
CARRIAGE OF GOODS BY SEA

SECOND EDITION

STEPHEN GIRVIN



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CASE OF GOODS BY SEA

SECOND EDITION

PROFESSOR STEPHEN GIRVIN



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United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (The Rotterdam Rules) 2008

PREFACE

The aim of this book is to provide comprehensive coverage of the subject of the carriage of goods by sea, the mainstay of the specialist bar and of leading firms of solicitors throughout the common law world, and of academic courses taken by postgraduate and undergraduate students in leading universities. In writing this new edition, I have sought again to add to the rather small store of one-volume texts covering the whole subject. It is my conviction that there is a place for a one-volume text which covers the subject in its entirety, notwithstanding the predilection of specialist publishers for offering texts in discrete areas of the subject. While now too substantial to be a *vade mecum*, I hope very much that this new edition will continue to be useful to students, shipping professionals, and those in the early stages of their legal careers.

The basic structure of the book remains essentially as in the first edition. Although there is a broad and general coverage of most of the main topics in the carriage of goods by sea, I have continued to omit conflict of laws issues and a general account of damages. These are substantial and complex areas of the law which are happily covered in other mainstream texts. In this new edition, I have decided to omit coverage of admiralty claims for similar reasons. I have tried to incorporate major commonwealth developments, whenever possible, although I regretfully acknowledge that these references are not as systematic as I would have liked.

This new edition has, inevitably, required substantial updating. The cut-off date for the consideration of new cases was 30 November 2010, although I have tried, whenever possible, to refer to cases reported since then at proof stage. Many new first instance cases make an appearance throughout the book. Major new appellate cases discussed include *AIC Ltd v Marine Pilot Ltd (The Archimidis)* [2008] EWCA Civ 175; *AET Inc Ltd v Arcadia Petroleum Ltd (The Eagle Valencia)* [2010] EWCA Civ 713; *Compania Sud Americana de Vapores SA v Sinochem Tianjin Import & Export Corp (The Aconcagua)* [2010] EWCA Civ 1403; *CTI Group Inc v Transclear SA (The Mary Nour)* [2008] EWCA Civ 856; *Edwinton Commercial Corp v Tsaviris Russ (Worldwide Salvage & Towage) Ltd (The Sea Angel)* [2007] EWCA Civ 547; *ENE 1 Kos Ltd v Petroleo Brasileiro SA (The Kos)* [2010] EWCA Civ 772; *Geofizika DD v MMB International Ltd (The Green Island)* [2010] EWCA Civ 459; *Golden Fleece Maritime Inc v ST Shipping and Transport Inc (The Elli & The Frixos)* [2008] EWCA Civ 584; *Golden Strait Corp v Nippon Yusen Kubishika Kaisha (The Golden Victory)* [2007] UKHL 12; *Lansat Shipping Co Ltd v Glencore Grain BV (The Paragon)* [2009] EWCA Civ 855; *Mansel Oil Ltd v Troon Storage Tankers SA (The Ailsa Craig)* [2009] EWCA Civ 425; *Mediterranean Salvage & Towage Ltd v Seamar Trading & Commerce Inc (The Reborn)* [2009] EWCA Civ 531; *Tasman Orient Line CV v New Zealand China Clays Ltd* [2010] NZSC 37; *Trafigura Beheer BV v Mediterranean Shipping Co SA (The MSC Amsterdam)* [2007] EWCA Civ 794; *Transfield Shipping Inc v Mercator Shipping Inc (The Achilleas)* [2008] UKHL 48; and *The Vicky I* [2008] EWCA Civ 101.

Case-law developments aside, this new edition is notable in trying to take into account relevant reported LMAA tribunal decisions. Many of these are integrated into the section

on charterparties, but references also occur elsewhere. An important feature of this new edition is the consideration of the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (The Rotterdam Rules) of 2008. During the writing of the first edition I predicted that many books would have to be devoted to these Rules and this is already bearing fruit. Though it is still relatively early days, the Rules have been signed by 23 state parties and, since submission of the manuscript, also been ratified by one state party (Spain).

