia Law Firm	ano@hafnialaw.com
04	Soendergaard, Harald	Hafnia Law Firm	hso@hafnialaw.com
05	Misik, Viktor	Misik Law	misik@akmisik.eu

UK Delegates



01	Badrick, Russell	Shoreside Law	Russell.Badrick@shoresidelaw.com
02	Boyle, Andrew	Clyde & Co	Andrew.Boyle@clydeco.com
03	Cappa, Francesca	MFB	FCappa@m-f-b.co.uk
04	Gercans, Peter	MFB	PGercans@m-f-b.co.uk
05	Hamblen, Jamie	Quadrant Chambers	jamie.hamblen@quadrantchambers.com
06	Hatcher, Jack	Shoreside Law	Jack.Hatcher@shoresidelaw.com
07	Keaney, Donal	Hill Dickinson	Donal.Keaney@hilldickinson.com
08	Law, Kate	Campbell Johnston Clark	Kate@CJCLaw.com
09	Lazarou, Louise	Holman Fenwick Willan	Louise.Lazarou@hfw.com
10	O'Brien, Conor	Hill Dickinson	Conor.O'Brien@hilldickinson.com
11	Rezutka, Cecilie	Holman Fenwick Willan	Cecilie.Rezutka@hfw.com
12	Ritter, Michael	Holman Fenwick Willan	michael.ritter@hfw.com
13	Ross, Katrina	UK Chamber of Shipping	KRoss@ukchamberofshipping.com
14	Savva, Harry	Campbell Johnston Clark	Harry@CJCLaw.com
15	Smith, Alexander	Birketts	alexander-smith@birketts.co.uk
16	Stevens, Andrew	4 Pump Court	AStevens@4pumpcourt.com
17	Tavares, Stefan	Clyde & Co	Stefan.tavares@clydeco.com
18	Woods, Ian	Clyde & Co	Ian.Woods@clydeco.com

FRENCH Delegates



01	Bekkali, Michael	HFW	mzb@hfw.com
02	Brehm, Christopher	HMN & Partners	cbrehm@hmn-partners.com
03	Cerrahoglu, Selviye	LMS Avocats	s.cerrahoglu@lmsavocats.fr
04	de Corbiere, Charles	Villeneuve Rohart Simon	c.decorbiere@villeneuve.com
05	de Ferriere, Hélène	HFW	helene.deferrieres@hfw.com
06	de Mesnard, Hélène	Bourayne Preissl et Associés	contact@Bourayne-Preissl.com
07	Dejean, Mona	HFW	mona.dejean@hfw.com
08	Graffin, Benoit	LBEW Avocats	b.graffin@lbew-avocats.fr
09	Guerard, Victor	Ince & Co	victor.guerard@incelaw.com
10	Lemarie, Alexis	Laroque & Associés	lemariealexis45@hotmail.com
11	Love, Stephen	Ince & Co	stephen.love@incelaw.com
12	Maslin, Jean-Philippe	Ince & Co	jean-philippe.maslin@incelaw.com
13	Merer, Pierre-Louis	Shipowners P&I Club	Pierre-Louis.merer@shipownersclub.com
14	Okbani, Ansam	Delviso	ansam.okbani@avocatline.fr
15	Peignon, Charlotte	Villeneuve Rohart Simon	c.peignon@villeneuve.com
16	Preissl, Sigrid	Bourayne Preissl et Associés	contact@Bourayne-Preissl.com
17	Renard, Léopold	Renard & Associés	avocats@renardassocies.com
18	Rouffet, Carole	Nicoletti, Hornig & Sweeney	crouffet@nicolettihornig.com
19	Roussel, Morgane	Delviso	morgane.roussel@avocatline.fr

Moot Court

Part 1: Facts

“The Unlucky Mr Smith”

Mr Smith, a British citizen, his girlfriend and some other friends (jointly referred to as “the travel group”) planned a cruise on the cruise ship “M/V SIEGLINDE 2” (hereinafter referred to as “SIGGY”) which operates under the German flag. Each member of the travel group signed a contract of passenger carriage by sea with the SIGGY. The contracts are subject to German law and provide, inter alia, as follows:

“Clause 10 Liability of the carrier

10.1 Liability and limit of liability for death and personal injury

10.1.1 The carrier shall be liable for the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident, unless the carrier proves that the incident:

(a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(b) was wholly caused by an act or omission done with the intent to cause the incident by a third party.

