

## DETAILED CONTENTS

|   |       |
|---|-------|
| <i>Acknowledgements</i>   | xix   |
| <i>Table of Cases</i>   | xxi   |
| <i>Table of Statutes</i>  | lvii  |
| <i>Table of Statutory Instruments</i>   | lxi   |
| <i>Table of Conventions and Rules</i>   | lxiii |
| <i>Table of European Legislation</i>  | lxvii |
| <br>  |       |
| CHAPTER 1 A SHORT HISTORY OF THE BILL OF LADING                                 | 1     |
| (A) The origins of the bill of lading   | 1     |
| Proof of entitlement  | 3     |
| The contract of carriage  | 4     |
| An indicium of title  | 7     |
| Conclusions   | 8     |
| (B) The eighteenth century and <i>Lickbarrow v Mason</i>                        | 8     |
| (C) The bill of lading in the nineteenth century and <i>Barber v Meyerstein</i> | 9     |
| The Hague Rules and the Carriage of Goods by Sea Act 1924                       | 13    |
| <br>  |       |
| CHAPTER 2 DEFINITION AND CLASSIFICATION OF BILLS OF LADING                      | 19    |
| (A) Introduction  | 19    |
| (B) Bill of lading contrasted with other instruments                            | 21    |
| Receipts  | 21    |
| Waybills  | 22    |
| Delivery orders/warrants  | 23    |
| Charterparties/booking notes  | 25    |
| (C) Forms of bills of lading  | 26    |
| Negotiable and non-negotiable bills   | 26    |
| Bearer bills  | 27    |
| Order bills   | 27    |
| Straight consigned bills  | 28    |
| Shipped bills   | 29    |
| Received for shipment bills – introduction                                      | 29    |

|   |           |
|---|-----------|
| Is a received for shipment bill of lading really a bill of lading?          | 31        |
| Received for shipment bills of lading – other issues                        | 33        |
| Freight prepaid bills   | 36        |
| Through bills and combined transport bills                                  | 36        |
| Short/long form bills   | 37        |
| Clean/claused bills   | 37        |
| Originals and copy bills  | 38        |
| Spent and stale bills   | 39        |
| (D) Other definitions of bills of lading                                    | 41        |
| The Factors Act 1889  | 41        |
| COGSA 1971 and the Hague Rules  | 41        |
| COGSA 1992  | 43        |
| The Hamburg Rules   | 43        |
| UCP 600   | 44        |
| (E) Electronic bills  | 44        |
| What are electronic bills of lading   | 45        |
| Are electronic “bills” bills of lading?                                     | 46        |
| Other problems  | 47        |
| The BOLERO Scheme   | 48        |
| The essDOCS Scheme  | 50        |
| The future  | 50        |
| <b>CHAPTER 3 THE ISSUE OF BILLS OF LADING</b>                               | <b>53</b> |
| (A) Introduction  | 53        |
| (B) The obligation to issue a bill of lading                                | 54        |
| The requirement to issue a bill of lading                                   | 55        |
| (C) The obligation to issue in a particular form                            | 55        |
| Where the vessel is not chartered   | 56        |
| Where the vessel is chartered   | 56        |
| Particulars inserted in a bill of lading                                    | 60        |
| Sets of bills   | 61        |
| (D) Place and time/date of issue  | 62        |
| Place of issue  | 62        |
| Time of issue   | 62        |
| (E) Failure to issue at all bills of lading or bills in an appropriate form | 64        |
| Failure or refusal to issue bill of lading                                  | 64        |
| The relevance of charterparty terms   | 66        |
| (F) Authority to sign/bind  | 67        |
| (G) Authority and false or inaccurate bills                                 | 69        |
| (H) Rights and obligations of the master/carrier on signing bills of lading | 74        |
| Contractual duty to take care   | 75        |
| Article III rule 3 of the Hague Rules                                       | 76        |
| (I) Status of parties concerned with bill of lading                         | 82        |
| Status of the shipper   | 82        |

