

INTERNATIONAL TRADE AND CARRIAGE OF GOODS

EDITED BY

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Peter MacDonald Eggers QC is a barrister specialising in all aspects of commercial law, with a particular emphasis on insurance and reinsurance, shipping, energy, commodities, international trade and international arbitration. Educated at the University of Sydney and the University of Cambridge, he practised as a solicitor before being called to the Bar in 1999 and taking silk in 2011. He is the author of *Deceit: The Lie of the Law* (2009) and co-author of *Good Faith and Insurance Contracts* (2010). In addition, he is a contributor to numerous other books and contributing editor of *Chitty on Contracts*. He is a Visiting Fellow at the Institute of International Shipping and Trade Law.

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Professor Dr Nikaki's teaching has covered an impressively wide area, ranging from carriage by sea, land and air, charterparties, commercial law, e-commerce and international trade to international litigation, oil and gas law and private international law. She is also part of the team that delivers the professional courses offered by the Institute of International Shipping and Trade Law.

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Simon Rainey QC is a barrister at, and former joint head of, Quadrant Chambers. He has been in practice since 1983 and took silk in 2000; he is also a Recorder and sits as a deputy High Court judge. In shipping work, he is regarded as one of the top leaders, being placed in the first division of shipping silks by both Chambers and the Legal 500. He specialises in all aspects of dry shipping and charterparty disputes, with particular emphasis in recent years on heavy shipbuilding disputes (from oil rigs and dry cargo vessels to car-carriers and superyachts); in addition, he has handled complex cases arising out of dangerous cargo incidents and safe port disputes, representing variously owners and charterers. He was counsel for the successful buyer on the high-profile arbitration appeal in *The Union Power* [2013] 1 Lloyd's Rep 325 on the application of the implied warranties to the Norwegian Saleform 1993. He also regularly sits as an arbitrator in LMAA, ICC, LCIA and UNCITRAL arbitrations and is a Fellow of the Chartered Institute of Arbitrators.

In addition, Simon Rainey is an author, having written *Tug and Tow and Offshore Contracts* (2011), the leading text on offshore industry contracts. This reflects the fact that he is frequently involved in advisory work and litigation on all aspects of offshore marine and construction and energy and natural resource disputes.

He has been a visiting research fellow at the Institute of International Shipping and Trade Law, University of Swansea since 2010 and was appointed Honorary Professor of Business, Law and Economics, University of Swansea in 2013.

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Stuart Shepherd joined Ince & Co as a trainee in 1982 and became a partner in 1990. He has specialised in shipping and commodity trading throughout his career, acting for traders in various industries from oil and gas to commodities traded on GAFTA and FOSFA terms. Sources say he is 'fantastic' (Chambers 2011) and 'extremely experienced and immensely practical, and understands the legal and commercial dynamics of any dispute' (Chambers 2012). A recent Legal 500 says that he is 'one of the best physical commodity lawyers around, and a delight to work with – he knows the commercial realities of any deal inside out'.

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Frank Stevens obtained his degree from the University of Louvain in 1991, and also holds an LLM in Admiralty from Tulane (1992) and a 'Special Degree in Maritime Sciences' from Antwerp (1993). He joined the Antwerp bar in 1993, and has been practising transport and maritime law since then. He is currently a Senior Associate with Roosendaal Keyzer, one of the leading maritime law firms in Antwerp.

Frank Stevens is the author of textbooks on carriage of goods by sea and on limitation of liability. He is a part-time Lecturer at the Erasmus University Rotterdam, regularly publishes and speaks on issues of transport and maritime law, and is on the Board of Editors of three legal journals.

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Professor Sturley has written extensively on maritime subjects, has lectured on maritime subjects at law schools and conferences around the world, and has been

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Before becoming an academic, Professor Sturley was associated with Sullivan & Cromwell in New York and clerked for judges in the US Supreme Court and the Second Circuit Court of Appeals in New York.

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Richard Williams retired from private practice at Ince & Co at the end of 2000 after 30 years, 25 as a partner. He was chair of the firm's dry shipping business group. Having grown up in South Wales, Professor Williams has been a Visiting Professor at Swansea University since then and teaches the law relating to charterparties and the carriage of goods by sea, land and air on the LLM course. Throughout his career he has been involved not only in the litigation of cases to the highest courts of appeal in the UK and abroad but also in the development of policy and documentation within the industry both for clients and international industry bodies. He has been consulted by United Nations agencies and other international bodies such as BIMCO and the International Group of P&I Clubs in relation to industry-wide issues and the drafting of standard documents, and is currently a member of the working group established by the UK Department for Transport to consider the implications of the implementation of the Rotterdam Rules into the law of the UK.

