



International Trade, Bills of Lading, Charterparties and Arbitration

Day 4

Obligations of Carrier at Common Law

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Obligations of Carrier at Common Law

Bases of Obligations

- Common Law (Implied Terms)
- Statutory (Hague Rules / Hague-Visby Rules)

Obligations of Carrier at Common Law

Implied Terms

Implied Terms at Common Law

- To provide a seaworthy (and cargoworthy) ship
- Not to deviate without reasonable justification
- Not to carry on deck, unless otherwise expressly agreed (quasi-deviation)
- To take reasonable care of the cargo

Obligations of Carrier at Common Law

Implied Terms

Seaworthiness v Cargoworthiness

- ‘**Seaworthiness**’ refers to the fitness of the ship to perform and complete the contracted voyage.
- ‘**Cargoworthiness**’ refers to the fitness of the ship to safely receive, carry and discharge the particular cargo contracted to be carried.

Obligations of Carrier at Common Law

Implied Terms

Doctrine of Stages

- The ship must be **seaworthy** at the time the ship **starts sailing**
 - Including sailings from an intermediate port
- The ship must be **cargoworthy** when the cargo is **loaded**

Obligations of Carrier at Common Law

Implied Terms

Seaworthiness

- Definition of seaworthiness
 - Include: Legal fitness and crew-competency
 - [F]it to meet and undergo the perils of sea and other incidental risks to which of necessity she must be exposed in the course of a voyage (*Kopitoff v Wilson* 1876)
- Standard of seaworthiness
 - [T]hat degree of fitness which an ordinary careful and prudent owner would require his vessel to have at the commencement of her voyage having regard to all the probable circumstances of it (*McFadden & Co v Blue Star Line* 1905)

Obligations of Carrier at Common Law

Implied Terms

Seaworthiness

- Absoluteness of the duty of seaworthiness
 - *Steel v State Line Steamship Co* (1877)
- Burden of Proof
 - Burden on Claimant,
 - But inferences are common (*The Torenia* (1983))

Obligations of Carrier at Common Law

Implied Terms

Seaworthiness

- Causation
 - Sufficient if unseaworthiness is 'a' cause
(Smith, Hogg v Black Sea and Baltic General Insurance (1940))
- Type
 - Innominate
(Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd (1962))

Obligations of Carrier at Common Law

Implied Terms

Deviation

- Duty not to Deviate without Reasonable Justification
 - Proceed without unnecessary deviation in the usual and customary course
Davis v Garrett (1830)
 - Liberty clauses in bill of lading, giving wide liberty to deviate, are construed narrowly
Leduc v Ward (1888)
“liberty to call at any ports in any order” meant “the ports ... which will be passed on the named voyage”
 - Two justifications:
 - (1) to save life at sea
 - (2) to avoid imminent peril

Obligations of Carrier at Common Law

Implied Terms

Quasi-Deviation

- Not to carry on deck, unless otherwise expressly agreed
- *Royal Exchange Shipping Co Ltd v Dixon (1886)*
 - Benefit of exception clause lost

Obligations of Carrier at Common Law

Implied Terms

Duty to take reasonable care of cargo

- *Notara v Henderson* (1872)

Obligations of Carrier at Common Law

Exclusion of Implied Terms

- Implied terms may be excluded
- but only by specific exclusion clause
- not by general exclusion clause

- *The Maori King* (1895)
 - “failure or breakdown of machinery, insulation and other appliances”
 - Refrigeration system of the ship carrying a cargo of frozen mutton did not work properly at the start of the voyage
 - Held clause not protect shipowner

