



International Trade, Bills of Lading, Charterparties and Arbitration

Day 11

Admiralty: Substantive Law

Arun Kasi

Advocate & Solicitor, Malaya

Barrister, England and Wales

Arbitrator, AIAC and THAC panels

Fellow, Chartered Institute of Arbitrators London (CIArb)

Member, London Maritime Arbitrators Association (LMAA)

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<https://g.page/ArunKasi/review>

ADMIRALTY

Introduction

- Admiralty Jurisdiction
 - Basically (but not exhaustively) a jurisdiction over / in connection with ships.
 - May also extend to hovercraft, aircraft, cargo, freight and other maritime property
 - Substantive law
 - Procedural law
 - Arrest, Limitation action, Collision claim, Pollution claim.
 - Limitation action
 - Action by Writ (Action in Personam under Admiralty Jurisdiction)
 - Payment into court
- Exercise of Admiralty Jurisdiction
 - In personam exercise
 - In rem exercise

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Introduction

- Short time limits in maritime claims
 - MSO 1952 / 1960 Sarawak Regulations / 1961 Sabah Regulations
 - COGSA 1950 / 1960 Sarawak Regulations / 1961 Sabah Regulations (Hague Rules)
- Stay in favour of Arbitration
 - Arbitration Act 2005, s 10
- Stay in favour of exclusive foreign jurisdiction clause
- Admiralty action vs. insolvency

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Substantive Law

- Courts of Judicature Act 1964, s 24(b)
 - ... the civil jurisdiction of the High Court shall include:
 - (b) the same jurisdiction and authority in relation to matters of admiralty as is had by the High Court of Justice in England under the United Kingdom [Senior Courts] Act 1981;

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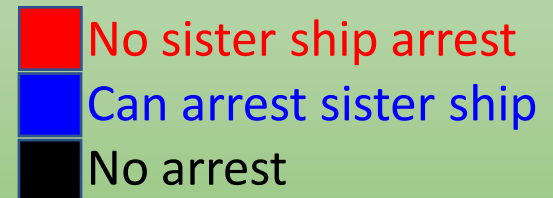
Substantive Law

- Senior Courts Act 1981 (previously Supreme Court Act 1981)
- Secs 20-24
 - 20. Admiralty jurisdiction of High Court.
 - 21. Mode of exercise of Admiralty jurisdiction.
 - 22. Restrictions on entertainment of actions in personam in collision and other similar cases.
 - 23. High Court not to have jurisdiction in cases within Rhine Convention.
 - 24. Supplementary provisions as to Admiralty jurisdiction.
- Sec 20(2)(a)-(s) *{(i) missing}* – 18 limbs of jurisdiction
- + Sec 20(1)(c)
 - any other Admiralty jurisdiction which it had immediately before the commencement of this Act;

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Substantive Law

- Senior Courts Act 1981, s 20(2)
 - (a) any claim to the possession or ownership of a **ship** or to the ownership of any share therein;
 - (b) any question arising between the co-owners of a **ship** as to possession, employment or earnings of that ship;
 - (c) any claim in respect of a mortgage of or charge on a **ship** or any share therein;
 - (d) any claim for damage received by a **ship**;
 - (e) any claim for damage done by a **ship**;



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Substantive Law

- Senior Courts Act 1981, s 20(2)
 - (f) any claim for loss of life or personal injury sustained in consequence of any defect in a **ship** or in her apparel or equipment, or in consequence of the wrongful act, neglect or default of—
 - (i) the owners, charterers or persons in possession or control of a ship; or
 - (ii) the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship, or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
 - (g) any claim for loss of or damage to goods carried in a **ship**;

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Substantive Law

- Senior Courts Act 1981, s 20(2)
 - (h) any claim arising out of any agreement relating to the carriage of goods in a **ship** or to the use or hire of a **ship**;
 - (j) any claim—
 - (i) under the Salvage Convention 1989; *[Note: Malaysia is not a member]*
 - (ii) under any contract for or in relation to salvage services; or
 - (iii) in the nature of salvage not falling within (i) or (ii) above; or any corresponding claim in connection with an aircraft;

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Substantive Law

- Senior Courts Act 1981, s 20(2)
 - (k) any claim in the nature of towage in respect of a **ship** or an aircraft;
 - (l) any claim in the nature of pilotage in respect of a **ship** or an aircraft;
 - (m) any claim in respect of goods or materials supplied to a **ship** for her operation or maintenance;
 - (n) any claim in respect of the construction, repair or equipment of a **ship** or in respect of dock charges or dues;
 - (o) any claim by a master or member of the crew of a **ship** for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages);