10.1.2 The liability of the carrier for the death of or personal injury to a passenger shall in no case exceed 600 000 units of account per passenger on each distinct occasion.

10.2 Liability and limit of liability for loss of or damage to luggage and vehicles

10.2.1 For the loss suffered as a result of the loss of or damage to luggage, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The fault or neglect of the carrier shall be presumed for loss caused by a shipping incident.

10.2.2 The liability of the carrier for the loss of or damage to luggage shall in no case exceed 4 250 units of account per passenger, per carriage.

10.3 As far as not otherwise stated in this Clause 10 the provisions of the Athens Convention 2002 shall apply.

The planned voyage: The cruise departs from Southampton, UK, the travel group’s place of residence, and sails along the coast of France, Belgium, the Kingdom of YMLA (a fictitious country situated between Belgium and the Netherlands), the Netherlands, Germany and ends in Copenhagen, Denmark.

A touring coach picks up the travel group and takes them to the Port of Southampton. After picking up the travel group, the coach is involved in an accident on the motorway, and Mr Smith’s arm is badly broken. Luckily, he receives immediate medical treatment and the entire travel group, including Mr Smith, reach the SIGGY in time to start the cruise.

Due to the shallow and heavily congested area off the coast of the Kingdom of YMLA, the cruise ship’s captain orders a native pilot – as required – to help him through the shallow waters. The pilot – who has his habitual residence in the Kingdom of YMLA – boards the SIGGY in Belgium already. On the Belgian coast the captain encounters difficulties

with the navigation of the ship and asks the pilot for guidance. As the pilot fears that the captain is not able to master the difficult maneuvers he pushes him to the side and operates the toggle himself. Unfortunately, the pilot fails to get the situation under control. His steering leads to the grounding of the SIGGY.

All members of the travel group are severely injured. The unlucky Mr Smith, in particular, falls on his broken arm which causes a permanent malalignment of the bone of his forearm. He is a professional and very successful painter and will not be able to pursue his career anymore.

In addition to the injuries suffered by the travel group, there are several damages to their luggage. In detail:

Of course, Mr Smith's suitcase goes overboard and is lost. He is very upset because he had an expensive diamond ring in his suitcase; he was planning to propose to his girlfriend once they arrived at their destination in Denmark.

But, Mr Smith is not the only unlucky man. Mr Jones, another passenger on the SIGGY who had not been picked up by the touring coach, had his fancy car onboard the ship, which is also lost overboard. What's more, in his car's trunk he had stored his suitcase which is also lost to the sea.

The cruise ship's liability for the occurred damages is covered by their P&I Club. The contract of insurance is subject to English law. The P&I Club pays all indemnifications to the affected passengers in accordance with the terms of the underlying contracts of passenger carriage by sea. In detail:

1. Indemnifications for damages to persons

Mr Smith received a total amount of EUR 744,000.00 for the damages which resulted from the permanent malalignment of the bone. The amount includes reimbursement for medical treatments, physiotherapy, lost profit and damages for pain and suffering.

2. Indemnification for damages to luggage

Mr Smith also got indemnified for the loss of his luggage. The value of the high-carat diamond ring Mr Smith had planned to give to his girlfriend was EUR 6,000.00. The rest of his luggage was proven to equal a monetary value of EUR 200.00. Based on these facts Mr Smith was indemnified for the loss of his luggage in a total amount of EUR 5,270.00.

Mr Jones got indemnified for the loss of his car in the total amount of EUR 15,748.00 plus an extra EUR 150.00 for his luggage.

[Please note that one special drawing right shall equal EUR 1.24.]

After the payment has been made the owners of the SIGGY sign a 'Letter of Subrogation' addressed to their P&I Club which, inter alia, provides as follows:

"[...] We acknowledge receipt of the amount of EUR 765,168.00 which we accept in full satisfaction of our claim. We also acknowledge that by virtue of the above mentioned payment you are subrogated to all our rights and remedies in connection with the concerned incident as provided by the law applying to the contract of insurance. We further confirm that you are authorized to use our name to exercise all and any such rights and remedies. [...]"