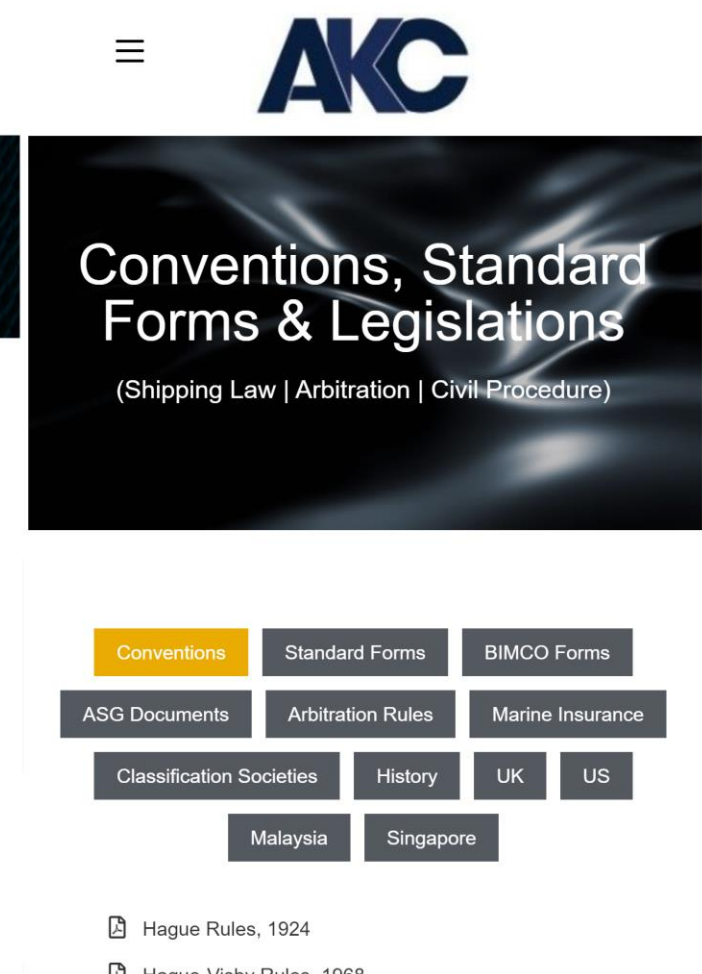
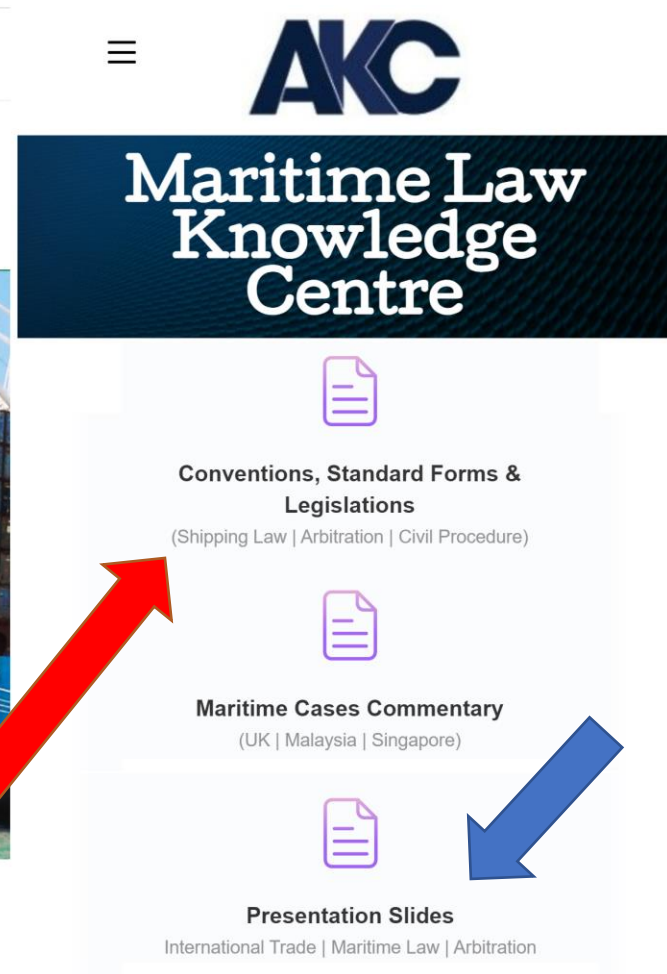
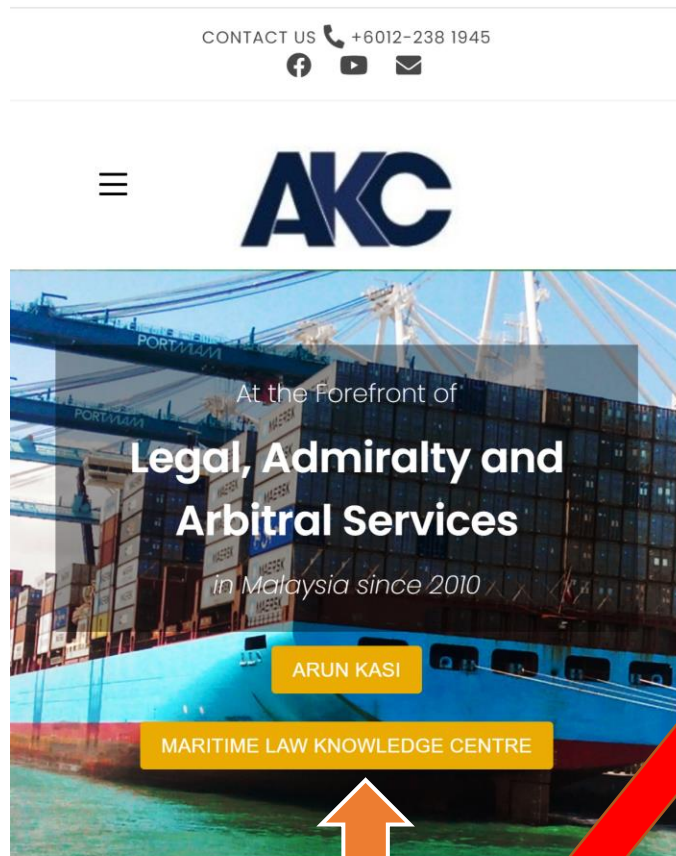
Obligations of Carrier at Common Law

