

Carriage of Goods by Sea

Seventh Edition

John F Wilson

Emeritus Professor of Law
at the Institute of Maritime Law
University of Southampton



Longman
is an imprint of



Harlow, England • London • New York • Boston • San Francisco • Toronto
Sydney • Tokyo • Singapore • Hong Kong • Seoul • Taipei • New Delhi
Cape Town • Madrid • Mexico City • Amsterdam • Munich • Paris • Milan

Contents

| | |
|--|----------|
| <i>Preface to the first edition</i> | xii |
| <i>Preface</i> | xiii |
| <i>Table of cases</i> | xv |
| <i>Table of statutes</i> | xlix |
| <i>Abbreviated book titles</i> | liv |
| <i>List of abbreviations</i> | lv |
| <i>Acknowledgements</i> | lvi |
| | |
| Part I | |
| General introduction | 1 |
| 1 Introduction | 3 |
| 1.1 The charterparty | 3 |
| 1.2 The bill of lading contract | 5 |
| 1.3 Charterers' bills of lading | 6 |
| 1.4 The demise charterparty | 7 |
| | |
| 2 Implied obligations in a contract of affreightment | 9 |
| 2.1 The undertaking as to seaworthiness | 9 |
| 2.1.1 Nature of the obligation | 9 |
| 2.1.2 Incidence of obligation | 11 |
| 2.1.3 Burden of proof | 13 |
| 2.1.4 Effect of breach | 13 |
| 2.2 Obligation of reasonable dispatch | 15 |
| 2.2.1 Effect of breach | 15 |
| 2.3 Obligation not to deviate from the agreed route | 16 |
| 2.3.1 Justifiable deviations | 17 |
| 2.3.2 Liberty clauses | 19 |
| 2.3.3 The effect of breach | 20 |
| 2.4 The obligation to nominate a safe port | 25 |
| 2.4.1 The period covered by the warranty | 26 |
| 2.4.2 The nature of the risks covered | 27 |
| 2.4.3 The nature of the undertaking – remedies available for breach | 28 |
| 2.4.4 The scope of the undertaking | 30 |
| 2.4.5 The safe port/safe berth relationship | 32 |
| 2.5 The obligation not to ship dangerous goods | 33 |
| 2.5.1 Meaning of dangerous goods | 33 |

| | | |
|-----------------------|---|-----------|
| 2.5.2 | Nature of liability | 34 |
| 2.5.3 | Liability under the Hague/Visby Rules | 35 |
| 2.5.4 | Statutory regulation | 37 |
| 2.6 | The effect of frustration | 38 |
| 2.6.1 | Types of frustration | 39 |
| 2.6.2 | Factors to be taken into consideration | 42 |
| 2.6.3 | Effect of frustration | 44 |
| Part II | | |
| Charterparties | | 47 |
| 3 | The voyage charterparty | 49 |
| 3.1 | An overview of the charter | 49 |
| 3.1.1 | Introductory clauses | 49 |
| 3.1.2 | Cargo clauses | 50 |
| 3.1.3 | Freight clauses | 50 |
| 3.1.4 | Laytime provisions | 51 |
| 3.1.5 | Other clauses | 52 |
| 3.1.6 | Performance of the charterparty | 53 |
| 3.2 | The arrived ship | 53 |
| 3.2.1 | Charterparty provisions shifting risk of delay | 56 |
| 3.2.2 | Readiness to load or discharge | 58 |
| 3.3 | The preliminary voyage | 62 |
| 3.3.1 | Nomination of port of loading | 62 |
| 3.3.2 | 'Or so near thereto as she may safely get' | 63 |
| 3.3.3 | The voyage to the loading port | 64 |
| 3.4 | The loading operation | 68 |
| 3.4.1 | Division of responsibility | 68 |
| 3.4.2 | Provision of cargo | 69 |
| 3.4.3 | Laytime | 72 |
| 3.4.4 | Demurrage and damages for detention | 76 |
| 3.5 | The carrying voyage | 79 |
| 3.6 | The discharging operation | 80 |
| 3.6.1 | Delivery | 81 |
| 4 | The time charterparty | 85 |
| 4.1 | General legal overview | 85 |
| 4.1.1 | Clause describing vessel | 85 |
| 4.1.2 | The charter period | 85 |
| 4.1.3 | Off-hire | 86 |
| 4.1.4 | Payment of hire – right to withdraw for non-payment | 86 |
| 4.1.5 | Employment and indemnity clause | 87 |
| 4.1.6 | Return of the vessel | 88 |
| 4.2 | Description of the vessel | 88 |
| 4.3 | Period of hire | 90 |
| 4.3.1 | Specific clauses | 91 |
| 4.3.2 | Effect of overlap | 92 |