|  |            |
|--|------------|
| Status of carrier  | 87         |
| Status of the consignee  | 87         |
| Status of notify party   | 87         |
| (J) Split/subsequent/switch bills  | 88         |
| Change of consignee  | 88         |
| Splitting/cancelling/“switch” bills  | 89         |
| (K) Indemnities consequent on issue  | 90         |
| <b>CHAPTER 4 REPRESENTATIONS IN THE BILL OF LADING</b>                             | <b>95</b>  |
| (A) Introduction   | 95         |
| (B) The carrier’s obligation to record quality and quantity                        | 95         |
| The common law   | 95         |
| The Hague and Hague-Visby Rules  | 95         |
| (C) The legal status of representations made in the bill                           | 99         |
| At common law  | 99         |
| (D) Representations in the bill of lading as between the shipper and carrier       | 101        |
| Common law   | 101        |
| Hague-Visby Rules  | 102        |
| (E) Representations in the bill of lading in the hands of a transferee             | 102        |
| The common law – estoppel  | 102        |
| The common law – negligent misstatement and deceit                                 | 109        |
| The Hague-Visby Rules  | 110        |
| (F) Representations in the bill of lading as between the transferor and transferee | 110        |
| (G) Representations made without authority   | 111        |
| Common law   | 111        |
| Bills of Lading Act 1855, section 3  | 112        |
| COGSA, section 4   | 113        |
| Requirements of the section  | 113        |
| Effect of the section  | 114        |
| (H) Warranty of authority  | 115        |
| (I) Conclusive evidence clauses  | 115        |
| <b>CHAPTER 5 DELIVERY</b>  | <b>119</b> |
| (A) Introduction   | 119        |
| (B) The right to delivery of the goods onboard from the carrier                    | 119        |
| A contractual right to delivery  | 119        |
| No right to delivery by reason of mere possession of the bill of lading            | 121        |
| Conclusion   | 128        |
| (C) The carrier’s right to deliver   | 128        |
| Delivery without production of a bill  | 128        |
| Delivery without production of a non-negotiable bill                               | 134        |

|  |            |
|--|------------|
| Carrier protected by delivery to the holder of a negotiable bill                                 | 136        |
| Delivery to the consignee named in a non-negotiable bill   | 138        |
| The carrier's failure to require the surrender of the bill of lading                             | 139        |
| Letters of indemnity against liability for delivery without the production of the bill of lading | 139        |
| <b>CHAPTER 6 THE BILL OF LADING AND PROPERTY AND TITLE TO THE GOODS</b>                          | <b>145</b> |
| (A) Introduction   | 145        |
| (B) The bill of lading as a document of title at common law                                      | 145        |
| Straight bills of lading   | 147        |
| Received for shipment bills of lading  | 148        |
| Mate's receipts and delivery orders  | 149        |
| Delivery warrants and orders   | 150        |
| (C) Proprietary effects between sellers and buyers   | 151        |
| The shipper's/seller's retention of the bill of lading   | 152        |
| The nature of the interest reserved  | 153        |
| Transfer of the bill of lading   | 154        |
| (D) The transfer of the bill of lading other than to the buyer                                   | 156        |
| Transfers of the bill of lading to banks or agents   | 156        |
| (E) The bill of lading and good faith purchasers   | 159        |
| Transfers under the Factors Act 1889   | 159        |
| Dispositions by buyers and sellers   | 163        |
| <b>CHAPTER 7 THE BILL OF LADING AS A CONTRACT</b>  | <b>165</b> |
| (A) Introduction   | 165        |
| Contract contained or evidenced  | 165        |
| (B) Formation of "the bill of lading contract"   | 166        |
| Antecedent contract  | 166        |
| One contract or more   | 168        |
| No (apparent) antecedent contract  | 170        |
| Bill of lading of no contractual force   | 171        |
| Rectification  | 173        |
| Contract concluded after issue of the bill   | 173        |
| (C) Terms of the bill of lading contract   | 174        |
| Which terms are contractually effective?   | 174        |
| Inconsistency between terms of bill and other terms  | 175        |
| Contractual content of bill in the hands of the indorsee   | 176        |
| Principles of construction of the bill of lading contract  | 177        |
| Terms and representations distinguished  | 180        |
| Implied terms in a bill of lading contract   | 181        |
| Classification of terms  | 182        |
| Statutory control of bill of lading contracts  | 182        |