Part 2: Legal proceedings before the Moot Court

The owners of the SIGGY now seek full recourse against the pilot. They bring an action against him before the (only) Regional Court of the Kingdom of YMLA. The pilot applies for denial of the action. These recourse proceedings are subject of the Moot Court that takes place on Friday, 22 June 2019.

The owners of the SIGGY base their recourse claim against the pilot on section 280(1) of the German Civil Code in connection with section 21(3) first sentence of the German Sea Pilot's Act. The corresponding provisions under YMLA law are equal.

- Section 280(1) of the German Civil Code/Section 189(1) of the YMLA Civil Code
"Damages for breach of duty

If the obligor breaches a duty arising from the [contractual] obligation, the obligee may demand damages for the damage caused thereby. This does not apply if the obligor is not responsible for the breach of duty."

- Section 21(3) first sentence of the German Sea Pilot's Act/Section 13(3) first sentence of the YMLA Sea Pilot's Act

"The pilot shall only be liable towards the owner of the piloted vessel or any other principal for the damages resulting from his pilot service if and insofar the pilot acted grossly negligent or intentionally.

The pilot rejects any liability by reference to the liability privilege provided in Section 13(3) first sentence of the YMLA Sea Pilot's Act which he considers to be applicable. The owners of the SIGGY argue that – according to German law – the pilot cannot rely on that privilege because, firstly, steering is not covered by the privilege but only consulting and, secondly, he did act grossly negligent.

[Please note that for educational purposes the tribunal would be very interested in hearing the respective Belgian, French, Dutch, English and German regulations, case laws and views regarding the pilot's liability and whether the pilot's scope of action is limited to consultation or whether it includes nautical piloting as well.]

The Moot Court proceedings shall be limited to the recourse regarding Mr Smith's and Mr Jones' claims. Any further passenger claims, potential claims for damages to the vessel or any other facilities shall not be under discussion.

Part 3: Organization of the Moot Court

1. Representations

We will need two participants of each delegation for the proceedings before the Moot Court. In detail:

1.1 The tribunal

The tribunal will consist of three judges. The presiding judge will be represented by Professor Dr. Henning Jessen

(World Maritime University, Malmö). His two associated judges will be represented by two nations – Belgium and Germany -, whereby two participants from Belgium share the position of one associated judge and two participants from Germany share the position of the other associated judge.

1.2 The parties

The claimants (the owners of the SIGGY) will be represented by two participants from the Netherlands. The defendant (the pilot) will be represented by two participants from France.

1.3 Experts/Expert witnesses

The tribunal will need to interrogate two experts/expert witnesses from UK as the question of the claimants' standing (locus standi) is subject to English law. We will need one expert who explains the meaning and the legal consequences of subrogation. The other expert will be interrogated with respect to P&I Clubs in general (their function, their organization, the scope of their coverages, and the like).

2. Procedure

The presiding judge will open the proceedings by presenting and summarizing the facts of the case. Subsequently, the claimants and the defendant will alternately present their cases on a point by point basis. The experts will be called and interrogated when their expert report is required. At the end the associated judges will evaluate the case one after the other by giving their votes. The proceedings will be closed by the presiding judge's concluding words. There will not be a ruling. Thus, there will not be one "winner" and one "loser".

Please note that the participants of the Moot Court are invited and encouraged to prepare the case based on their national legal systems (where appropriate including the applicable Conventions). It is intended and wanted that the legal discussions are influenced by the different national laws of the delegations.

3. Further preparations

We kindly ask the 10 participants of the Moot Court to provide us, the Organizing Committee, with short statements/ bullet points regarding the legal issues they consider relevant to be discussed in the Moot Court proceedings no later than 11 June 2019. The Organizing Committee might afterwards give further "judicial indications" to the participants of the Moot Court. Also, should there be any questions in respect of the facts of the case the participants are welcome to ask the Organizing Committee.

In a shared position, it is up to the participants, to decide on how they want to divide their role. For example, they could split the legal questions in two parts, or they could both prepare all legal questions and argue together and spontaneously on the day of the Moot Court.

We look forward to an interesting, educational and exciting Moot Court!

The Organizing Committee



YOUNG MARITIME LAWYERS ASSOCIATION