The Rules receive separate treatment in two of the chapters but most of the provisions are discussed in the relevant chapters of the book where they have been integrated into the analysis of the Hague and Hague-Visby Rules, which are in force in many countries, including the UK.

The first edition of this book was written partly in Singapore and mostly in Birmingham. For this new edition, the bulk of the work has been undertaken in Singapore, apart from a short interlude in London and what should have been the 2010 Christmas vacation in Durban. For giving me the space to write, I should like to thank Dean Tan Cheng Han of the National University of Singapore (NUS) for graciously awarding me a half-sabbatical in the first part of 2010. Without that, this project would never have been completed. I assumed office as Vice Dean (Research and International Programmes) at NUS on 1 June 2010 and I should like to thank my secretary, Rahima Binte Hussain, and my Assistant Deans, Sabiha Shiraz, now Deputy Executive Director of the Singapore Mediation Centre, Elizabeth Chua, and Jamila Osman, for their forbearance during the times when I grievously neglected my administrative duties and when work on this new edition swallowed up every available waking hour.

I should like to thank a number of research assistants who have helped me in the writing of this new edition. I wish, in particular, to single out Dai Yi, my former Birmingham post-graduate student, now practising in Shanghai, who provided invaluable assistance with the LMAA tribunal decisions at a critical phase in the writing. Among my current NUS students, I should like to pay tribute to Max Lim Zhi Meng and Khoo Zhi Xuan, both of whom willingly assisted me in the closing stages of writing. I should like also to acknowledge the helpful and perceptive comments of many students on whom the ideas in this book have been tested, both at the University of Birmingham and at NUS, during the past four years.

No major writing project would stand a hope of completion without the steadfast love and support of those closest to me, including my family and close friends, scattered as they are throughout the globe. They know who they are. I acknowledge their influence on me with heartfelt thanks.

Finally, I should like to thank Joanna Dymond and to single out Jessica Huntley for gently prodding me throughout the project through to final submission. One could not wish for a more helpful and professional commissioning editor. For their work in the production stages, I should also like to acknowledge the work of Bethan Cousins and Gary Hill, who saved me from many egregious errors. I should like too to thank Oxford University Press for their support and encouragement in commissioning this new edition. Any remaining omissions or errors rest, of course, with me.

Stephen Girvin
Singapore
Feast Day of St Thomas Aquinas
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ABBREVIATIONS

BBA	British Bankers Association
BIFA	British International Freight Association
BIMCO	The Baltic and International Maritime Conference
CISG	Vienna Convention on the International Sale of Goods
CLC	Civil Liability Convention
CMI	Comité Maritime International
COA	contract of affreightment
CTO	combined transport operator
ECSA	European Community Shipowners Associations
EDI	Electronic Data Interchange
ESC	European Shippers' Council
FFAs	Forward Freight Agreements
FIATA	International Federal of Freight Forwarders Associations
FONASBA	Federation of National Associations of Ship Brokers and Agents
ICC	International Chamber of Commerce
ICS	International Chamber of Shipping
ILA	International Law Association
IMCO	Intergovernmental Maritime Consultative Organisation
IMDG Code	International Maritime Dangerous Goods Code
IMF	International Monetary Fund
IMO	International Maritime Organisation
IPG	Intergovernmental Preparatory Group
IRU	International Road Transportation Union
ISM Code	International Safety Management Code
ISPS Code	International Ship and Port Facility Security Code
IWG	International Working Group
LNG	Liquid Natural Gas
LOF	Lloyds Open Form
LOI	letter of indemnity
LPG	liquid petroleum gas
MTO	multimodal transport operator
NITB	National Industrial Transportation League
NOR	notice of readiness
NVOC	non vessel operating carrier
NVOCC	non vessel owning common carrier
OPA	Oil Pollution Act 1990
SBM	single buoy mooring
SOLAS	International Convention for the Safety of Life at Sea 1974
STC	Standard Trading Conditions
TEU	twenty foot equivalent units
ULCC	ultra large crude carrier
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNIDROIT	International Institute for the Unification of Private Law
VLCC	very large crude carrier
WSC	World Shipping Council