|   |            |
|---|------------|
| (D) Identity of parties to the bill of lading contract      | 183        |
| Who is the contracting carrier?                             | 183        |
| Identity of the other contracting party                     | 188        |
| Estoppel  | 191        |
| (E) Incorporation of terms into the bill of lading contract | 192        |
| General words of incorporation                              | 193        |
| Specific words of incorporation                             | 197        |
| Summary of principles                                       | 199        |
| Identifying the charter whose terms are to be incorporated  | 201        |
| (F) Other contractual issues                                | 204        |
| Termination   | 204        |
| Duties post termination                                     | 207        |
| <b>CHAPTER 8 THE TRANSFER OF CONTRACTUAL RIGHTS</b>         | <b>209</b> |
| (A) The position prior to COGSA 1992                        | 209        |
| The position at common law                                  | 209        |
| The Bills of Lading Act 1855                                | 211        |
| Growing problems with the 1855 Act                          | 213        |
| (B) The doctrine in <i>Brandt v Liverpool</i>               | 213        |
| (C) COGSA 1992  | 215        |
| The holder of a bill of lading – the concept of possession  | 219        |
| Obtaining possession  | 220        |
| Restrictions on "holder"                                    | 221        |
| In good faith   | 226        |
| Contract of carriage  | 227        |
| Estoppel  | 229        |
| Set-off   | 229        |
| Goods   | 230        |
| Sea waybills  | 231        |
| Ship's delivery orders                                      | 232        |
| Application of section 3                                    | 236        |
| (D) The Contracts (Rights of Third Parties) Act 1999        | 241        |
| <b>CHAPTER 9 CLAIMS OTHER THAN IN CONTRACT</b>              | <b>243</b> |
| (A) Introduction  | 243        |
| (B) Suit in negligence                                      | 244        |
| General principles  | 244        |
| Physical loss and damage                                    | 246        |
| Economic loss   | 248        |
| Title to sue in negligence                                  | 248        |
| Negligence and damage occurring at different times          | 250        |
| The relevance of contracts                                  | 252        |
| International regimes                                       | 252        |

|   |     |
|---|-----|
| Substantive differences between claims in negligence and Hague Rules regime | 253 |
| The relevance of bailment   | 254 |
| (C) Suit in bailment  | 255 |
| The essence of bailment   | 256 |
| Possession  | 257 |
| Attornment  | 258 |
| Duties and responsibilities of the bailee                                   | 259 |
| Duty of the bailor  | 262 |
| Title to sue  | 262 |
| Sub-bailment  | 264 |
| Bailment on terms   | 265 |
| (D) Suit in wrongful interference with goods/conversion                     | 270 |
| Title to sue for wrongful interference with goods                           | 270 |
| Species of wrongful interference with goods                                 | 271 |
| Quantum of damages in claims for wrongful interference                      | 273 |
| The effect of contractual terms on claims for wrongful interference         | 273 |
| (E) The relevance of contractual terms to non-contractual claims            | 274 |
| The basic principle   | 274 |
| (1) Agency  | 275 |
| (2) Contractual protection to "non-parties" – Himalaya clauses              | 276 |
| Implied contract  | 282 |
| Bailment on terms   | 283 |
| Statutory force of law  | 283 |
| <br>CHAPTER 10 CONTRACTUAL RIGHTS AND OBLIGATIONS:<br>THE HAGUE RULES       |     |
| (A) Introduction  | 285 |
| (B) The rules – history and basic principles                                | 286 |
| History   | 286 |
| (C) General principles of construction                                      | 287 |
| Language  | 287 |
| International convention  | 287 |
| Use of travaux préparatoires  | 288 |
| Interpretation of foreign versions of the Rules                             | 288 |
| (D) Application/incorporation of the rules                                  | 289 |
| COGSA 1971: Introduction  | 289 |
| Article X   | 290 |
| Sub-rule X(a)   | 291 |
| Sub-rule X(b)   | 291 |
| Sub-rule X(c)   | 292 |
| Section 1 of COGSA 1971   | 300 |

|  |     |
|--|-----|
| Foreign law applicable   | 306 |
| The Hague Rules  | 307 |
| (E) Individual Hague-Visby Rules                                 | 307 |
| The basic scheme of the Hague-Visby Rules                        | 307 |
| Article I  | 307 |
| Article II   | 313 |
| Article III  | 315 |
| Article III rule 1   | 315 |
| Article III rule 2   | 335 |
| Care of cargo at common law                                      | 336 |
| The position under the Rules                                     | 338 |
| Article III rule 3   | 346 |
| Article III rule 4   | 346 |
| Article III rule 5   | 346 |
| Article III rule 6   | 347 |
| Article III rule 6bis  | 352 |
| Article III rule 7   | 353 |
| Article III rule 8   | 354 |
| Article IV   | 357 |
| Article IV rule 1  | 358 |
| Article IV rule 2  | 358 |
| Article IV rule 3  | 380 |
| Article IV rule 4  | 380 |
| Article IV rule 5  | 388 |
| Article IV rule 6  | 399 |
| Article Vbis   | 408 |
| Article VI   | 409 |
| Article VII  | 410 |
| Article VIII   | 410 |
| Article IX   | 410 |
| Article X  | 411 |
| (F) The Hamburg Rules  | 411 |
| Introduction   | 411 |
| Application  | 411 |
| Specific rules   | 412 |
| (G) The Rotterdam Rules  | 413 |
| <br>CHAPTER 11 COMBINED TRANSPORT AND THROUGH<br>BILLS OF LADING |     |
| (A) Introduction   | 415 |
| Scope of this chapter  | 415 |
| Main issues  | 417 |
| Terminology  | 417 |
| (B) Basic contractual issues                                     | 419 |
| What is the ambit of the contract?                               | 419 |

