



International Trade, Bills of Lading, Charterparties and Arbitration

Day 2

International Trade and Letters of Credit

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International Trade and Letter of Credit

International Trade

TERMINOLOGIES

- Shipper
 - Consignor
 - Consignee
 - Carrier
 - Shipowner
 - Freight forwarder
 - Shipment
- See *Arun Kasi, The Law of Carriage of Goods by Sea, Singapore, Springer, 2021*

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International Trade

SHIPPING TERMS

- Classical Shipment Terms
 - fob, c&f, cif eg. fob Port Klang, c&f Singapore, cif Rotterdam
 - Variants of fob
 - Bare / straight fob (buyer arranges carriage contract)
 - fob of classical type (seller arranges carriage contract as agent for buyer-shipper)
 - fob with additional carriage services
(seller arranges carriage contract in own name as shipper and charges the cost plus a commission to the buyer)
- ICC Incoterms 2010 / 2020
 - FOB, CFR, CIF
 - D-terms: DAT (now DPU) , DAP, DDP
 - DAT / DPU = Delivered at Terminal / Delivered at Place Unloaded
 - DAP = Delivered at Place
 - DDP = Delivered Duty Paid
 - E-terms: EXW = Ex Works, eg. EXW Seller's Warehouse in Kuala Lumpur

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International Trade

PASSING OF PROPERTY AND RISK

- Sale of Goods Act 1957
 - Property passes when intended to pass (s. 19)
 - Risk passes with property , unless otherwise agreed (s. 26)
- fob, c&f, cif / FOB, CFR, CIF
 - Property passes on full payment by buyer
 - Risk passes upon loading on board the ship
- Implications of risk passing before property
 - Buyer must pay if goods are damaged on board the ship even though bill of lading is not transferred yet
- 'Out turn' clauses (that price will be adjusted if goods arrive short in quantity / quality) do not alter the risk passing upon loading

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Letter of Credit

LETTER OF CREDIT (DOCUMENTARY CREDIT)

- Buyer instructs its bank to issue L/C to the seller
- L/C = undertaking *by bank to seller* to pay upon presentation of documents
- LC acts as a unilateral contract *between buyer's bank and the seller*, so that the bank is bound by it but not the seller
- L/C is independent of the sale and purchase contract *between buyer and seller*

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Letter of Credit

CHANNELS OF L/C

- Buyer -> Issuing bank
- Issuing bank -> Seller OR Issuing bank -> Correspondent bank -> Seller
- Correspondent bank = Advising bank OR Confirming bank

- If Issuing / Confirming the bank defaults,
buyer may sue the Issuing (AND Confirming bank, if there is one) AND the Buyer

- If the Issuing / Correspondent bank wrongfully refuses to honour payment to the buyer
and Seller is not at fault for this,
the Seller may sue the Issuing bank

- If the Issuing / Correspondent bank wrongfully pays the Seller, the buyer may reject the documents and the Issuing bank will bear the loss OR the buyer may accept the documents and claim compensation from the Issuing bank

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Letter of Credit

TYPES OF L/C

- Revocable or Irrevocable L/C
- Confirmed or Unconfirmed L/C
- Straight or Negotiable L/C
- Sight or Deferred Payment L/C
- Transferable L/C
- Revolving L/C
- Red Clause L/C

- Bank Guarantee / SBLC (not letter of credit)

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Letter of Credit

TERMS OF L/C

- Payment upon presentation of **compliant** documents within the allowed time limit, eg.
 - Clean and shipped bill of lading
 - Invoice, Packing List
 - Certificate of quality / quantity, eg. issued by SGS
 - Insurance policy (if cif contract)
- ICC UCP 600 (a standard form document, in 39 articles, available for voluntary adoption)
 - Bank must pay or reject within 5 banking days of presentation. If not reject within 5 banking days, bank is considered to have accepted the documents

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Letter of Credit

PAY OR REJECT – BANK ON RAZOR BLADE?

