



International Trade, Bills of Lading, Charterparties and Arbitration

Day 1

Legal Framework & Shipping Documents

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Legal Framework & Shipping Documents

SOURCES OF LAW AND MATERIALS

STATUTES

- Malaysia
 - Peninsular Malaysia, Sabah, Sarawak, Labuan
 - Acts / Ordinances, Rules, Regulations
- UK / England & Wales (imported into Malaya / Sabah / Sarawak by ss 3 and 5 CLA 1956)

INTERNATIONAL CONVENTIONS

- Given force by Malaysian statutes

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SOURCES OF LAW AND MATERIALS

CASE LAWS

STANDARD FORMS

- ICC Incoterms 2020, ICC UCP 600
- BIMCO Forms, ASBA Forms

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BRANCHES OF MARITIME LAW

DRY SHIPPING (CARRIAGE OF GOODS BY SEA)

- Bills of Lading, Seaway bills, Ship's delivery orders
- Charterparties
 - Demise / Bareboat charter, Time charter, Voyage charter, Trip charter, Slot charter

WET SHIPPING

- General Average, Collision, Pollution, Salvage

DISPUTE RESOLUTION / PROCEDURE

- Admiralty
- Litigation, Arbitration

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BRANCHES OF MARITIME LAW

MARINE INSURANCE

- Hull and Machinery
- Cargo
- P & I

SHIPBUILDING

SHIP SALE & PURCHASE, SHIP FINANCING

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BILLS OF LADING

STATUTORY TERMS

- **PENINSULAR MALAYSIA:** Carriage of Goods by Sea Act 1950
 - Regulates the terms of bill of lading contract in Peninsular Malaysia
 - Incorporates **HAGUE RULES**, 1924 (with slight modification)
 - Applies to shipments out from any Peninsular Malaysian port
 - Limited to carriages under bills of lading
 - Carriage of Goods by Sea (Amendment) Bill 2019 (in process)
 - When passed and implemented:
 - The 1950 Act will apply to sea waybills and ship's delivery orders
 - Hague-Visby Rules 1968 (with SDR Protocol Amendments, 1979) will be incorporated

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BILLS OF LADING

STATUTORY TERMS

- **SARAWAK:** Merchant Shipping (Implementation of Conventions Relating to Carriage of Goods by Sea and to Liability of Shipowners and Others) Regulations 1960
 - Almost Identical to Carriage of Goods by Sea Act 1950, except:
 - Hague-Rules Art. IV(5) **Liability Limit (per package or unit) changed to RM850**
 - See Arun Kasi, 'The Dancing Liability-Limit in Hague Rules and Validity of RM850 Limit for East Malaysia', *Malaysian Law Journal*, vol. 1, Jan 2021
- **SABAH:** Merchant Shipping (Applied Subsidiary Legislation) Regulations 1961
 - Incorporates the Sarawak Regulations into Sabah.

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BILLS OF LADING

STATUTORY TERMS (INTERNATIONAL CONVENTIONS)

- Hague Rules, 1924
 - Adopted by Malaysia
- Hague-Visby Rules, 1968
 - Adopted by Singapore with modifications
- Hague-Visby Rules, 1968 (amended by SDR Protocol, 1979)
 - Adopted by the UK
 - Will be adopted by Malaysia when the Carriage of Goods by Sea (Amendment) Bill 2019 is passed
- Hamburg Rules, 1978
 - Adopted by a few African countries
- Rotterdam Rules, 2009
 - Not yet in force as the minimum number of ratifications not achieved

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BILLS OF LADING

STATUTORY TRANSFER OF CONTRACTUAL RIGHTS

- UK Bills of Lading Act 1855
 - Regulates transfer of contractual rights in B/L to transferee of the B/L
 - Now repealed in the UK
 - But applies in Malaysia (ss. 3 and 5 of Civil Law Act 1956 to all states / FTs except:
 - Penang, Malacca, Sabah, Sarawak and *Labuan*

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BILLS OF LADING

STATUTORY TRANSFER OF CONTRACTUAL RIGHTS

- UK Carriage of Goods by Sea Act 1992
 - Regulates transfer of contractual rights in B/L to transferee of the B/L
 - Now in force in the UK
 - Applies in Malaysia by ss. 3 and 5 of Civil Law Act 1956 to Penang, Malacca, Sabah and Sarawak
 - 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*, vol. 5, Oct 2020, p. cxxxiv
- Labuan lacuna
 - Possibly, neither the 1855 Act nor the 1992 Act applies.
 - See Arun Kasi, 'The 'Labuan Lacuna': Hague or Hague-Visby Rules for Labuan?', *Malaysian Law Journal*, vol. 6, Nov 2020, p. cxxxi