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Substantive Law

- Senior Courts Act 1981, s 20(2)
 - (p) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a **ship**;
 - (q) any claim arising out of an act which is or is claimed to be a **general average** act;
 - (r) any claim arising out of **bottomry**;
 - (s) any claim for the forfeiture or condemnation of a **ship or of goods** which are being or have been carried, or have been attempted to be carried, in a **ship**, or for the restoration of a **ship** or any such goods after seizure, or for droits of Admiralty.
- Senior Courts Act 1981, s 20(3)(c)
 - Limitation actions

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Substantive Law

- Senior Courts Act 1981, s 20(1)(c)
 - any other Admiralty jurisdiction which it had immediately before the commencement of this Act;
 - Administration of Justice Act 1956, s 1(1) – preserves all the previous admiralty jurisdiction
 - Supreme Court of Judicature (Consolidation) Act 1925, s 22(1)
 - Some limited limbs of supply of **necessaries** to a ship
 - Preserves all the previous admiralty jurisdiction
 - Admiralty Court Act 1840 - Administration of Justice Act 1920
 - Conferred jurisdiction on a piecemeal basis
 - Supply of **necessaires** included in various limited ways
- Compare 1981 Act, s 20(2)(m) any claim in respect of **goods or materials** supplied to a ship for her operation or maintenance

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Mode of Exercise of Jurisdiction

- Senior Courts Act 1981, s 21
 - (1) **In personam** exercise of **any** admiralty jurisdiction
 - Statute uses the word 'in all cases within the Admiralty jurisdiction'
 - (2) **In rem** exercise of admiralty jurisdiction under **ss 20(2)(a), (b), (c) and (s) against the concerned ship (or property) only**
 - (a) possession/ownership; (b) co-owners' dispute; (c) mortgage; (s) forfeiture or condemnation of ship or cargo
 - 'property' refers only to (s); for (a)-(c), it is only a ship
 - (4) **In rem** exercise of admiralty jurisdiction under **ss 20(2)(d) – (r) against the concerned ship or sister ship**

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Mode of Exercise of Jurisdiction

- Senior Courts Act 1981, s 21
 - (4) Conditions (for arresting concerned ship / sister ship)
 - the claim arises in **connection with a ship**; AND
 - the person who would be **liable** on the claim in an action **in personam** (“the **relevant person**”) **was, when the cause of action arose,**
 - **Owner OR charterer OR in possession OR in control of the ship**; AND
 - The relevant person, **at the time when the action is brought,** is
 - the beneficial **owner** of that ship **OR the demise charterer of it** (for concerned ship)
 - the beneficial **owner** of that ship ~~OR the demise charterer of it~~ (for sister ship)

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Mode of Exercise of Jurisdiction

- Senior Courts Act 1981, s 21
 - (3) *In rem* exercise of admiralty jurisdiction for **maritime lien** (on ship/ aircraft/ other property)
 - *The Bold Buccleugh* (1851) [PC]
 - Damage, Salvage, Wages, Bottomry
 - Only against the ship concerned
 - Change of ownership between the accrual of maritime lien and action does NOT matter

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Mode of Exercise of Jurisdiction

- Senior Courts Act 1981, s 21
 - (8) One cause, one arrest
 - Can **issue** writ naming multiple ships or writs against multiple ships for same cause
 - But can **arrest only** one ship, then must have other ship names removed from the writ / other writs struck out
 - ‘Supply of necessities’ (s 20(1)(b))
 - Arrest?
 - Not under s 21(2), (3) or (4)
 - Arrest under s 20(1)(d)?
 - Sec 20(1)(d): all previous jurisdiction **connected with ships** preserved

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Mode of Exercise of Jurisdiction

- Senior Courts Act 1981, s 24
 - (1) Ship includes **hovercraft**
 - (2) Court may refuse to exercise jurisdiction in **wages**-claim against a **foreign ship** (or its owner)

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Liability Limitation (Tonnage Limitation)