| | | |
|------------------------|--|------------|
| 4.4 | Payment for hire | 94 |
| 4.4.1 | Payment in cash | 94 |
| 4.4.2 | Payment in advance | 95 |
| 4.5 | The off-hire clause | 96 |
| 4.5.1 | Period of off-hire | 97 |
| 4.5.2 | Effects of the operation of the off-hire clause | 99 |
| 4.6 | Deductions from hire | 100 |
| 4.7 | Right to withdraw vessel for non-payment of hire | 102 |
| 4.7.1 | Requirements for exercise of right of withdrawal | 103 |
| 4.7.2 | Waiver of right to withdraw | 103 |
| 4.7.3 | Possible bars to exercise of the right of withdrawal | 105 |
| 4.7.4 | Effect of exercise of right to withdraw | 107 |
| 4.8 | Employment and agency clause | 108 |
| 4.9 | Redelivery of the vessel | 111 |
| Part III | | |
| Bills of lading | | 113 |
| 5 | Bills of lading and their functions | 115 |
| 5.1 | Historical introduction | 115 |
| 5.2 | Functions of a bill of lading | 117 |
| 5.2.1 | As receipt for goods shipped | 118 |
| 5.2.2 | As evidence of the contract of carriage | 129 |
| 5.2.3 | As a document of title | 132 |
| 5.3 | Bills of lading and third parties | 142 |
| 5.3.1 | Liability in tort | 142 |
| 5.3.2 | Third party reliance on bill of lading terms | 144 |
| 5.4 | Presentation of a bill of lading | 154 |
| 5.5 | Problems in presentation | 157 |
| 5.5.1 | Short form bill of lading | 158 |
| 5.5.2 | The waybill | 159 |
| 5.5.3 | The straight bill of lading | 161 |
| 5.5.4 | A registry system | 163 |
| 5.5.5 | A possible practical solution | 165 |
| 5.6 | Electronic bills of lading | 165 |
| 5.6.1 | Atlantic Container Line datafreight system | 166 |
| 5.6.2 | Electronic data exchange systems | 167 |
| 5.6.3 | Bolero | 170 |
| 5.6.4 | Conclusions | 171 |
| 5.7 | Switch bills | 172 |
| 6 | Application of the Hague/Visby Rules | 174 |
| 6.1 | Application of the Rules | 174 |
| 6.1.1 | Types of carriage covered by the Rules | 174 |
| 6.1.2 | The cargoes excluded | 178 |
| 6.1.3 | Period of coverage of the Rules | 181 |
| 6.2 | Legal effect of the Rules | 183 |