- Bank will be liable if:
 - If it pays on non-compliant document, OR
 - If it refuses to pay on compliant documents
- But bank's duty to examine documents only on face of it, hence it will not be liable where it pays on a forged bill
- Fraud exception to autonomy of letter of credit

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Letter of Credit

PAY OR REJECT WITHIN 5 BANKING DAYS

- *Punjab National Bank v Malayan Banking Berhad* [2020] 1 LNS 232, [2020] 5 MLJ 732
 - 60 Days L/C issued by Punjab Bank, confirmed by Malayan Bank
 - L/C prohibited freight forwarder's bill
 - Seller presented freight forwarder's bill
 - Malayan Bank negotiated the L/C and paid, and claimed reimbursement from Punjab Bank
 - Punjab Bank rejected because it was a freight forwarder's bill, but after the 5 banking days
 - Punjab Bank, hence, refused to reimburse Malayan Bank, and Malayan Bank sued Punjab Bank.
 - Maybank succeeded in High Court, because Punjab Bank missed the 5-banking days limit.
 - Court of Appeal reserved the decision, because the 5-banking days limit is to notify 'discrepancy' in documents, but not apply where the documents are 'different' from that contracted.

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Bills of Lading

CONVENTIONAL USAGE OF BILL OF LADING

- Consignor ships (loads) the goods on board the ship
- The shipowner issues the bill of lading
- The consignor tenders the bill to the L/C bank for payment
- The bank takes the bill and pays
- The bank passes on the bill to the buyer
 - The buyer had either deposited the bill amount to the bank OR
 - settles it later as per arrangement between the buyer and the bank
- The buyer presents the bill to the shipowner at the destination port and collects the goods
- The shipowner delivers the goods to one who presents the bill at the destination port

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Bills of Lading

FUNCTIONS OF BILL OF LADING

- Acknowledgment of receipt for cargo
 - 'Shipped' bill / 'Received for shipment' bill.
- Evidence of contract of carriage
- Goods-token coupled with undertaking by shipowner to deliver goods to one who presents the bill (i.e. constructive possession / document of title)
- See **Arun Kasi, 'Bill of Lading: Document of Title or Possession?', *Journal of The Commonwealth Lawyers' Association*, vol. 30, no. 3, December 2020**

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Bills of Lading

FUNCTIONS OF BILL OF LADING

- A bill is usually issued in a set of 3 originals
- Only one original needs to be returned to the shipowner (or carrier) for delivery of the goods
- If a shipowner (or carrier) delivers without presentation of the bill, for *whatever* reason (usually on indemnity), it will be liable to the lawful holder of the bill (if a claim is made)

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Bills of Lading

TYPES OF BILL OF LADING

- Straight bill eg. Importer Ltd
- To order bill eg. To order of Bank Ltd / To assigns of Bank Ltd
- Bearer bill eg. To bearer

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Bills of Lading

INDORSEMENTS AND TRANSFER OF BILL OF LADING

- Straight bill eg. Delivery to the named consignee
 - No indorsement is possible. Transferable once only to the named consignee
- To order bill eg. Indorse at the bank and deliver to transferee
 - This can be converted to a straight bill by indorsement to a named consignee without 'to order' addition
 - This can be converted to a bearer bill by indorsement without any consignee / 'to order' of a consignee or by indorsement 'to bearer'
 - This will be maintained as a 'to order' bill if indorsed 'to order' of a consignee, so that the consignee can further indorse it and so forth
- Bearer bill eg. No indorsement
 - This can be converted to a straight bill or 'to order' bill by suitable endorsement

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Bills of Lading

INDORSEMENTS AND TRANSFER OF BILL OF LADING

- Indorsement to bearer is called general endorsement or endorsement in blank
- Indorsement to a consignee / 'to order' of a consignee is called a specific endorsement or endorsement in full