TABLE OF CONTENTS

<i>Acknowledgements</i>	xv
<i>Preface</i>	xvii
<i>Bibliography</i>	xix
<i>Abbreviations</i>	xxiii
<i>Table of cases</i>	xxv
<i>Tables of legislation</i>	lxiii

I INTRODUCTION

1. The Business of Carriage of Goods	3
A. Introduction	3
B. Cargoes	3
C. Vessels	9
D. Markets	14
E. Parties	15
F. Contracts	20

II BILLS OF LADING AND OTHER DOCUMENTS OF CARRIAGE

2. Shipping Documents Issued before Shipment	27
A. Introduction	27
B. Liner Booking Notes	27
C. Tally Clerk's Receipts	32
D. Mate's Receipts	33
3. Types of Bills of Lading	38
A. Introduction	38
B. Historical Background	38
C. Liner Bills of Lading	39
D. Straight Bills of Lading	43
E. Charterparty Bills of Lading	44
F. Freight Forwarders' Bills of Lading	45
G. Through (Combined Transport) Bills of Lading	48
H. Multimodal Transport and Bills of Lading	49

4. Other Documents of Carriage	55
A. Introduction	55
B. Sea Waybills	55
C. Ship's Delivery Orders	59
5. Issue and Transfer of Bills of Lading	62
A. Introduction	62
B. Issue of Bills of Lading	62
C. Transfer of Bills of Lading	65
6. The Bill of Lading as a Receipt for the Goods Shipped	67
A. Introduction	67
B. Statements on the Face of the Bill of Lading	67
C. Quantity or Weight	68
D. Condition	73
E. Leading Marks	76
F. Receipt and the Carriage of Goods by Sea Act 1992	77
G. Endorsements and Indemnities	78
H. The Master's Role in Clausing the Bills of Lading	80
7. The Bill of Lading as Evidence of the Contract of Carriage	83
A. Introduction	83
B. Bills of Lading between Shippers and Shipowners	83
C. Where a Charterer Holds a Bill of Lading	86
D. The Position of a Transferee	86
8. The Bill of Lading as a Document of Title	88
A. Introduction	88
B. Common Law Principles	88
C. Documents of Title under Statute	92
D. Transfer of Rights and Obligations in Bills of Lading	92
E. The Carriage of Goods by Sea Act 1992	95
F. Spent Bills of Lading	109
9. Third Parties and Bill of Lading Terms	113
A. Introduction	113
B. Contract	113
C. Implied Contracts	114
D. The Special Contract	119
E. Negligence	122

F. Bailment	124
G. Himalaya Clauses	131
H. The Contracts (Rights of Third Parties) Act 1999	137
10. The Carriers' Delivery Obligation	141
A. Introduction	141
B. Delivery to the Person Entitled	142
C. Delivery against Fraudulent Bills of Lading	144
D. Delivery and Exclusionary Terms	146
E. Delivery and Custom	149
F. Delivery and Straight Bills of Lading	150
G. Delivery: Sea Waybills	154
H. Delivery against Letters of Indemnity	154
I. Consequences of Failure to Take Delivery	158
J. Consequences of Misdelivery	160
K. Delivery under the Rotterdam Rules	161
11. Alterations of Delivery Obligations and Other Problems	169
A. Introduction	169
B. Problems Associated with the Commencement of Carriage	169
C. Correction or Amendment of the Bills of Lading after Signature	171
D. Switch Bills of Lading	172
12. Charterparties and their Relationship with Bills of Lading	174
A. Introduction	174
B. Background	174
C. Bills of Lading in the Hands of the Charterer	175
D. Who is the Carrier?	177
E. Incorporation of Charterparty Terms	186
F. Bills of Lading Transferred to a Third Party	194
13. Paperless Trading	196
A. Introduction	196
B. Commercial Background	196
C. Legal Difficulties	197
D. Seadocs	201
E. The CMI Rules for Electronic Bills of Lading	202
F. The Bolero Project	206
G. The Rotterdam Rules	207