- MSO 1952, s 360 read together with 16th Schedule (LLMC 1976 as amended by 1996 Protocol)
 - Convention on Limitation of Liability for Maritime Claims 1976 (amended by 1996 Protocol)
 - Limitation by Gross Tonnage of the Ship
- 1960 Sarawak Regulations, Part III. (Limitation Convention 1957)
 - International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships 1957
 - Limitation by Net Tonnage of the Ship (with some modifications)
 - Reg 9(2)(b) and (c): **1,000 gold francs = RM203.07**
- 1961 Sabah Regulations, reg 3 (Limitation Convention 1957)
 - incorporates by reference the 1960 Sarawak Regulations

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Liability Limitation (Tonnage Limitation)

LLMC 1976, as amended by 1996 Protocol – art 6, para 1 (SDR)

The general limits

The limits of liability for claims **other than those mentioned in art 7**, arising on any distinct occasion, shall be calculated as follows:

(a) in respect of claims for **loss of life or personal injury**,

(i) 2 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 800 Units of Account;

for each ton from 30,001 to 70,000 tons, 600 Units of Account; and

for each ton in excess of 70,000 tons, 400 Units of Account,

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Liability Limitation (Tonnage Limitation)

LLMC 1976, as amended by 1996 Protocol – art 6, para 1 (SDR) (cont.)

(b) in respect of **any other claims**,

(i) 1 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 400 Units of Account;

for each ton from 30,001 to 70,000 tons, 300 Units of Account; and

for each ton in excess of 70,000 tons, 200 Units of Account.

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Liability Limitation (Tonnage Limitation)

LLMC 1976, as amended by 1996 Protocol – art 7, para 1 (SDR) (cont.)

The limit for passenger claims

- (1) In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 175,000 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate.

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Liability Limitation (Tonnage Limitation)

Limitation Convention 1957 - art 3

- (1) The amounts to which the owner of a ship may limit his liability under Article 1 shall be:
- (a) where the occurrence has only given rise to property claims an aggregate amount of 1,000 francs for each ton of the ship's tonnage;
 - (b) where the occurrence has only given rise to personal claims an aggregate amount of 3,100 francs for each ton of the ship's tonnage;
 - (c) where the occurrence has given rise both to personal claims and property claims an aggregate amount of 3,100 francs for each ton of the ship's tonnage, of which a first portion amounting to 2,100 francs for each ton of the ship's tonnage shall be exclusively appropriated to the payment of personal claims and of which a second portion amounting to 1,000 francs for each ton of the ship's tonnage shall be appropriated to the payment of property claims: Provided however that in cases where the first portion is insufficient to pay the personal claims in full, the unpaid balance of such claims shall rank rateably with the property claims for payment against the second portion of the fund.
- (5) ...
- (6) The franc mentioned in this Article shall be deemed to refer to a unit consisting of sixty five and a half milligrams of gold of millesimal fineness nine hundred. ...

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Liability Limit (Hague Rules)

COGSA 1950 / 1960 Sarawak Regulations / 1961 Sabah Regulations

- Hague Rules: Art. IV(5)
 - Neither the carrier nor the ship shall in any event be or become liable for any *loss or damage to or in connexion with goods* in an amount exceeding **100 pounds** sterling **per package or unit**, or the equivalent of that sum in other currency *unless the nature and value of such goods have been declared by the shipper* before shipment and inserted in the bill of lading.
- Hague Rules: Art. IX
 - The monetary units mentioned in this Convention are to be taken to be **gold value**

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Liability Limit (Hague Rules)

COGSA 1950 / 1960 Sarawak Regulations / 1961 Sabah Regulations

- *The Rosa S* (1988)
 - Art IV(5) read with Art X: gold value of 100 pounds in 1924
 - Gold value of the £100 in 1984 was £6,630.50
- Sabah & Sarawak
 - Modified to RM850 (1960 Sarawak Regulation / 1961 Sabah Regulation)
- Two layers liability limitation
 - Layer 1: Hague Rules (automatic)
 - Layer 2: LLMC (options, must invoke by action)

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Time Limit

MSO 1952, s 517: Limitation of actions

No action shall be maintainable to enforce any claim or lien against a vessel or her owners in respect of any **damage or loss to another vessel, her cargo or freight, or any property on board her, or damages for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former vessel**, whether such vessel be wholly or partly in fault, or in respect of any salvage services, unless proceedings therein are commenced within **two years** from the date when the damage or loss or injury was caused or the salvage services were rendered, and an action shall not be maintainable under this Ordinance to enforce any **contribution** in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings therein are commenced within **one year** from the date of payment:

Provided that any **court** having jurisdiction to deal with an action to which this section relates **may**, in accordance with the rules of court, **extend** any such period, to such extent and on such conditions as it thinks fit, and **shall**, if satisfied that **there has not during such period been any reasonable opportunity of arresting the defendant vessel within the jurisdiction** of the court, or within the territorial waters of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity.