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BILLS OF LADING

COMMON LAW TRANSFER OF POSSESSORY RIGHTS (CONSTRUCTIVE POSSESSION)

- *Lickbarrow v Mason* (1794), HC
- *Barber v Meyerstein* (1870), HL
- See Arun Kasi, 'Bill of Lading: Document of Title or Possession?', *Journal of The Commonwealth Lawyers' Association*, vol. 30, no. 3, Dec 2020, p. 27

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BILLS OF LADING

CARGO CLAIMS

- Hague Rules / Hague-Visby Rules (given force to by relevant statute)
- Common law implied terms
 - Seaworthiness & cargoworthiness, Duty not to deviate, Duty not to carry not deck, Duty to take reasonable care of cargo
- Contract
- Tort (common law)
 - Conversion, Negligence
- Bailment (*a sui generis*)

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BILLS OF LADING

CARGO CLAIMS

- Contracts Act 1950
 - Part IX (ss. 101 – 134): Bailment
 - Part X (ss. 135 – 191): Agency
- Evidence Act 1950
 - Chapter VI (ss. 101 – 114): Burden of Proof
- Sale of Goods Act 1957
 - Chapter III (ss. 18 – 30): Effects of the Contract

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CHARTERS AND INTERNATIONAL TRADE

CHARTERPARTIES

- Contracts Act 1950
- Case Law
- BIMCO Forms

INTERNATIONAL TRADE

- Contract law
- Sale of Goods Act (passing of property and passing of risk)
- Shipping terms (fob, cif, c&f)
- ICC Incoterms 2020 (FOB, CFR, CIF, DPU/DAT, DAP, DDP, EXW)
- ICC UCP 600 (letters of credit)

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INTERNATIONAL STANDARD FORM AGREEMENTS

- Inter-Club Agreement (cargo claims liability apportionment agreement in charterparty between shipowner and charterer)
- York-Antwerp Rules 1994 / 2004 / 2016 (general average rules)
- Lloyd's Standard Form of Salvage Agreement (Lloyd's Open Form 2020) (LOF 2020)
- ICC UCP 600 [2006] (letter of credit terms) [first edn in 1933]
- ICC Incoterms 2020 (international trade terms) [first edn in 1923]

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INTERNATIONAL STANDARD FORM AGREEMENTS

- Bill of Lading Forms
 - BIMCO COMBICONBILL 2016 (Bills of lading, Multimodal)
 - BIMCO CONGENBILL 2016 (Bills of lading, General cargo)
 - BIMCO CONLINEBILL 2016 (Bills of lading, Liner)
 - BIMCO MULTIDOC 2016 (Bills of lading, Multimodal)
- Charterparty Forms
 - BIMCO BARECON 2017 (Bareboat charter)
 - NYPE 2015 (Time charter, Dry cargo) [ASBA]
 - BIMCO BALTIME 1939 (Revised 2001) (Time charter, Dry cargo)
 - BIMCO SUPPLYTIME 2017 (Offshore, Marine services, Time charter)
 - SHELLTIME 4 (Revised 2003) (Time charter, Fuel/Diesel Oil)
 - BIMCO GENCON 1994 (Voyage charter, General cargo, Dry cargo)
 - ASBATANKVOY (Voyage charter, Tanker) [ASBA]

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ADMIRALTY

- Courts of Judicature Act 1964, s. 24(b):
 - (b) the same jurisdiction and authority in relation to matters of admiralty as is had by the High Court of Judice in England under the United Kingdom [Senior Courts] Act 1981
- UK Senior Courts Act 1981, ss. 20-24
 - Sec. 20. Admiralty jurisdiction of High Court.
 - Sec. 21. Mode of exercise of Admiralty jurisdiction.
 - Sec. 22. Restrictions on entertainment of actions in personam in collision and other similar cases.
 - Sec. 23. High Court not to have jurisdiction in cases within Rhine Convention.
 - Sec. 24. Supplementary provisions as to Admiralty jurisdiction.