|  |            |
|--|------------|
| One contract of carriage (to which C is party)                           | 419        |
| Contracting as agent   | 420        |
| Contract for carriage  | 421        |
| The role of "freight forwarders" and "agents"                            | 421        |
| Principal, agent or both?  | 422        |
| (C) Is it a bill of lading?  | 424        |
| General considerations   | 424        |
| Specific contexts  | 426        |
| (D) Carrier's liability  | 428        |
| Which regime   | 428        |
| Aspects of the Hague and Hague-Visby Rules                               | 431        |
| <b>CHAPTER 12 FREIGHT</b>  | <b>435</b> |
| (A) Introduction   | 435        |
| (B) Right to freight – Conditions of earn/return                         | 435        |
| The common law position in the absence of specific contractual provision | 435        |
| Specific contractual provisions  | 439        |
| (C) Who is liable for freight  | 444        |
| The original contracting party   | 444        |
| The subsequent holder or indorsee  | 445        |
| Freight "as per charterparty"  | 446        |
| Freight prepaid bills  | 448        |
| (D) Who is entitled to freight   | 450        |
| (E) Lien for freight   | 450        |
| Lien on cargo  | 450        |
| "Lien" on freight or sub-freights  | 453        |
| (F) Defences to claims for freight                                       | 454        |
| Rule against set-off   | 454        |
| Illegality   | 455        |
| <b>CHAPTER 13 PRIMARY REMEDIES</b>                                       | <b>459</b> |
| (A) Damages  | 459        |
| Non-delivery of cargo and delivery of damaged cargo                      | 460        |
| Late delivery  | 465        |
| Failure by carrier to ship cargo   | 465        |
| Late loading   | 466        |
| Other "consequential" losses   | 467        |
| Failure by cargo interests to load or take delivery of cargo             | 468        |
| Representations in bills of lading                                       | 468        |
| Damages for conversion or wrongful interference with goods               | 469        |
| Interest   | 469        |
| (B) Injunctions and related orders                                       | 470        |
| Injunctions  | 470        |

|   |            |
|---|------------|
| Orders under the Torts (Interference with Goods) Act 1977, CPR Part 25 and the Arbitration Act 1996 | 471        |
| (C) Other equitable remedies  | 474        |
| Specific performance  | 474        |
| Rectification   | 474        |
| Miscellaneous remedies  | 474        |
| (D) Declarations  | 475        |
| <b>CHAPTER 14 CONFLICTS AND PROCEDURAL MATTERS</b>  | <b>477</b> |
| (A) Introduction  | 477        |
| (B) Applicable law  | 478        |
| Contract  | 478        |
| (C) Choice of forum clauses   | 490        |
| Validity  | 490        |
| Scope of jurisdiction or arbitration clauses  | 500        |
| (D) <i>In rem</i> actions   | 501        |
| (E) <i>In personam</i> actions – The European regime  | 503        |
| (F) <i>In personam</i> actions – The English regime   | 506        |
| Presence in the jurisdiction  | 506        |
| Service within the jurisdiction   | 506        |
| Service out of the jurisdiction   | 506        |
| (G) Ancillary remedies and other procedural matters   | 508        |
| Stays of actions  | 508        |
| Anti-suit injunctions   | 512        |
| Negative declarations   | 515        |
| Limitation claims   | 515        |
| Miscellaneous other applications  | 516        |
| <b>APPENDIX 1: HAGUE RULES 1924</b>   | <b>519</b> |
| <b>APPENDIX 2: BILLS OF LADING ACT 1855 (REPEALED)</b>  | <b>525</b> |
| <b>APPENDIX 3: CARRIAGE OF GOODS BY SEA ACT 1971</b>  | <b>527</b> |
| <b>APPENDIX 4: CARRIAGE OF GOODS BY SEA ACT 1992 (C. 50)</b>  | <b>537</b> |
| <b>APPENDIX 5: SCHEDULE OF CONTRACTING STATES</b>   | <b>541</b> |
| <i>Index</i>  | 545        |