| | | |
|----------|--|------------|
| 6.3 | Basic provisions of the Hague/Visby Rules | 186 |
| 6.3.1 | Duties of the carrier | 187 |
| 6.3.2 | Rights and immunities of the carrier | 194 |
| 6.3.3 | Other provisions | 208 |
| 6.4 | Incorporation of the Hague/Visby Rules in charterparties | 210 |
| 6.4.1 | Effect of incorporation | 211 |
| 7 | Bills of lading – the Hamburg Rules | 215 |
| 7.1 | Introduction | 215 |
| 7.2 | Scope of application of the Rules | 215 |
| 7.3 | Basic carrier liability | 216 |
| 7.4 | Limitation of liability | 220 |
| 7.4.1 | Loss of right to limit liability | 222 |
| 7.5 | Other provisions | 222 |
| 7.6 | Prospects for adoption of the Hamburg Rules | 226 |
| 7.7 | Later developments | 228 |
| 8 | Bills of lading – the Rotterdam Rules | 230 |
| 8.1 | Introduction | 230 |
| 8.2 | Scope of application of the Rules | 231 |
| 8.3 | Basic carrier liability | 232 |
| 8.4 | Special provision for particular cases | 233 |
| 8.4.1 | Carriage of deck cargo | 233 |
| 8.4.2 | Live animals and certain other goods | 233 |
| 8.4.3 | Dangerous goods | 234 |
| 8.5 | Core provisions | 234 |
| 8.5.1 | Definition of ‘carrier’ | 234 |
| 8.5.2 | Documentation | 235 |
| 8.5.3 | Deviation | 236 |
| 8.5.4 | Delay in delivery | 236 |
| 8.5.5 | Limitation of liability | 237 |
| 8.5.6 | Limitation of action | 237 |
| 8.5.7 | Contracting out | 238 |
| 8.5.8 | Volume contracts | 238 |
| 8.6 | Ancillary provisions | 239 |
| 8.6.1 | Delivery of the goods | 239 |
| 8.6.2 | Rights of the controlling party | 240 |
| 8.6.3 | Transfer of rights | 241 |
| 8.7 | Jurisdiction and arbitration | 241 |
| 8.7.1 | Jurisdiction | 242 |
| 8.7.2 | Arbitration | 242 |
| 9 | Bills of lading issued under charterparties | 243 |
| 9.1 | Where bill of lading issued to charterer | 243 |
| 9.2 | Where bill issued to third-party shipper | 244 |
| 9.2.1 | Who is the carrier? | 244 |
| 9.2.2 | What are the terms of the contract? | 247 |

| | | |
|-----------|---|------------|
| 9.3 | Where bill indorsed by charterer to a third party | 251 |
| 9.4 | Shipowner's recourse against charterer | 252 |
| 10 | Problems of combined transport | 253 |
| 10.1 | The liability of the carrier | 254 |
| 10.1.1 | Locating damage or loss | 255 |
| 10.1.2 | Limitation of liability | 256 |
| 10.1.3 | Claims in tort | 256 |
| 10.2 | Combined transport and documentary credits | 257 |
| 10.3 | Effect of transhipment | 258 |
| 10.3.1 | Transhipment and documentary credits | 258 |
| 10.4 | Multimodal Convention 1980 | 259 |
| | Part IV | |
| | Common aspects of contracts of affreightment | 261 |
| 11 | Exceptions | 263 |
| 11.1 | Common law exceptions | 263 |
| 11.1.1 | Act of God | 263 |
| 11.1.2 | Act of the Queen's enemies | 264 |
| 11.1.3 | Inherent vice | 265 |
| 11.2 | Contractual exceptions | 265 |
| 11.2.1 | Perils of the sea | 266 |
| 11.2.2 | Collisions – both-to-blame clause | 267 |
| 11.2.3 | Restraint of princes | 268 |
| 11.2.4 | Strikes or lockouts | 271 |
| 11.2.5 | Defective packing | 272 |
| 11.3 | The Hague/Visby exceptions | 273 |
| 11.3.1 | Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship | 273 |
| 11.3.2 | Fire, unless caused by the actual fault or privity of the carrier | 275 |
| 11.3.3 | The catch-all exception | 277 |
| 11.4 | Bars to the exceptions | 279 |
| 11.4.1 | Negligence | 280 |
| 11.4.2 | Unseaworthiness | 280 |
| 11.4.3 | Fundamental breach | 280 |
| 12 | Limitation of liability | 282 |
| 12.1 | Introduction | 282 |
| 12.2 | Merchant Shipping Act 1995 | 283 |
| 12.2.1 | Parties covered | 283 |
| 12.2.2 | Types of claim covered | 285 |
| 12.2.3 | Limitation amount | 286 |
| 12.2.4 | Breaking the limits | 287 |