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Bills of Lading

INDORSEMENTS AND TRANSFER OF BILL OF LADING

- To be transferable, the bill must not be 'spent'
- A spent bill does not represent the goods, because the goods were already delivered or lost

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Bills of Lading

SWITCHING BILL OF LADING

- 'Switch' bill of lading
 - Holder older returns the bill to the shipowner (or carrier) to switch the consignee to another
 - Any of the 3 types of bill can be switched
- Holder may also switch it with ship's delivery order – this will happen when bulk cargo is shipped under a single bill and delivery need to be made to multiple consignees, hence the bills will be switched for ship's delivery orders
 - a ship's delivery order is an undertaking from the shipowner (or carrier) to the named consignee to deliver the goods
 - a ship's delivery order is not transferable by the consignee

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Bills of Lading

TRANSFER OF CONTRACTUAL RIGHTS AND CONSTRUCTIVE POSSESSION

- Two distinct matters
 - Constructive possession transferred under common law
 - Contractual rights transferred under UK Bills of Lading Act 1855 / UK COGSA 1992
 - For Peninsular Malaysia, except for Penang and Malacca, the 1855 Act
 - For Penang, Malacca, Sabah and Sarawak: the 1992 Act
 - Under the 1855 Act (but not under the 1992 Act),
the property must be transferred in order for the contractual rights to be transferred
 - Labuan in lacuna
 - See Arun Kasi, 'UK Bills of Lading Act 1855 or Carriage of Goods by Sea Act 1992 for Penang, Malacca, Sabah and Sarawak?', *Malaysian Law Journal*, [2020] 5 *Malaysian Law Journal*, p. cxxxiv
 - See Arun Kasi, 'The 'Labuan Lacuna': Hague or Hague-Visby Rules for Labuan?', *Malaysian Law Journal*, vol. 6, Nov 2020, p. cxxxii

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Bills of Lading

FREIGHT FORWARDER'S BILL OF LADING

- Also called 'house' bills and comes within NVOC bills.
- Combined transport bills may also be NVOC bill
- Through bill may also be NVOC bill
 - Pure through bill, false through bill, collective through bill
- *Punjab National Bank v Malayan Banking Berhad* doubts if a freight forwarder's bill is a 'bill of lading' as a matter of law.
- See [Arun Kasi, 'Freight Forwarder's Bill of Lading: Are they Bills of Lading?', THAC's Newsletter, No. 3, December 2020, p. 2](#)
- See [Arun Kasi, 'NVOC/Freight Forwarders' Bill of Lading: An Anathema to Carriage of Goods by Sea?', *Revue de Droit des Affaires Internationales \(International Business Law Journal\)*, 2021](#)