Exclusion of Implied Terms

- *The Torenia* (1938)
 - “perils of the sea” excepted
 - Ship sank
 - Held clause not protect shipowner, as most likely cause was defect in ship structure
- *The Emmanuel C* (1983)
 - ‘errors of navigation’ exception
 - “negligent” errors of navigation
 - Held clause not protect shipowner
- *FC Bradley & Sons Ltd v Federal Steam Navigation Co Ltd* (1927)
 - Shipowner to prove it was not “negligent”
before it can rely on any general exception clause

International Trade and Letter of Credit: Web Reference

arunkasico.com -> [Maritime Law Knowledge Centre](#) -> [Conventions ...](#)



Legal Framework & Shipping Documents: Further Reading

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

PART I: INTRODUCTION AND INTERNATIONAL TRADE

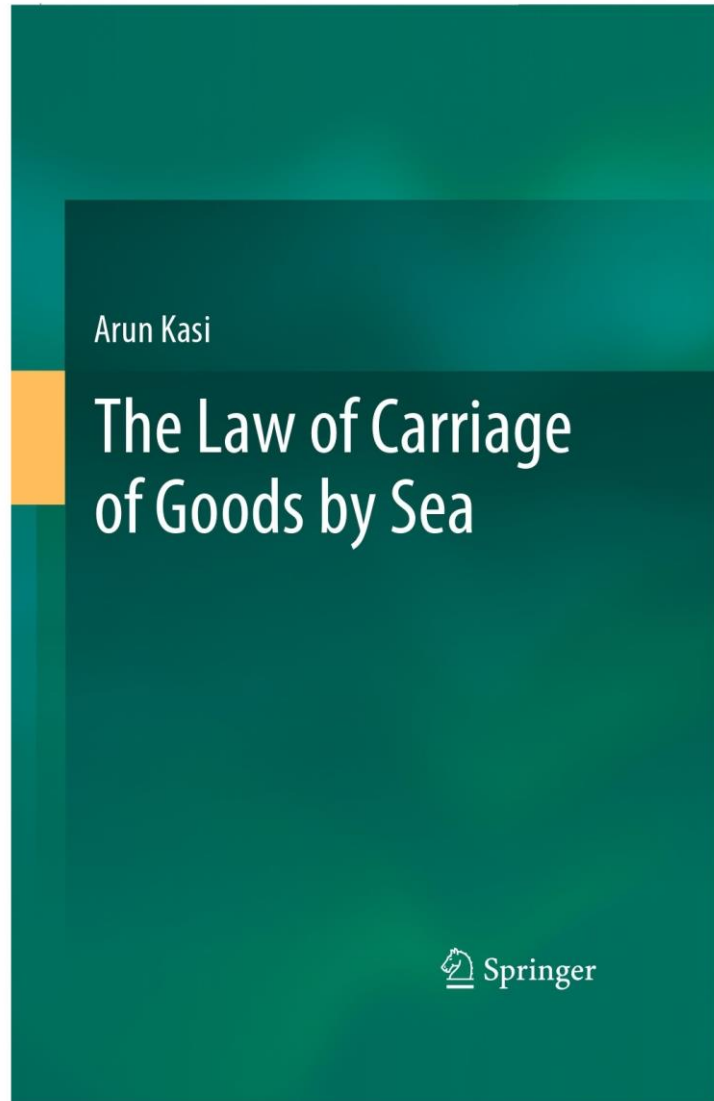
1. Introduction and Legal Framework
2. Shipping Documents
3. International Trade