He is the author of numerous papers and articles on shipping law, is co-author of the textbook *Limitation of Liability of Maritime Claims* (4th edition 2005) and author of the *Gard Guidance to the Statutes and Rules* (2008), the *Gard Guidance on Maritime Claims and Insurance* (2013) and the *Gard Guidance to the Rules* (2015).

FOREWORD

The regular Swansea autumn colloquium on shipping and commercial law has become a firm fixture in the commercial law calendar. Held every year at Swansea University under the auspices of the Institute of International Shipping and Trade Law, it represents an opportunity for academics and practitioners to exchange ideas on contemporary topics in international trade law and even for the occasional commercial judge to obtain some advance notice of the likely issues with which they will soon have to grapple. The summer of 2015 saw the eleventh such event. It proved to be an international colloquium in the true sense – international in perspective, with contributions from distinguished scholars from a range of jurisdictions and backgrounds, covering such diverse topics as paperless trade, the Rotterdam Rules, Islamic letters of credit and consignees' rights under a variety of European legal systems; and a forum for questions and discussions in which the ideas presented could be tested and refined. This book is the fruit of those discussions. For those who were unable to experience themselves the late summer sunshine of Swansea Bay and the warm welcome of the Institute, and even for those who were fortunate enough to do so, it provides a rich source of learning and experience covering the whole range of international trade law – sale of goods, carriage, banking and insurance, the interlocking contracts which are in play when business people need to trade cargoes across the oceans of the world. It will be a valuable resource. I commend it to the reader.

The Hon Mr Justice Males
Presiding Judge of the North Eastern Circuit
London, February 2016

PREFACE

Rather like the background to an Ealing Studios movie, a curious air of England in the 1950s still hangs like a London fog over much writing on the law of carriage and international sales. Swansea University's Institute of International Shipping and Trade Law makes no bones of its aim to break this mould. From its beginnings in 2000 it has made a special point of presenting commercial law in all its disorderly contemporaneity. The present volume, product of the School's eleventh annual commercial law colloquium held in September 2015, is no exception. Its theme could not be simpler: the law affecting carriage and sales of goods sold in international trade. The first part deals with the sometimes uneasy relations between these two. It covers such matters as what kind of contract a seller has to conclude if they agree to arrange delivery (Ruth Hosking), to the clash between environmentalism and impatience implicit in demands for slow steaming (Theodora Nikaki) and the often incongruous spatchcocking of demurrage stipulations into sales agreements (Simon Baughen). The second section continues the theme with chapters on consignees' rights in civil-law Europe and under the Rotterdam proposals (Frank Stevens and Michael F. Sturley), the ever-changing problems associated with letters of indemnity (Richard Williams), paperless trade (M. A. Goldby) and the perennial difficulties of less-than-frank 'said to contain' clauses (Olivier Cachard). There follows some serious stuff on letters of credit in connection with sanctions (Damian Honey and Michael Buffham), the demands of Islamic propriety (Jason Chuah) and rejection of goods (Stuart Shepherd), and also on lending against non-title documents (Andrew Tettenborn). Rounding off the work is a section on some insurance bugbears: open covers (Peter MacDonald Eggers QC), transit clauses (Sarah Cockerill QC) and the much-awaited Insurance Act 2015 on cargo insurance (Barış Soyer).

We are, as ever, enormously grateful to Informa Law (from Routledge) for their continuing generous support for the Institute of International Shipping and Trade Law, and more generally for commercial law at Swansea. Not only have they made our job as editors as painless as any such task can ever be: more to the point, neither this book nor the colloquium underlying it would have happened without them. We are also grateful to our colleagues at the

PREFACE

Institute and those who attended last year's colloquium either as speakers, chairpersons or delegates. They have all in their own way contributed to the success of this book.