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ADMIRALTY

- Territorial Sea Act 2012
 - Sec. 3 – Limits of Territorial Sea: 12 nautical miles from baseline
- Baselines of Maritime Zones Act 2006
 - Sec. 5 – Baselines: The low-water line along the coast as marked on large scale charts (and 2 other alternative measurements)
- UK Maritime Conventions Act 1911
 - Sec. 8: Collision and salvage claims to be brought within 2 years (but court may extend) [now repealed in the UK and replaced by s. 190 of the UK Merchant Shipping Act 1995]

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ADMIRALTY

- Rules of Court 2012
 - Order 71 (Admiralty)
 - Forms 146 – 157
- Practice Directions
 - PD No. 2/2007 (Admiralty Actions)
 - PD No. 1/2012 (Admiralty and Maritime Claims)
- Admiralty Court User Guide
(https://www.malaysianbar.org.my/cms/upload_files/document/Admiralty%20Court%20User%20Guide.pdf)

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MARINE INSURANCE

STATUTES

- Financial Services Act 2013 (repealing and replacing Insurance Act 1996)
- UK Marine Insurance Act 1906
 - Amended now in the UK by Insurance Act 2015

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MARINE INSURANCE

STANDARD FORM AGREEMENTS

- International Underwriting Association of London (IUA) - Institute Clauses
[IUA is a merger of Institute of London Underwriters (ILU) and London Insurance and Reinsurance Market Association (LIRMA)]
 - Institute International Hull Clauses (2002 / 2003)
 - Institute Time Clauses – Hull (1983 / 1995)
 - Institute Voyage Clauses – Hulls (1983 / 1995)
 - Institute War and Strikes Clauses - Hulls-Time (1983 / 1995)
 - Institute War and Strikes Clauses - Hulls-Voyage (1983 / 1995)
 - Institute Cargo Clauses (A) (1982 / 2009)
 - Institute Cargo Clauses (B) (1982 / 2009)
 - Institute Cargo Clauses (C) (1982 / 2009)

Legal Framework & Shipping Documents

MARINE INSURANCE

PROTECTION AND INDEMNITY (P&I) CLUBS' P&I RULES

- 13 member clubs of International Group (IG) of P&I Clubs
 - American Steamship Owners Mutual Protection and Indemnity Association, Inc
 - The Britannia Steam Ship Insurance Association Limited / The Britannia Steam Ship Insurance Association Europe
 - Gard P&I (Bermuda) Ltd. / Assuranceforeningen Gard
 - The Japan Ship Owners' Mutual Protection & Indemnity Association
 - The London Steam-Ship Owners' Mutual Insurance Association Limited
 - The North of England Protecting & Indemnity Association Limited / The North of England P&I Designated Activity Company (North EU)
 - The Shipowners' Mutual Protection & Indemnity Association (Luxembourg)
 - Assuranceforeningen Skuld / Skuld Mutual Protection and Indemnity Association (Bermuda) Ltd
 - The Standard Club Ltd / The Standard Club UK Ltd / The Standard Club Ireland Designated Activity Company (Standard Ireland) /The Standard Club Asia Ltd. (reinsured subsidiary)
 - The Steamship Mutual Underwriting Association (Bermuda) Limited / The Steamship Mutual Underwriting Association Ltd / The Steamship Mutual Underwriting Association (Europe) Limited
 - Sveriges Ångfartygs Assurans Förening / The Swedish Club
 - United Kingdom Mutual Steamship Assurance Association (Bermuda) Ltd / United Kingdom Mutual Steam Ship Assurance Association (Europe) Ltd /UK P&I Club N.V. (UKNV)
 - The West of England Ship Owners Mutual Insurance Association (Luxembourg)

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OTHER STATUTES

ACTS / ORDINANCES / ENACTMENTS

- Merchant Shipping Ordinance 1952 (amended in 2016)
- Merchant Shipping (Oil Pollution) Act 1994
- Port (Privatisation) Act 1990
- Port Authorities Act 1963
- Penang Port Commission Act 1955
- Environmental Quality Act 1981
- Merchant Shipping (Liability and Compensation for Oil and Bunker Oil Pollution) Act 1994
- Federation Light Dues Act 1953
- SARAWAK Port Authorities Ordinance 1961
- SARAWAK Bintulu Port Authority Act 1981
- SABAH Ports Authority Enactment 1981
- SABAH Ports (Privatisation) Enactment 1998

