

Scrutton
on
Charterparties

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SCRUTTON
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CHARTERPARTIES
and
Bills of Lading

Twenty-first Edition

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The Bar Tournament.—Mr. Justice Scrutton (Vacation Judge) is interrupted by business when on the links.



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PREFACE

The challenge when updating a long-established textbook is to ensure that the text remains relevant and accessible to the modern user, without compromising the strengths and characteristics which established the reputation of the text. T.E. Scrutton referred to this difficulty in the preface to the first edition published in 1886, noting of a number of competing texts that “*re-editing, to satisfactorily adapt such works to modern commerce, must also amount to re-writing*”.

The editors are conscious that, while editorial teams change, the book remains Scrutton’s book, and readers have certain expectations both as to its style and content. We have taken the opportunity to restructure certain parts of the book, and to effect some editorial changes which will give the book a more modern feel. But we remain of the view that Scrutton’s original approach—the identification of clear and succinct principles in the Articles, more extended discussion of the principles and the issues to which they give rise in notes, and examples illustrating the practical application of those principles in decided cases—remains of value to the modern reader.

When publishing the first edition in 1886, Scrutton noted in the Preface that “*the last twenty years have seen what almost amounts to a revolution in the shipping trade of Great Britain*”. In particular, he mentioned the supplanting of sailing ships by steamers and the invention of the electronic telegraph. The intervening 120 or so years have seen changes which are almost as revolutionary. Among these was the passage of the Carriage of Goods by Sea Act 1924 to give effect to the Hague Rules, and which for the first time regulated by statute the contract between ship and cargo. Since then, we have seen the passage of further COGSAs in 1971 and 1992, international conventions (such as the Hamburg Rules) intended to achieve greater uniformity and closer regulation of contracts of carriage, and other statutory reforms of the common law (for example the Contracts (Rights of Third Parties) Act 1999). All of these have been addressed in successive editions.

There have also been numerous other changes. The first edition of Scrutton did not include a chapter on time charters, whereas 20 pages are devoted to this topic in this edition, including references to important new decisions on the owner’s obligation to obey orders (*The Hill Harmony* [2001]) and the recovery of damages for late re-delivery (*The Achilleas* [2007], although readers should note that, at the time of writing, we await the decision of the House of Lords on an appeal in this case). By contrast, there was extensive discussion of the law of blockade, stoppage in transit and of custom, the significance of which is much diminished in modern shipping, and this edition continues the process which began in earlier editions of condensing the discussion of topics which now have little practical importance.

In recent years there has been a discernable trend in the courts to address the particular issues which arise in shipping cases in the light of more general contractual principles. This has influenced decisions on the incorporation of terms (*The Spiros C* [2000], *The Hai Hing* [2000]), the determination of the contracting carrier (*The Starsin* [2003]), the date for the assessment of damages (*The Golden Victory* [2007]) and the duty to mitigate (*The Dynamic* [2003]). Although Scrutton addresses the specialist area of contracts of carriage, it is important that the book continues to reflect and be informed by developments in the law of contract (and tort) more generally.

There have been a number of significant developments in the law relating to charterparties and bills of lading since the 20th edition was published in 1996. Important areas include:

- developments in the general law of contract relating to mistake (*The Great Peace* [2002]) and third party rights (Contracts (Rights of Third Parties) Act 1999, considered in the charterparty context in *Nisshin v Cleaves* [2003] and *The Laemthong Glory* [2005]);
- determining the identity of the carrier under bills of lading (*The Starsin* [2003]);
- defining the circumstances in which a party in whom rights of suit are vested in COGSA 1992 will become subject to liabilities (*The Berge Sisar* [2001]);
- the owner's obligation to obey time charterer's orders (*The Hill Harmony* [2001]);
- guidance given by the House of Lords on the status of straight bills of lading in the *Rafaella S* [2005];
- liability for dangerous cargo under the Hague-Visby Rules (*The Giannis NK* [1998]);
- recovery of damages in time charterparty disputes (*The Golden Victory* [2007] and *The Achilleas* [2007], decision of the House of Lords pending);
- "clausing" bills of lading to reflect the condition of cargo on shipment (*The Arctic Star* [1996], *The Hawk* [1999], *The David Agmashenebeli* [2003] and *Sea Success v African Carriers* [2005]).

Responsibility for different parts of the book has been divided between the editors as follows:

Professor Andrew Burrows Q.C. (Hon): Chapters 1, 2, 3, 8 and 19.

Bernard Eder Q.C.: Chapters 15, 18, 20, and 21.

Steven Berry Q.C.: Chapters 9, 12, 13, and 14.

David Foxton Q.C.: Chapters 5, 6, 7 and 10.

Christopher Smith: Chapters 4, 11, 16 and 17, and the Appendices.

Responsibility for the book as a whole rests with the General Editor, Stewart Boyd Q.C.

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