Bariş Soyer
Andrew Tettenborn
February 2016
Swansea, Wales

TABLE OF CASES

Ace Importers Pty Ltd v Companhia de Navegação Lloyd Brasileiro (The Esmeralda I) (1987) 10 NSWLR 32; [1988] 1 Lloyd's Rep 206	120
Adelfamar S.A. v Silos E Mangimi Martini S.p.A. (The Adelfa) [1988] 2 Lloyd's Rep Rep 466	59, 62, 63, 76, 79
Adolf Leonhardt, The [1986] 2 Lloyd's Rep 395	42, 43
Aegean Sea Traders Corporation v Repsol Petroleo SA (The Aegean Sea) [1998] 2 Lloyd's Rep 39	202
Aello, The [1961] AC 135	37, 46
Aegeon, The [2002] EWCA Civ 247; [2002] 2 Lloyd's Rep 42	244
Agricultores Federados Argentinos Sociedad Cooperativa v Ampro SA Commerciale, Industrielle et Financiere [1965] 2 Lloyd's Rep 157	29, 50
Akman & Son v Chipman (1988) 45 DLR (4th) 481	185
Aktieselskabet Reidar v Arcos Ltd [1927] 1 KB 352	46
Alaska Textile Co Inc v Chase Manhattan Bank 982 F 2d 813 (1992)	168
Aldrich v Norwich Union Life Insurance Co Ltd [2000] Lloyd's Rep IR 1	243
Alfred McAlpine plc v BAI (Run-off) Ltd [2000] 1 Lloyd's Rep 437	236
Alimport v Soubert Shipping Ltd [2000] 2 Lloyd's Rep 448	212
Ama Ulgen, The [2001] 1 Lloyd's Rep 512	41
Aneco Reinsurance Underwriting Ltd (in liq) v Johnson & Higgins Ltd [2001] UKHL 51; [2002] 1 Lloyd's Rep 157	228
Anglo-Russian Merchant Traders and John Batt & Co (London) Ltd, Re [1917] 2 KB 679, 688	26
AP Moller-Maersk A/S v Sonaec Villas Cen Sad Fadoul [2010] EWHC 355 (Comm); [2012] 1 CLC 798	211, 213
Aron & Co Inc v Comptoir Wegimont SA [1921] 3 KB 435, (1921) 8 Ll L Rep 236	27
A/S D/S Svendborg v Akar [2003] EWHC 797 (Comm)	120, 122
Ashmore & Son v CS Cox & Co [1899] 1 QB 436	27
Assicurazioni Generali de Trieste v Empress Assurance Corporation Ltd [1907] 2 KB 814	226
Aston Hill Financial Inc v African Minerals Finance Ltd [2013] EWCA Civ 416	159, 160
Atlantic Sunbeam, The [1973] 1 Lloyd's Rep 482	37
Baker v Black Sea & Baltic General Insurance Co Ltd [1995] Lloyd's Rep IR 261	242
Bank of Credit & Commerce International SA (In Liquidation) v Ali [2001] UKHL 8; [2002] 1 AC 251	190

TABLE OF CASES

Bank of New South Wales v South British Insurance Company Ltd (1920)	
4 Ll L Rep 384	226
Bank of Nova Scotia v Angelica Whitewear Ltd [1987] 1 SCR 59	168
Banque Keyser Ullmann SA v Skandia (UK) Insurance Co Ltd [1990]	
1 QB 665; [1991] 2 AC 249.....	243
Barber v Meyerstein (1869–1870) LR 4 HL 317	222
Barclays Bank Ltd v Commissioners of Customs & Excise [1963]	
1 Lloyd's Rep	127, 128
Baxendale v Harvey (1849) 4 H & N 445	269
Bayview Motors Ltd v Mitsui Fire & Marine Ins Co Ltd [2002]	
EWHC 21 (Comm).....	260
BC Fruit Market Ltd v National Fruit Co (1921) 59 DLR 87	7
Beam Technology (Manufacturing) Pte Ltd v Standard Chartered Bank	
[2003] SLR 597	156
Berg (V) & Son v Vanden Avenne-Izegem PVBA [1977] 1 Lloyd's Rep 499.....	31
Berge Sund, The [1993] 2 Lloyd's Rep 453.....	79
Berger & Light Diffusers Pty Ltd v Pollock [1973] 2 Lloyd's Rep 442.....	233, 244, 245
Beursgracht, The [2001] EWCA Civ 2051; [2002] 1 Lloyd's Rep 574.....	229, 231, 232, 235,
	236, 237, 238, 239
Bhugwandass v Netherlands India Sea and Fire Insurance Company	
of Batavia (1888) 14 App Cas 83	226
Bolivinter Oil SA v Chase Manhattan Bank NA [1984] 1 WLR 393.....	186
Bonde, The [1991] 1 Lloyd's Rep 136.....	46
Bonner v Cox Dedicated Corporate Member Ltd [2005] EWCA Civ 1512;	
[2006] 2 Lloyd's Rep 152	238
Bowes v Shand (1876–77) LR 2 App Cas 455	26, 27, 31
Bowmakers Ltd v Barnet Instruments Ltd [1945] KB 65	188
BP plc v GE Frankona Reinsurance Ltd [2003] EWHC 344 (Comm);	
[2003] 1 Lloyd's Rep 537.....	232, 237, 238
Brammer Corp v Holland America Insurance Co [1962] AMC 1584	253
Brandt v Bowlby (1831) 2 B & Ad 932	212, 213
Bremen Max, The [2008] EWHC 2755 (Comm); [2009] 1 Lloyd's Rep 81.....	134, 137
Brough v Whitmore (1791) 4 TR 206.....	227
Brown Jenkinson & Co Ltd v Percy Dalton (London) Ltd [1957]	
2 QB 621; [1957] 2 Lloyd's Rep 557.....	126
Bukhta Novik, The, Gerechtshof Amsterdam 19.6.2003, S&S 2003, 134.....	104
Bulk Ship Union SA v Clipper Bulk Shipping Ltd (The Pearl C) [2012]	
EWHC 2595; [2012] 2 Lloyd's Rep 533.....	17
Bunge & Co v Tradax England Ltd [1975] 2 Lloyd's Rep 235	19, 28, 30, 36
Burstall v Grimsdale (1906) 11 Com Cas 280.....	24, 25
Captain Gregos, The (No 1) [1990] 1 Lloyd's Rep 310.....	141
Captain Stefanos, The [2012] EWHC 571 (Comm); [2012] 2 Lloyd's Rep 46.....	79, 80
Carewins Development (China) Ltd v Bright Fortune Shipping Ltd	
[2009] 3 HKLRD 409.....	129
Cargill International SA v Bangladesh Sugar & Food Industries Corp	
[1998] 1 WLR 461, 465.....	20, 23
Carlos Federspiel & Co SA v Charles Twigg & Co SA [1957] 1 Lloyd's Rep 240.....	248
Cereal Investments Co (CIC) SA v ED & F Man Sugar Ltd [2007]	
EWHC 2843; [2008] 1 Lloyd's Rep 355.....	30