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OTHER STATUTES

RULES & REGULATIONS

- Merchant Shipping Order (Collision) Regulations 1984 (amended in 2000)
- Merchant Shipping (Collision Regulations) (Rules For Vessels Navigating Through The Straits of Malacca and Singapore) Order 1984
- Federal Territory of Labuan (Extension and Modification of the Light Dues Act 1953) Order 2014
- Port (Safety of workers) Rules 1985
- Federation Ports Rules 1953
- Boat Rules 1953
- State Ports Rules
- Merchant Shipping Ordinance 1952 - Merchant Shipping (Central Mercantile Marine Fund) Rules 1984
- Merchant Shipping Ordinance 1952 - Merchant Shipping (Near Coastal Trade) Voyage Limit Rules 1994
- Petroleum (Safety Measures) (Transport of Petroleum by Water) Regulations 1985
- Penang Port (Navigation within the Area of the Bridge) Rules 1986
- Merchant Shipping (Medical Examination) Rules 1999

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OTHER INTERNATIONAL CONVENTIONS

SIGNED BY MALAYSIA

- Nairobi International Convention of the Removal of Wrecks 2007
- International Convention on Load Lines (LL), 1966 as Amended by the Protocol of 1988
- Convention on the International Maritime Organization, 1948
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND)
- Convention on the International Regulations for Preventing Collisions at Sea (COLREG) 1972
- International Convention for the Safety of Life at Sea (SOLAS) 1974, as amended by the Protocol of 1988
- Protocol of 1978 relating to the International Convention for the Safety of Life at Sea 1974, as amended
- International Convention on Tonnage Measurement of Ships, 1969
- Convention on the International Mobile Satellite Organization (IMSO) 1976, as amended
- Operating Agreement on the International Mobile Satellite Organization 1976, as amended
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) 1978, as amended

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OTHER INTERNATIONAL CONVENTIONS

SIGNED BY MALAYSIA

- International Convention for the Prevention of Pollution from Ships (MARPOL) 73/78, Annex III: Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged form
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND) 1971
- International Convention for the Prevention of Pollution from Ships (MARPOL) 73/78, Annex I: Regulations for the Prevention of Pollution by Oil
- International Convention for the Prevention of Pollution from Ships (MARPOL) 73/78, Annex II: Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk
- International Convention for the Prevention of Pollution from Ships (MARPOL) 73/78, Annex V: Regulations for the Prevention of Pollution by Garbage from Ships
- International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) 1990
- International Convention for the Prevention of Pollution from Ships (MARPOL) 73/78, Annex IV: Regulations for the Prevention of Pollution by Sewage from Ships

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OTHER INTERNATIONAL CONVENTIONS

SIGNED BY MALAYSIA

- Amendments Adopted in November 1991 to the Convention of the International Maritime Organization (Institutionalization of the Facilitation Committee)
- International Convention for the Prevention of Pollution from Ships (MARPOL) 73/78, Annex VI: Regulations for the Prevention of Air Pollution from Ships
- International Convention on Civil Liability for Oil Pollution Damage (CLC) 1992
- International Convention on the Establishment of an International Fund For Compensation for Oil Pollution Damage (FUND) 1992
- Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage (CLC) 1969
- Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971
- International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001
- The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention 2001)
- The International Convention for the Limitation of Liability for Maritime Claims, 1976 as Amended by Protocol of 1996 (LLMC Convention 1996)
- International Convention for the Control and Management of Ship's Ballast Water and Sediment (BWM), 2004

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BIMCO STANDARD FORMS

SALE, PURCHASE, SHIPBUILDING AND FINANCE

- BIMCO BIMCOSALE (Sale and purchase)
- BIMCO DEMOLISHCON (Sale and purchase)
- BIMCO RECYCLECON (Sale and purchase, Ship building)
- BIMCO SALEFORM 2012 (Sale and purchase, Ship building)
- BIMCO SHIPTERM (Ship financing)
- BIMCO SHIPTERM S (Ship financing, Ship building, Sale and purchase)
- BIMCO Standard Deposit Escrow Agreement for Ship Sale and Purchase (Escrow, Sale and purchase, Newbuilding)
- BIMCO Standard Escrow Agreement for Disputes (Escrow, Dispute)
- BIMCO NEWBUILDCON (Sale and purchase, Ship building)
- BIMCO Novation Agreement for Shipbuilding Contracts (Ship building)