| | |
|--|------------|
| 13 Freight | 289 |
| 13.1 The basic obligation | 289 |
| 13.1.1 Calculation of freight | 290 |
| 13.1.2 Deductions from freight | 290 |
| 13.1.3 The effect of deviation | 291 |
| 13.2 Advance freight | 292 |
| 13.3 Specialised types of freight | 295 |
| 13.3.1 Lump sum freight | 295 |
| 13.3.2 Pro rata freight | 296 |
| 13.3.3 Back freight | 296 |
| 13.3.4 Dead freight | 297 |
| 13.4 Payment of freight | 298 |
| 13.4.1 Party from whom freight due | 298 |
| 13.4.2 Party to whom freight payable | 300 |
| 14 Shipowners' liens | 303 |
| 14.1 Liens at common law | 303 |
| 14.1.1 Requirements for the exercise of the common law lien for freight | 303 |
| 14.2 Express contractual liens | 304 |
| 14.2.1 Characteristics of contractual lien | 305 |
| 14.2.2 Lien on sub-freights | 306 |
| 14.3 The cesser clause | 308 |
| Part V | |
| Dispute settlement | 311 |
| 15 Dispute settlement | 313 |
| 15.1 Problems of conflict of laws | 313 |
| 15.1.1 Jurisdiction of the English courts | 313 |
| 15.1.2 Choice of forum | 315 |
| 15.1.3 Choice of law | 323 |
| 15.2 Security for claims | 330 |
| 15.2.1 The action <i>in rem</i> | 331 |
| 15.2.2 The freezing injunction | 332 |
| 15.3 Arbitration | 335 |
| 15.3.1 The Arbitration Act 1996 | 336 |
| 15.3.2 Basic principles | 337 |
| 15.3.3 Types of arbitration | 338 |
| 15.3.4 Commencement of arbitration | 339 |
| 15.3.5 Appeal from arbitration award | 339 |
| 15.3.6 Other challenges to an award | 343 |
| 15.3.7 Control by the court of arbitration proceedings | 343 |
| 15.3.8 Enforcement of arbitration awards | 345 |
| 16 Breach of contract | 346 |
| 16.1 Forms of breach | 346 |
| 16.1.1 Anticipatory breach | 346 |

| | | |
|-------------------|--|------------|
| 16.2 | The effects of breach | 347 |
| 16.2.1 | Conditions and warranties | 348 |
| 16.2.2 | Intermediate terms | 350 |
| 16.2.3 | The effects of a repudiatory breach | 351 |
| 16.3 | The action for damages | 353 |
| 16.3.1 | Remoteness of damage | 353 |
| 16.3.2 | Measure of damages | 358 |
| 16.3.3 | Other relevant considerations in assessing damages | 361 |
| 16.4 | Remedies other than damages | 363 |
| 16.4.1 | Specific performance | 363 |
| 16.4.2 | Injunction | 364 |
| Appendices | | 367 |
| Appendix 1 | Bills of Lading Act 1855 | 369 |
| Appendix 2 | The Hague Rules 1924 | 370 |
| Appendix 3 | Carriage of Goods by Sea Act 1971 | 377 |
| Appendix 4 | Carriage of Goods by Sea Act 1992 | 386 |
| Appendix 5 | The Hamburg Rules 1978 | 390 |
| Appendix 6 | The Rotterdam Rules | 402 |
| Appendix 7 | CMI Uniform Rules for Sea Waybills | 438 |
| Appendix 8 | CMI Rules for Electronic Bills of Lading | 440 |
| Appendix 9 | Barecon 2001 Charter | 444 |
| Appendix 10 | Gencon 94 Charter | 456 |
| Appendix 11 | Shellvoy 6 Charter | 462 |
| Appendix 12 | Baltimex 1939 Charter (as revised 2001) | 482 |
| Appendix 13 | New York Produce Exchange (NYPE 46) Charter | 487 |
| Appendix 14 | New York Produce Exchange (NYPE 93) Charter | 491 |
| Appendix 15 | Shelltime 4 Charter (as amended 2003) | 505 |
| Appendix 16 | Conlinebill 1978 | 522 |
| Appendix 17 | Conlinebill 2000 | 526 |
| Appendix 18 | Congenbill | 528 |
| Appendix 19 | Maersk Line bill | 530 |
| Appendix 20 | GCBS Short Form Bill | 534 |
| Appendix 21 | Combiconbill | 536 |
| Appendix 22 | Maersk Line Waybill | 540 |
| <i>Index</i> | | 541 |

Visit the *Carriage of Goods by Sea*, seventh edition mylawchamber site at 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.