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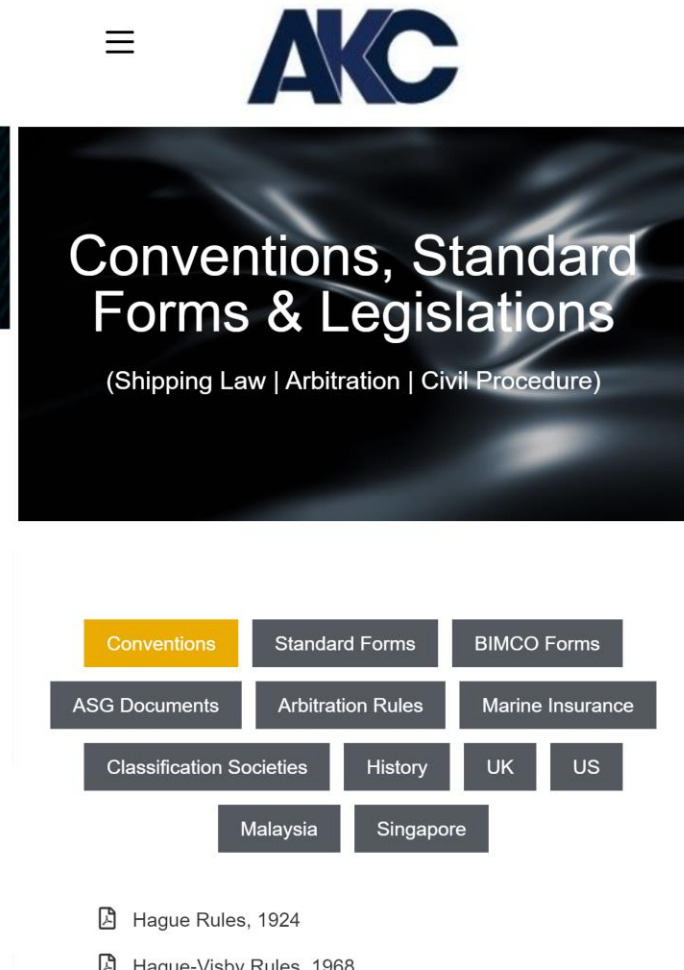
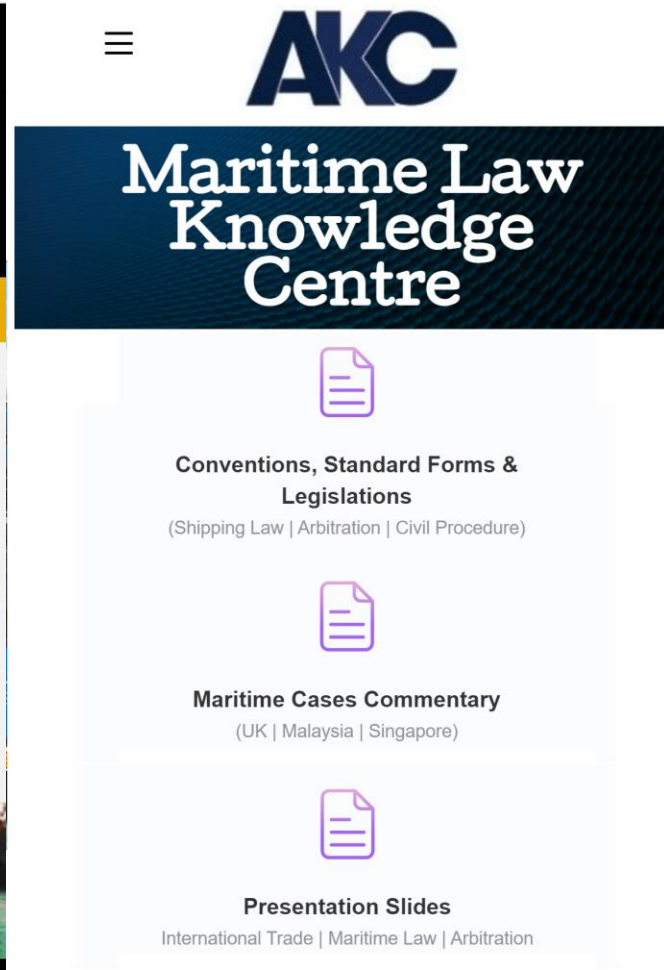
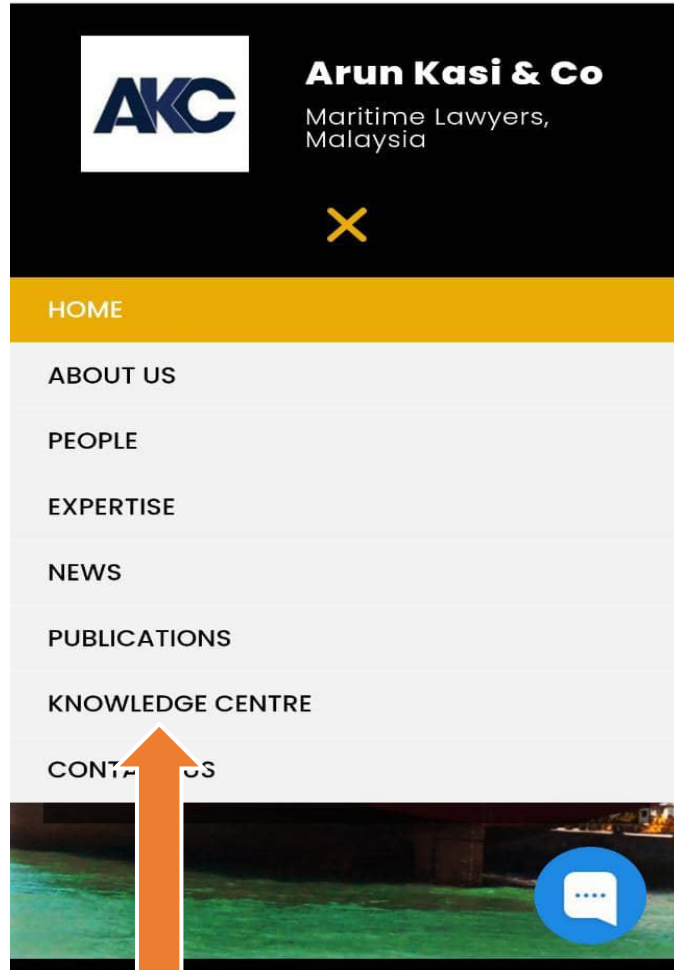
Time Limit