III INTERNATIONAL AND DOMESTIC REGULATION

14. Domestic Legislation on Cargo Liability	213
A. Introduction	213
B. The Basic Liability of the Carrier	213
C. The Harter Act	215
D. Legislation in Other Countries	217
15. The Rise of International Regulation	219
A. Introduction	219
B. Early Developments	219
C. Hague Rules	220
D. Visby Protocol	224
E. The SDR Protocol	227
16. The Movement to the Hamburg Rules	228
A. Introduction	228
B. Background	228
C. The Hamburg Conference	230
17. Hybrid Carriage Regimes and the Movement to the Rotterdam Rules	233
A. Introduction	233
B. The Move to Domestic Solutions	233
C. New Movements Towards Uniformity	236
D. The Rotterdam Rules	238
18. The Legal Effect and Interpretation of the Hague and Hague-Visby Rules	242
A. Introduction	242
B. The Legal Effect of the Hague Rules	242
C. The Legal Effect of the Hague-Visby Rules	245
D. Contractual Freedom	250
E. Interpretation of the Hague and Hague-Visby Rules	253
19. The Scope and Application of the Hague and Hague-Visby Rules	257
A. Introduction	257
B. General Scope of Coverage	257
C. Operational Coverage	258
D. Period of Coverage	260
E. Carriers	262
F. Vessels	263

G. Documents	263
H. Charterparties and the Rules	268
I. Cargoes Excluded	268
J. Shipment of Particular Goods	273
K. Additional Responsibilities	274
L. No Derogation from the Rules	274
M. Paramount Clauses	279
20. The Scope and Application of the Rotterdam Rules	284
A. Introduction	284
B. Interpretation	284
C. General Scope of Application	285
D. Carriers and Other Parties	287
E. Period of Coverage	288
F. Transport Documents	291
G. Volume Contracts	292
H. Special Cargoes	294
I. Rights of Control	296
J. Transfer of Rights	300
K. Validity of Terms	302
L. Final Provisions	303
 IV THE RESPONSIBILITIES OF THE SHIPPER	
21. The Shipper's Common Law Obligations	307
A. Introduction	307
B. Obligations at Common Law	307
C. Dangerous Cargoes	309
D. The Obligation to Nominate a Safe Port	318
22. Freight	335
A. Introduction	335
B. The Basic Obligation	335
C. Freight at Common Law	337
D. Calculation of Freight	339
E. Deductions from Freight	342
F. Advance Freight	346
G. Lump Sum Freight	353
H. Pro Rata Freight	355

I. Back Freight	356
J. Deadfreight	357
K. Payment of Freight	359
23. Shipper's Obligations and Immunities under the Hague, Hague-Visby, and Rotterdam Rules	365
A. Introduction	365
B. Shipper's Guarantee of Particulars	365
C. Notice of Loss or Damage	366
D. Shipment of Dangerous Cargoes	367
E. Obligations under the Rotterdam Rules	373
 V THE OBLIGATIONS OF THE CARRIER	
24. Seaworthiness	383
A. Introduction	383
B. The Common Law Obligation	383
C. Meaning of Seaworthiness	384
D. Nature of the Obligation	386
E. Extent of the Obligation	390
F. Burden of Proof and Causation	392
G. Effect of Unseaworthiness	393
H. Express Seaworthiness Clauses	394
I. Exceptions Clauses and Seaworthiness	397
25. Deviation	400
A. Introduction	400
B. Meaning	400
C. Justifiable Deviations	402
D. Liberty Clauses	405
E. Effect of Unjustifiable Deviation	407
26. Reasonable Despatch	413
A. Introduction	413
B. Common Law	413
C. Express Clauses	414
27. The Carrier's Obligations under the Hague, Hague-Visby, and Rotterdam Rules	416
A. Introduction	416
B. Issue of Bills of Lading	416