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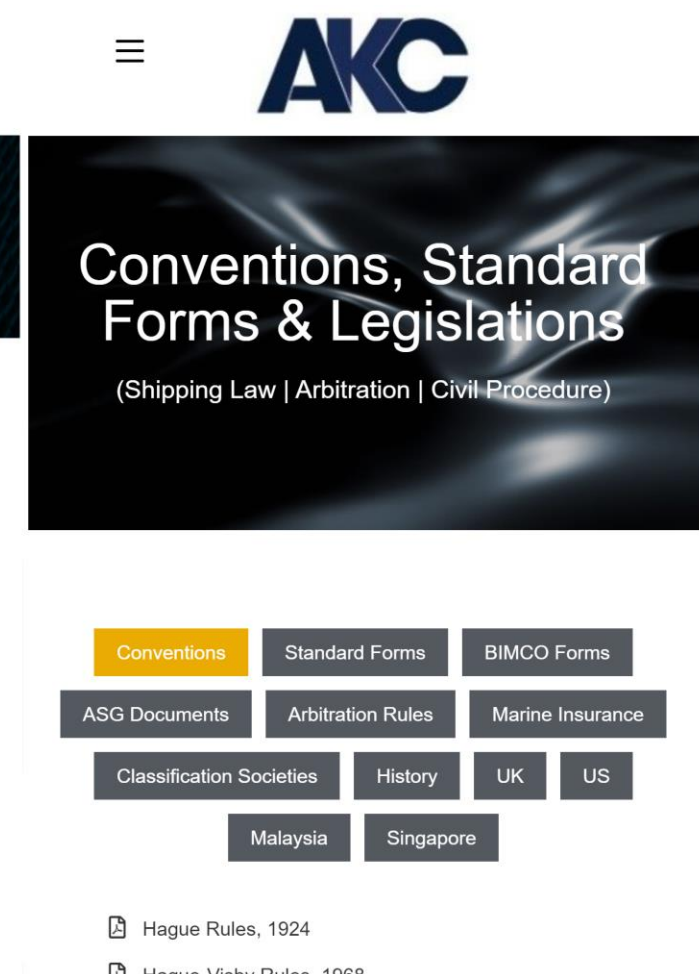
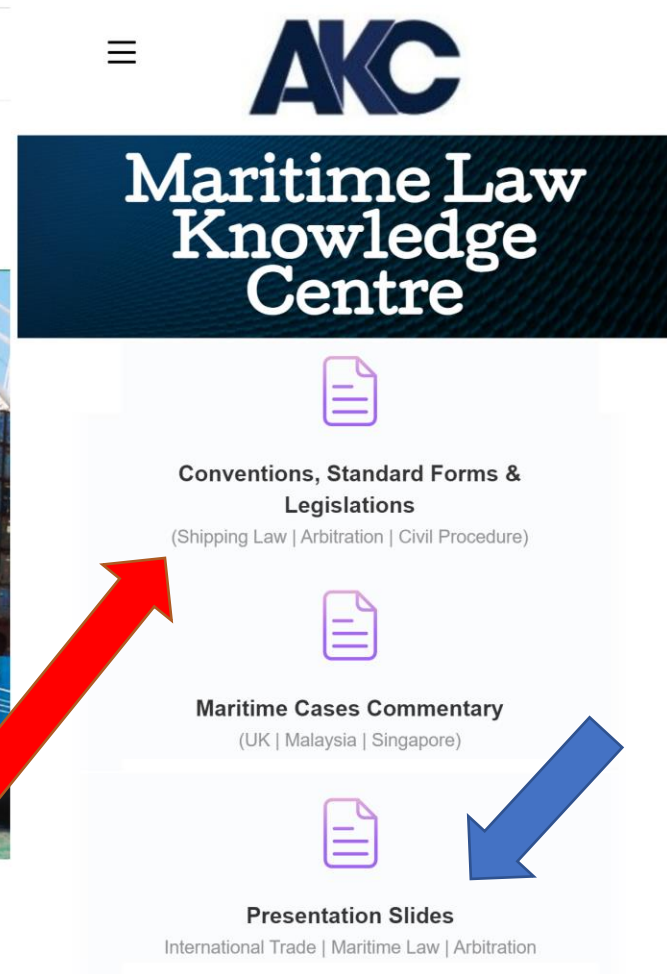
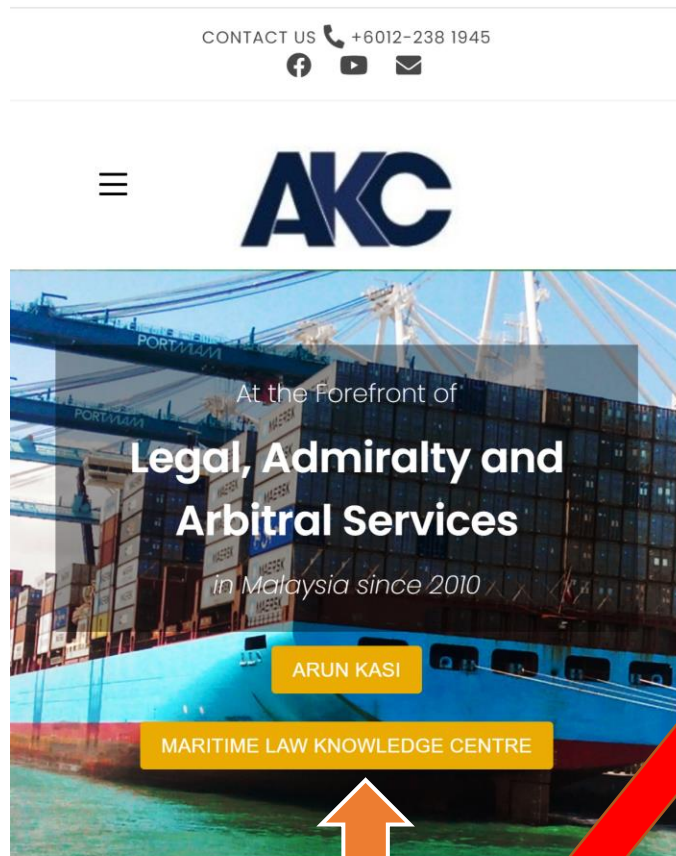
Sea Waybills / Ship's Delivery Orders