COGSA 1950 / 1960 Sarawak Regulations / 1961 Sabah Regulations

- Hague Rules - art III(6)
 - One year time limit
 - from delivery of goods or
 - the time when the goods should have been delivered

International Trade, Maritime Law and Arbitration Web Reference

arunkasico.com -> Knowledge Centre -> Conventions ...



Carriage of Goods by Sea

Further Reading

[Arun Kasi, *The Law of Carriage of Goods by Sea*, Singapore, Springer, 2021](#)

Arun Kasi

The Law of Carriage of Goods by Sea

 Springer

PART I: INTRODUCTION AND INTERNATIONAL TRADE

1. Introduction and Legal Framework
2. Shipping Documents
3. International Trade

PART II: BILLS OF LADING

4. Obligations of Carrier under Rules: Legal Bases
5. Third Parties: Protection and Action for
6. Proof of Damages: Presumptions and Estoppels
7. Implied Terms and Exclusion Clauses.
8. Hague & Hague-Visby Rules: Application
9. Hague & Hague-Visby Rules: Carriers' Obligations and Defences
10. Hague & Hague-Visby Rules: Carriers' Liability and Time Limitations
11. Shippers' Obligation for Dangerous Cargo

PART III: CHARTERPARTIES

12. Charterparty: Introduction
13. Voyage Charter: Freight and Lien
14. Voyage Charter: Laytime and Demurrage
15. Time Charter: Orders and Indemnity
16. Time Charter: Withdrawal, Off-Hire and Redelivery
17. Time Charter: Apportionment of Cargo-Claims Liability

Carriage of Goods by Sea

Further Reading

Arun Kasi

The Law of Carriage of Goods by Sea

 Springer

Availability

Malaysia

- Kinokuniya

UK

- Wildy
- Foyles
- Waterstone
- Blackwells
- John Smith's
- Browns Books

USA

- Barnes & Noble
- Books A Million
- Walmart
- The Last Bookstore
- Schuler Books
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- Joseph Beth
- Bluemanatee
- Literatibookstore
- Powells
- Bookshop.org
- Kinokuniya

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- Indigo

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- Weltbild
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