PART II: BILLS OF LADING

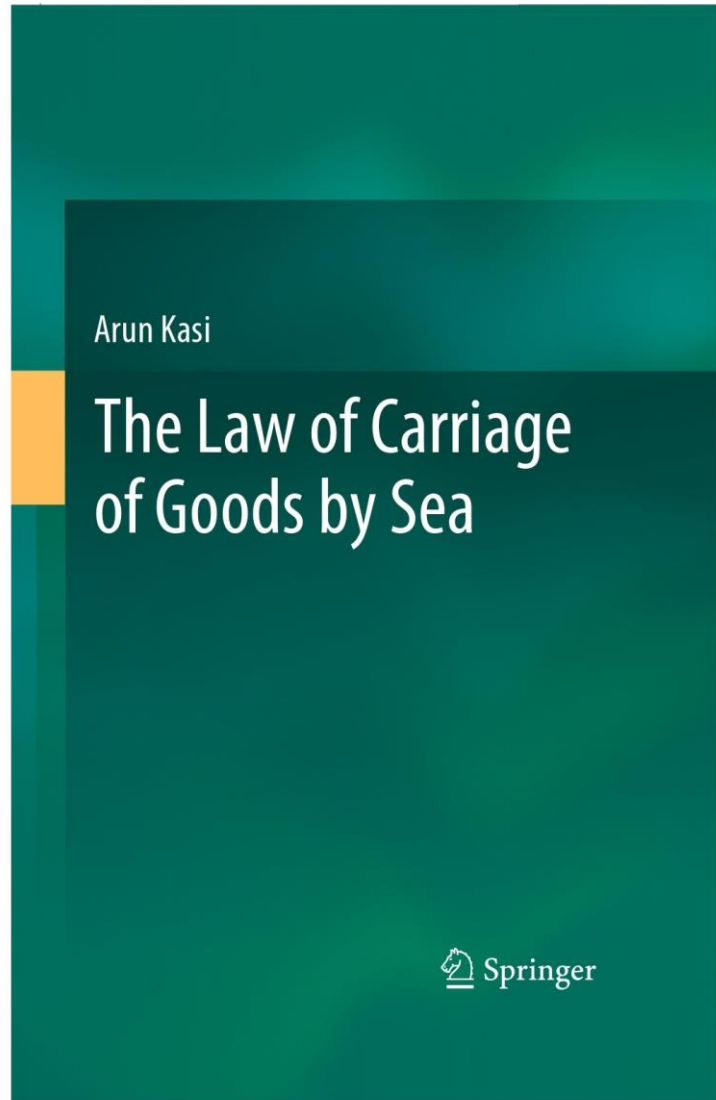
4. Obligations of Carrier at Common Law: Legal Bases
5. Third Parties: Protection and Action for
6. Proof of Damages: Presumptions and Estoppels
7. Implied Terms and Exclusion Clauses.
8. Hague & Hague-Visby Rules: Application
9. Hague & Hague-Visby Rules: Carriers' Obligations and Defences
10. Hague & 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



Legal Framework & Shipping Documents: Further Reading



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
- Bookscouter
- Joseph Beth
- Bluemanatee
- Literatibookstore
- Powells
- Bookshop.org
- Kinokuniya

Canada

- Indigo

Australia

- Dymocks
- Booktopia
- Kinokuniya

Germany

- Hugendubel
- Weltbild
- Thalia
- Langer Blomqvist
- Buchkatalog
- Umbreit
- Stephanus Buchhandlung

France

- Galignani

Brussels

- Standard Boekhandel
- Club

Sweden

- Adlibris
- AkademiBokHandeln
- Bokus

Switzerland

- Buchhaus
- OrellFuessli

Estonia

- Krisostomus

Elovakia

- Martinus

Denmark

- Saxo

Czech

- Martinus

Singapore

- Kinokuniya

Taiwan

- Kinokuniya
- Books.com.tw

Thailand

- Kinokuniya

S. Korea

- Aladin

India

- Books Wagon