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Book Review

LAW ON CARRIAGE OF GOODS BY SEA*

by Tan Lee Meng

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1 This book is the third edition of one that was in its first two editions called *The Law in Singapore on Carriage of Goods by Sea*. The work was initially published in 1986 under that title, and was partly based on Professor Tan Lee Meng's pioneering database of cases from the Straits Settlements, Malaya, Singapore and Malaysia, together with leading English cases. At the time of its first publication Singapore only had the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, and Protocol of Signature[1] ("Hague Rules"). By the second edition of 1994 Singapore had adopted the Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading[2] ("Visby Protocol"). It had also adopted the new rules for transfer of bills of lading contracts embodied in the UK Carriage of Goods by Sea Act 1992.[3] The Singapore Act was more appropriately named Bills of Lading Act,[4] a title which those responsible for the Act had indeed intended in the UK in 1992, only to be defeated by "official channels" which imposed the completely inappropriate title we have now. Further, in 1995 the technique for the operation of the Visby Protocol was changed in Singapore, giving the revised rules the "force of law" as in the UK Carriage of Goods by Sea Act 1971[5] and thereby dealing with the problem raised by the legendary *Vita Food* case of 1939;[6] and that is the major change drawn attention to in the preface of this third edition. During these years case law has been moving and developing in Singapore as well as elsewhere; and Professor Tan has moved to the Bench, and recently back to the Faculty from the Bench, thus partly returning to his original home.

2 This third edition has the more general, if rather bare, title, *Law on Carriage of Goods by Sea*, and no longer purports to be directed only to the law in Singapore. Most of the main authorities cited are, as in fact they always were, English; but the Singapore judiciary has in recent

* Singapore: Academy Publishing, 3rd Ed, 2018.
1 25 August 1924; entry into force 2 June 1931.
2 23 February 1968; entry into force 23 June 1977.
3 c 50.
4 Cap 384, 1994 Rev Ed.
5 c 19.
6 *Vita Food Products Inc v Unus Shipping Co Ltd* [1939] AC 277.

years generated many more local cases of value and/or interest in this area than formerly, and these appear prominently throughout, both leading cases and cases of less significance. Older cases, and cases from Malaysia and elsewhere in the area are still included too. Thus, the book can now be read as a useful introduction to the common law of carriage by sea outside the US in general, though an English reader at least needs to remember that in it the phrase "the Court of Appeal" usually refers to the Singapore court of that name, not the Court of Appeal for England and Wales.

3 The style in which the book is written makes it very suitable for beginners. In general, the exposition follows a tranquil and clearly explained path. Many of the leading cases appear set out in the main text as part of the exposition, often with reference to the relevant judge's explanation of a particular rule. This is very convenient for those who either as beginners do not know the case concerned, or who know more, but did not know or cannot recollect the details of case in question. The accounts given in other books often tend to be shorter, or not in the text at all but in a brief summary printed as an inset or the like; or there may simply be a footnote reference which the reader is left to decide whether to follow up or not. The method adopted in this book is especially valuable and appropriate in the first seven chapters on charterparties, and chapters 16 to the end on proceeding on the voyage, dangerous goods, laytime, freight and liens. It can be said to encounter more difficulties in taking in the huge external area which chapter 10, on "Rights of Suit outside the Bills of Lading Act", seeks to cover.

4 There is, however, a drawback to this method of exposition, to which I have attached the word "tranquil". Although there is an occasional extra-judicial steer towards adoption of an English decision,[7] the text gives not much inkling of the extent to which propositions can be developed or queried, or of the possibility of deploying other reasoning from elsewhere. Practitioners, even if this is not true of students, look for not only authority but also possible lines of argument. Recent cases show (quite surprisingly) much that is yet uncertain, even in connection with the Hague Rules of 1924 themselves. Recently we have seen elaborate decisions on, for example, application of the package or unit limitation to bulk cargo, and (too late to incorporate) the application of the time bar to claims for delivery without bill of lading[8] – both under the 1924 wording. A Singapore practitioner, and indeed a practitioner from elsewhere, will get a lot of local cases, together with

7 See, *eg*, Tan Lee Meng, *Law on Carriage of Goods by Sea* (Singapore: Academy Publishing, 3rd Ed, 2018) at p 351.

8 *Deep Sea Maritime Ltd v Monjasa A/S* [2018] 2 Lloyd's Rep 563, now subject to appeal.

the standard authorities; but the toolbox for at least hinting at argument that usually (but not always) emerges from the text and footnotes in other works is not always there. Perhaps this is consistent with the aim of the book. (Two recent cases on the Hague Rules, *Glencore Energy UK v Freeport Holdings Ltd ("The Lady M")*[9] and *Sevylor Shipping and Trading Corp v Altfadul Company for Foods, Fruits & Livestock ("The Baltic Strait")*,[10] on the now becoming notorious s 2 of the Bills of Lading Act, must also have come too late for incorporation.)

5 Further, there is one part of the subject area where at least a mildly critical approach to the law is possible, even desirable: that of the UK Act of 1992, the Bills of Lading Act in Singapore. The general policy of this is undoubtedly acceptable, but some of the incidental provisions, particularly in ss 2 and 5, are more difficult than they need be and have already led to complex litigation. This is duly explained in the text, and in fact there is a surprising number of Singapore cases dealing with these and other points on the Act not yet raised elsewhere. But the Act requires a rather intensive analysis and perhaps some critical consideration of some of the drafting, and I think the reader needs more warning of hazards than he or she gets. In passing I suggest that the statement that "[a] claimant who sues the carrier on a bill of lading must have the bill of lading in his hands at the time the suit is instituted" is at best misleading.[11] He might have returned the bill to the carrier in order to collect the goods; indeed, this is likely. All that is required is surely that he "has become" the holder of the bill and has not actually transferred it on (it is the situation where the latter has occurred to which the case references given must refer). The specific reference to rejection of goods or documents in s 2(2)(*b*) is (as stated) not to this but apparently to a more specialised situation where the goods have been delivered to the buyer without surrender of the bill of lading.

6 In a book covering such extensive material as this one, any reader can notice points with which he or she might not agree, or on which more might be said, or other cases that could have been cited. But perhaps I could briefly mention that I think also some of what is said on "FIO", "FIOS" and "FIOST" may be slightly misleading. The terms are charterparty terms concerning what is covered by the freight, though they are often incorporated into bills of lading by appropriately worded clauses. There has been recent detailed discussion of how to determine responsibility, as opposed to "who pays for what", in this area, and I think *Société de Distribution de Toutes Merchandises en Cote D'Ivoire v*

9 [2018] Bus LR 294.
10 [2018] 2 Lloyd's Rep 33.
11 Tan Lee Meng, *Law on Carriage of Goods by Sea* (Singapore: Academy Publishing, 3rd Ed, 2018) at p 242.

Continental Lines NV ("The Sea Miror")[12] deserves a mention at least; so also, as a well-expounded case for beginners, may *Yuzhny Zavod Metall Profil LLC v Eems Beheerder BV ("The MV Eems Solar")*.[13]

7 These are small points such as any informed reader might make. They do not affect the substance and value of the highly original enterprise originally undertaken by Professor Tan in the mid-1980s, nor the careful and thorough way in which the project has been continued by him in the same style and with updated coverage as Justice Tan and finally Senior Judge Tan of the Supreme Court of Singapore. This book requires a place in any law library covering maritime law for its coverage of Singapore cases, but also for its clear exposition.

12 [2015] 2 Lloyd's Rep 395.
13 [2013] 2 Lloyd's Rep 487.