

BILLS OF LADING INCORPORATING CHARTERPARTIES

Melis Özdel



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BILLS OF LADING INCORPORATING CHARTERPARTIES

Vessels very frequently serve under a long chain of charterparties and sub-charterparties. When this is the case, the legal issues are more convoluted than they might at first seem. Incorporation clauses are commonplace in bills of lading used in the tramp trade due to the desire to make this web of contracts back-to-back. The extent to which the terms of the charterparty referred to can be carried across to the bill of lading has, over the centuries, been hotly disputed in many jurisdictions. Entirely dedicated to the topic of the incorporation of charterparty terms into bills of lading, this book discusses and analyses the legal and practical issues surrounding this topic under English and US law. Through discussions on the incorporation of a wide range of different charterparty terms, the book combines the peculiar and sophisticated rules of incorporation with the legal and practical issues concerning shipping, international trade, arbitration and conflict of laws and jurisdiction.

To Professor Charles Debattista

PREFACE

This book is the product of my doctoral research in a territory that cuts across the boundaries of various areas of maritime law. It gives a detailed account of the English and US rules of incorporation through the examination of the essential links between the rules and the fundamentals of shipping, international trade and maritime conflict of laws and jurisdiction. An earlier version of this work was submitted as a PhD thesis in late 2010. Since then, the English and US rules of incorporation have attracted further judicial refinement. Also, recent years have seen an increasing interaction between the rules of incorporation and the enforcement of forum selection clauses in bills of lading. In this book, I have tried to chart these developments, while also discussing some additional points of interest based on the issues that await further judicial scrutiny.

These issues include the decision of Males J in *The Channel Ranger* [2014] 1 Lloyd's Rep 337. The decision introduces a relaxation of the description test, which was established more than a century ago with the leading House of Lords decision in *Thomas & Co v Portsea Steamship Ltd* [1912] AC 1. As the decision in *The Channel Ranger* has been appealed, it is now for the Court of Appeal to tell if this is the way forward. Further judicial developments also remain to be seen across the Atlantic in the wake of *Maroc Fruit Board SA v M/V Vinson* 2012 WL 2989195 (D Mass 2012)—the first US federal decision to distinguish the famous US Supreme Court decision in *The Sky Reefer* 515 US 528 (1998). It will be interesting to see the extent to which the former decision will affect the pro-arbitration policy primarily reflected by *The Sky Reefer* in the bill of lading context. No doubt the coming years will also show how far the Brussels I Revised Regulation will succeed in enhancing the enforcement of arbitration clauses incorporated into bills of lading. All these, and many other, recent developments have thrown up issues that have important links with the incorporation of charterparty clauses into bills of lading. This has necessitated extensive rewriting of all the chapters of my original thesis.

This book aims to offer a rigorous analysis of the rules of incorporation, with an eye to offering a practical and analytical framework for their current and future developments. I hope the book will be enlightening to practitioners and scholars alike.

I owe a great debt of gratitude to the many people who have assisted and encouraged me in the completion of this book. My deepest gratitude goes first to my PhD supervisor, Professor Charles Debattista of Stone Chambers, formerly Professor of Law at the University of Southampton, for his continuous guidance,

support and encouragement, without which this book would not have been possible. It was a true privilege to have him as my supervisor, to work with him and to learn from him. Thank you so much for having faith in me.

I am grateful to the examiners of my PhD thesis, Professor Yvonne Baatz of the University of Southampton and Professor Andrew Tettenborn of Swansea University, for their insightful comments on my thesis during my viva voce examination. I am indebted also to Deborah Renshaw and Carolyn Fox for their invaluable assistance in the latter stages of preparation, especially for their careful reading of the manuscript. I would like to extend my thanks to Richard Hart and Rachel Turner, both of Hart Publishing, for their wonderful support and assistance.

My deepest debt is to my family. I am immensely grateful to my mother and father for their endless support and encouragement. Last, but not least, I want to thank my fiancé, for being a constant source of wisdom, joy and support.

The law is stated as of 1 June 2014.

Melis Özdel
8 June 2014
London

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