OTHER SHIPPING DOCUMENTS

- Sea waybills
 - To a named consignee and not transferable
 - The consignor retains possessory rights until delivery to the consignee
 - The consignor may order the carrier to switch the consignee to any other person
- Ship's delivery orders
 - To a named consignee and not transferable by the consignee

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

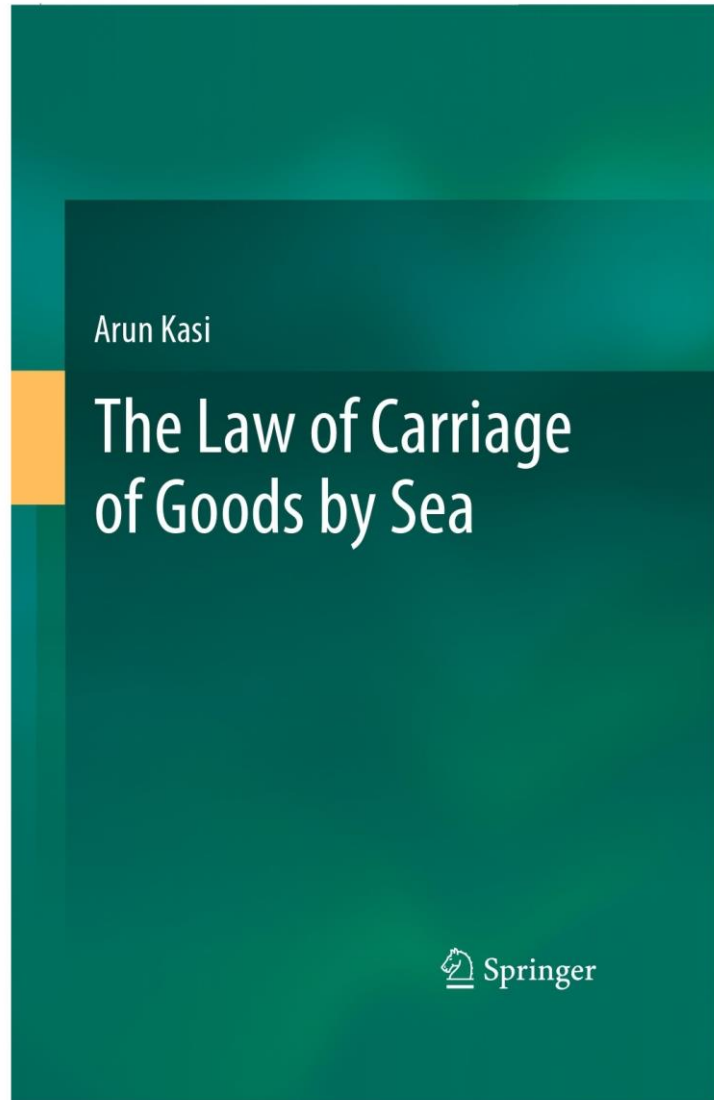
1. Introduction and Legal Framework
2. Shipping Documents
3. International Trade