TABLE OF CASES

Ceval Alimentos SA v Agrimpex Trading Co Ltd (The Northern Progress)	
(No 2) [1996] 2 Lloyd's Rep 319	5, 8, 9, 19, 20, 24, 25, 26
Chappell v Bray (1860) 6 H&N 145.....	133
Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38,	
[2009] 1 AC 1101	159
Cheikh Boutros Selim El-Khoury v Ceylon Shipping Lines	
(The Madeleine) [1967] 2 Lloyd's Rep 224.....	29
Cie Commerciale Sucres et Denrees v C Czarnikow Ltd (The Naxos)	
[1990] 1 WLR 1337, [1991] 1 Lloyd's Rep 29	30, 36
Citadel Insurance Co v Atlantic Union Insurance Co SA [1982]	
2 Lloyd's Rep 543	232, 237
Clarke v Hutchins (1811) 14 East 475	4
Coastal (Bermuda) Petroleum Ltd v VTT Vulcan Petroleum S.A. (No 2)	
(The Marine Star) [1994] 2 Lloyd's Rep. 629.....	65, 68
Compañía Naviera Vasconzada v Churchill & Sim [1906] 1 KB 237	212
Compañía Sud Americana de Vapores SA v. Sinochem Tianjin Imp & Exp Corp	
(The Aconcagua) [2010] EWCA (Civ) 1403; [2011] 1 Lloyd's Rep 683.....	119
Concordia Trading BV v Richco International Ltd [1991] 1 Lloyd's Rep 475.....	26
Congimex SarL v Tradax Export SA [1981] 2 Lloyd's Rep 687.....	36
Contship Containerlines Ltd v PPG Industries Inc, 442 F 3d 74;	
[2006] AMC 686.....	119
Cork Distilleries Co v Great Southern & Western Ry Co (Ireland)	
(1874-75) LR 7 HL 269	213
Cottonex Anstalt v Patriot Spinning Mills [2014] EWHC 236 (Comm);	
[2014] 1 Lloyd's Rep 615	159
Crawford & Law v Allan Line SS Co Ltd [1912] AC 130	212
Crédit Industriel et Commercial v China Merchants Bank [2002]	
EWHC 973 (Comm); [2002] 2 All ER (Comm) 427.....	146
Cunliffe-Owen v Teather & Greenwood [1967] 1 WLR 1421	147
Czarnikow-Rioda Sugar Trading Inc v Standard Bank London Ltd	
[1999] 1 All ER (Comm) 890	156
David Agmashenebeli, The [2002] EWHC 104 (Admlty); [2003]	
1 Lloyd's Rep 92	143
David Allester Ltd, Re [1922] 2 Ch 211.....	220
Davies v National Fire Co of New Zealand [1891] AC 485	227, 229, 237, 238, 239
Davis v Garrett (1830) 6 Bing 716, [1824-34] All ER Rep 286.....	17
De Hahn v Hartley (1786) 1 TR 346	266
Dealers Dairy Products Co v Royal Insurance Co 170 Ohio St 336,	
10 Ohio 2d 424, 164 NE 2d 745 (1960).....	257
Delfini, The [1990] 1 Lloyd's Rep 252	134
Devonald v Rosser & Sons [1906] 2 KB 728.....	147
DGM Commodities Corp v Sea Metropolitan SA (The Andra)	
[2012] EWHC 1984 (Comm); [2012] 2 Lloyd's Rep 587.....	60, 63, 76
Diana Cass, The, Com. 31.3.1987, Pourvoi No 85-10605, D.M.F. 1988.....	99
Discount Records Ltd v Barclays Bank Ltd [1975] 1 WLR 315.....	154
Dithmarschen, The, BGH 25.4.1988, TranspR 1988, 288	101
Diversified Mineral Resources NL v CRA Exploration Pty Ltd (1995)	
ICCR 6(5) 95-96	185
Dolphina, The [2011] SGHC 273; [2012] 1 Lloyd's Rep 304.....	143