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BIMCO STANDARD FORMS

SHIP MANAGEMENT

- BIMCO CREWMAN A (Ship management, Crewing)
- BIMCO CREWMAN A (Cost plus fee) 2009 (Crewman A cost plus fee 2009, Ship management, Crewing)
- BIMCO CREWMAN B (Ship management, Crewing)
- BIMCO CREWMAN B (Lump sum) 2009 (Crewman B lump sum 2009, Ship management, Crewing)
- BIMCO LAYUPMAN (Ship management)
- BIMCO SHIPMAN 2009 (Ship management)
- BIMCO SHIPMAN 98 (Ship management)
- BIMCO Shipmanagers' Letter of Undertaking (Lou, Ship management)
- BIMCO SUPERMAN (Ship management)

Legal Framework & Shipping Documents: ADR

ARBITRATION

MALAYSIA

- Malaysia is a signatory to the New York Convention 1958
- Malaysia is a Model Law country (i.e. adopted the UNCITRAL Model Law on International Commercial Arbitration)
- Arbitration Act 2005 (amended in 2018)
 - Applies to Domestic and International Arbitration
 - Based on UNCITRAL Model Law on International Commercial Arbitration 1985 (amended in 2006)
 - Sec. 13: AIAC is the authority for appointing arbitrators, where parties have not agreed on this.
 - See *Arun Kasi, Arbitration: Stay of Court Proceedings and Anti-Suit Injunctions*, Kuala Lumpur, CLJ Publication, 2014
- Rules of Court 2012, Order 69 (Arbitration)
- AIAC Arbitration Rules 2018
- AIAC Fast Track Arbitration Rules 2018

Legal Framework & Shipping Documents: ADR

ARBITRATION

INTERNATIONAL

- New York Convention 1958
- UNCITRAL Model Law on International Commercial Arbitration 1985 (amended in 2006)
- UNCITRAL Arbitration Rules (revised in 2010)

Legal Framework & Shipping Documents: ADR

ARBITRATION

BIMCO FORMS RECOGNISED ARBITRATIONS

- London Maritime Arbitrators Association (LMAA)
 - LMAA Terms 2017
 - LMAA Small Claims Procedure 2017
- Singapore Chamber of Maritime Arbitration (SCMA)
 - SCMA Arbitration Rules (3rd Ed, Oct 2015)
- Society of Maritime Arbitrators (SMA) [New York]
 - SMA Arbitration Rules
 - SMA Shortened Arbitration Rules
 - SMA Salvage Arbitration Rules
- Lloyd's Salvage Arbitration
 - Lloyd's Salvage Arbitration Clauses 2020
 - (old LSSA Clauses and Procedural Rules combined) (LSAC 2020)
 - Under Lloyd's Standard Form of Salvage Agreement (Lloyd's Open Form 2020) (LOF 2020)

