

John F. Wilson

# Carriage of Goods by Sea

Seventh Edition

## 海上货物运输法

(第七版)

[英]约翰·F·威尔逊 著  
袁发强 译



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## 第一版前言

本书旨在通过中等篇幅的教材为学习海上货物运输法的基本原则提供系统的、关键性的介绍。不论是在本科教育,还是在研究生教育阶段,这种类型教材在一些大学和职业院校中对于学习海商法各种知识的作用都是显而易见的。当然,斯科拉顿(Scrutton)和卡弗(Carver)著作的权威性是不容置疑的。他们的两本专著在内容的专业性和百科全书式的方法上都不太适合学生使用,其价值远远超过了学生课本的范围。

本教材目的在于填补这个空白,同时也能为在船东保赔协会和伦敦市里从事货物索赔的律师事务所工作人员提供介绍性的知识。本书将集中揭示租船和提单方面的法律,同时还会介绍单据新形式的发展,以及联运方式下的法律问题,因为这都和海上货物运输有关。最后一章介绍了货物索赔诉讼可能涉及的各项因素,从选择法院到法律适用、仲裁程序以及玛瑞瓦禁令的签发等。

本书采用学位课程所使用的教材标准编写方法。对法律原理的讲述主要采取评论的方式,而不是简单介绍当前运输业正在使用的单据和实践,着重于航运领域内现实存在的难点和重大发展变化。尽管本书也试图将英联邦国家、美国以及国际性的素材都涵盖进来,但仍主要以英国普通法为基础。为避免内容过分冗长而不实用,本书放弃采取深入比较研究的方法,以免篇幅像本笃二世那样长。

## 前 言

本书第七版主要是为了适应一个新国际运输公约的出现而编写,该国际运输公约对提单运输合同可能带来重大变化。经过长达6年的酝酿,联合国《全程或部分海上国际货物运输合同公约》最终于2009年9月在鹿特丹对外开放签署。正如公约名称所隐示的那样,新公约试图超越以往运输公约只调整“港到港”的范围,而适用于“门到门”。尽管该公约比汉堡规则规定更详细,条文有96条之多,但仍然采用了汉堡规则的立法模式。新公约起初的目的在于为同时存在的3个规则各自发挥作用所引发的问题提供一套简单的、适应时代需要的责任制度,然而,显然存在的危险却是:如果新的国际公约不能得到国际的广泛支持以取代以往的3个规则,则会演变为与其他3个规则竞争的第4个规则。从参与起草进程的成员国数量看,存在这种结果能够被避免的希望,但从开放签署后的6个月来看,新公约仅仅获得了21个国家的签署。当然,从以往运输公约的经验看,各国一般都对法律带来的改变适应较慢,也许世界主要航运国家的批准能够改变这一现象。

本书新版将新公约(以下简称鹿特丹规则)的主要特点与其他已经存在的运输法律制度进行了比较的讨论,同时新公约的全文也收入本版的附件。

本书新版因此也有机会对第六版出版以来的30个新案例进行了分析。其中最引人注目的是Achilleas案。在该案中,英国上议院对一艘期租船舶延迟还船造成损失的索赔考虑了可预见性规则的适用。为了限制对租船合同期满后,合同约定的租金率与市场租金率的差额请求,上议院法官推翻了上诉审法官的观点(该观点得到上诉法院的一致赞成),而支持了原仲裁中一位持少数意见的仲裁员的看法。其他有趣的案件还包括Mediterranean Salvage and Towage Co. v Seamar Trading案。在该案中,上诉法院并不认为承租人在租赁合同中指定码头的行为构成了保证码头安全的默示义务;还有Bunge SA v. ADM Do Brasil Ltda案,该案裁决认为,除非货物本身存在引起其他货物或船舶损害的潜在可能性,否则不应将其视为海牙规则下的“危险”货物;在Fiona Trust and Holding Corp v. Privalov案中,法院判决认为仲裁条款虽然是合同的一部分,但却独立于合同,并不必然因合同的无效而无效;在Archimidis案中,判决认为支付空舱费的责任应当依据在启运港实际装上船的货物数量而不是租船合同中约定的货物数量决定;Trafigura Beheer v. Mediterranean Shipping Co.案则涉及对合同条款的解释问题,该条款试图免除船东

## 2 海上货物运输法

在伪造提单下交付货物的责任。

最后,作者要一如既往地感谢海商法中心同事们的不断鼓励和有益建议。特别要感谢大卫·杰克逊,他的帮助和专业咨询意见使我能跟上冲突法的发展;还要感谢冯·巴兹女士提供有价值的建议,使我能顺利掌握鹿特丹规则的复杂性;感谢安德鲁·桑地福在基础研究方面的慷慨协助。当然,下文中出现的任何错误或疏忽都应当由作者本人负责。

我还要感谢卡罗琳·秋佩柯在处理我的原稿方面的热情和高超能力,以及出版商在出版过程中的大力支持和鼓励。

本书中提及的案例和法律截至 2010 年 4 月 1 日。

约翰·F. 威尔逊  
于南安普敦  
2010 年 4 月

## 案 例 表

Visit the *Carriage of Goods by Sea*, seventh edition **mylawchamber** site at **[www.mylawchamber.co.uk/wilsoncogbs](http://www.mylawchamber.co.uk/wilsoncogbs)** to access regular updates to help you keep up to date with important legal developments in this area and web links to relevant sites of further interest.

[Numbers in bold type indicate cases illustrated in the text]

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