PART II: BILLS OF LADING

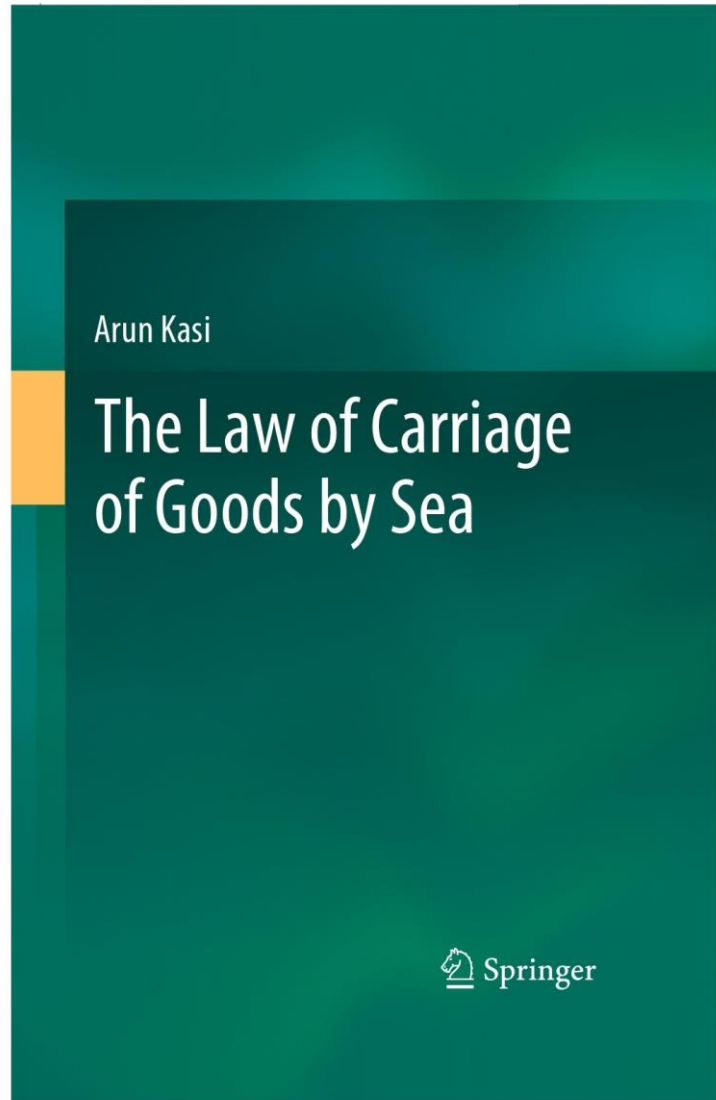
4. Cargo Claims: Legal Bases
5. Third Parties: Protection and Action for
6. Proof of Damages: Presumptions and Estoppels
7. Implied Terms and Exclusion Clauses.
8. Hague & Hague-Visby Rules: Application
9. Hague & Hague-Visby Rules: Carriers' Obligations and Defences
10. Hague & Hague-Visby Rules: Carriers'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

Germany

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

France

- Galignani

Brussels

- Standard Boekhandel
- Club

Sweden

- Adlibris
- AkademiBokHandeln
- Bokus

Switzerland

- Buchhaus
- OrellFuessli

Australia

- Dymocks
- Kinokuniya

Singapore

- Kinokuniya

Taiwan

- Kinokuniya
- Books.com.tw

Thailand

- Kinokuniya

S. Korea

- Aladin

India

- Books Wagon

Estonia

- Krisostomus

Elovakia

- Martinus

Denmark

- Saxo