Legal Framework & Shipping Documents: ADR

MEDIATION

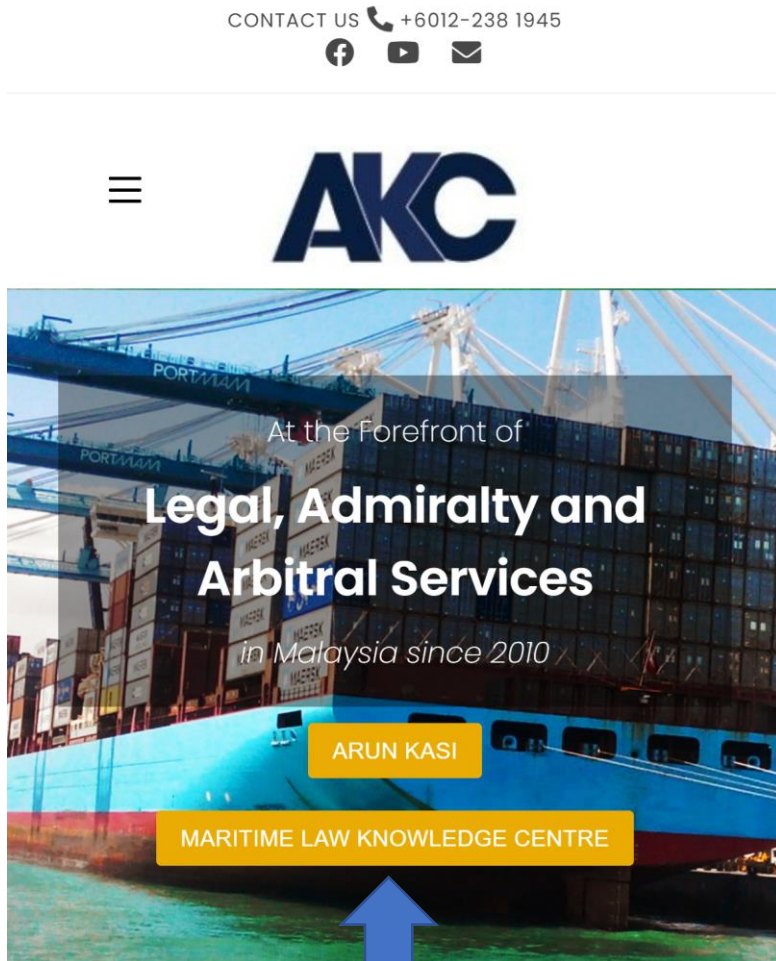
MALAYSIA

- Mediation Act 2012
- Singapore Convention on Mediation 2019 (Malaysia is a signatory – not implemented yet)

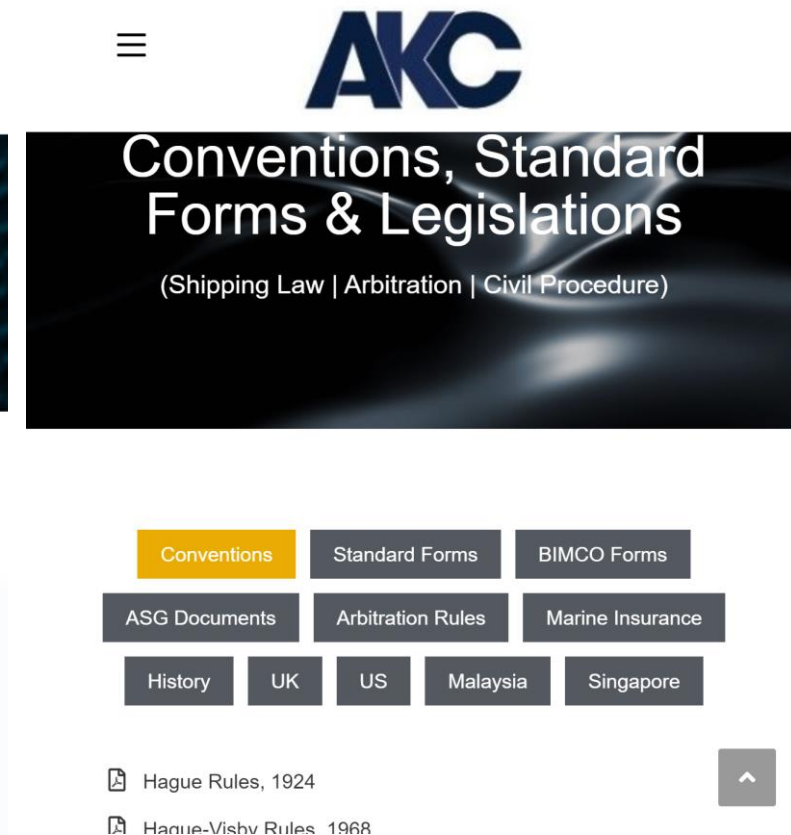
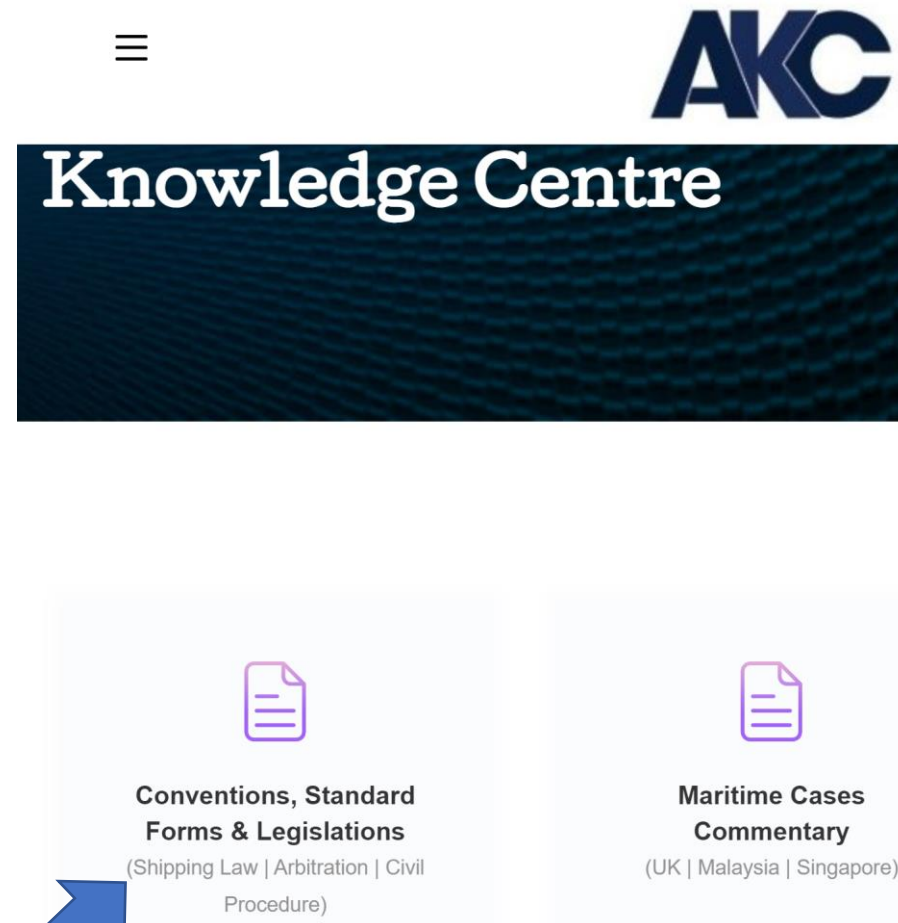
See *Ashgar Ali, Arun Kasi, et al, Alternative Dispute Resolution: Law & Practice*, Kuala Lumpur, CLJ Publication, 2020