TABLE OF CASES

Donaldson v Manchester Insurance Co (1836) 14 S 601.....	226
Dublin City Distillery Ltd v Doherty [1914] AC 823	217, 218
Dugdale v Lovering (1875) LR 10 CP 196.....	127
Dunlop Brothers & Co v Townend [1919] 2 KB 127.....	229, 231, 234, 236, 247
Ease Faith Ltd v Leonis Marine Management Ltd [2006] EWHC 232; [2006] 1 Lloyd's Rep 673 [131]	17
East West Corporation v DKBS 1912 [2002] EWHC 83 (Comm); [2002] 2 Lloyd's Rep 222	202
Ebsworth v Alliance Marine Insurance Co (1873) LR 8 CP 596	247
Edward Owen Engineering Ltd v Barclays Bank International Ltd [1978] QB 159	154, 168, 186
Elena G, The [2001] 2 Lloyd's Rep 278	246
ERG Raffinerie Méditerranée SpA v Chevron USA Inc (The Luxmar) [2007] EWCA 494; [2007] 2 Lloyd's Rep 542 (affirming [2006] EWHC 1322, [2006] 2 Lloyd's Rep 543)	19, 28, 29, 49
Erichsen v Barkworth (1858) 3 H&N 894	131
Erichsen v Barkworth [1994] 2 Lloyd's Rep 266	131
Ets Soules & Cie v Intertradex SA [1991] 1 Lloyd's Rep 378.....	38
Eurodale Manufacturing Ltd v Ecclesiastical Insurance Office plc [2003] EWCA Civ 203; [2003] Lloyd's Rep IR 444	259
Everbright Commercial Enterprises Pte Ltd v AXA Insurance Singapore Pte Ltd (The Sirena 1) [2001] 2 SLR 316	268, 272
Evialis SA v SIAT [2003] EWHC 863 (Comm); [2003] 2 Lloyd's Rep 377	233
Fal Oil Co Ltd v Petronas Trading Corp Sdn [2004] EWCA Civ 822; [2004] 2 Lloyd's Rep 282	40, 43, 44, 45
Far East Structural Steelwork Engineering Ltd, Re [2010] 1 HKLRD 156	218, 220, 221, 222
Fedsure General Insurance Ltd v Carefree Investments Pty Ltd (477/99) [2001] ZASCA 88	258, 274
Finnish Cellulose Union v Westfield Paper Co Ltd [1940] 4 All ER 473, (1940) 68 Ll L Rep 75	5, 20, 24, 25
First Energy (UK) Ltd v Hungarian International Bank Ltd [1993] 2 Lloyd's Rep 194	160
Fitz-Gerald v Pole (1754) Amb 214, (1754) 4 Bro 439	227
Fjordass, The [1988] 1 Lloyd's Rep 336	79
Fortis Bank SA v Indian Overseas Bank [2011] EWHC 538 (Comm), [2011] 2 Lloyd's Rep 190	121, 193
Friends Provident Life & Pensions Ltd v Sirius International Insurance [2005] EWCA Civ 601; [2005] 2 Lloyd's Rep 517	236
Fyffes Group Ltd v Reefer Express Lines Pty Ltd (The Kriti Rex) [1996] 2 Lloyd's Rep 171	17, 23, 65, 67, 68, 79
Galaxy Energy International Ltd v Murco Petroleum Ltd (The Seacrown) [2013] EWHC 3720; [2013] 2 CLC 1007	28
Galloway v Guardian Royal Exchange (UK) Ltd [1999] Lloyd's Rep IR 209	244