Legal Framework & Shipping Documents: Web Reference

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

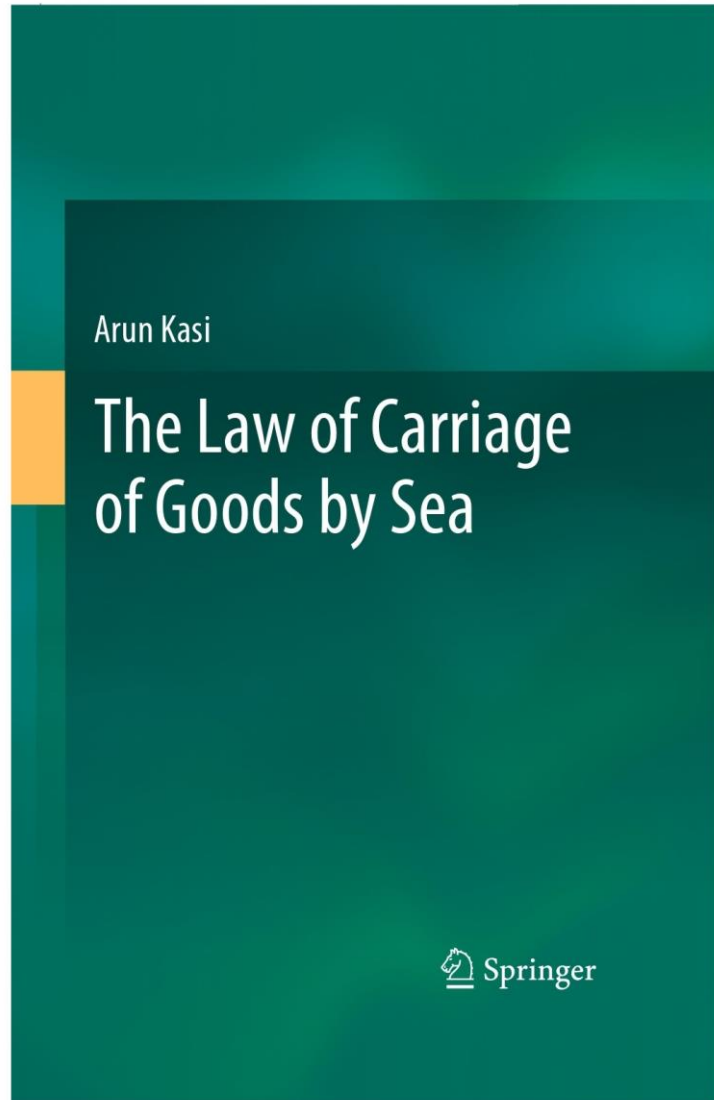


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Legal Framework & Shipping Documents: Further Reading



[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