

CONTENTS

<i>Preface</i>	<i>vii</i>
<i>Table of Cases</i>	<i>xxv</i>
<i>Table of Statutes</i>	<i>lv</i>
<i>Table of Statutory Instruments</i>	<i>lxi</i>
<i>Table of European Legislation</i>	<i>lxiii</i>
<i>Table of Other Legislation and Other Materials</i>	<i>lxix</i>
<i>Table of Abbreviations</i>	<i>lxxxvii</i>
<i>Introduction</i>	<i>xciii</i>

PART I INTERNATIONAL SALES OF GOODS

OVERVIEW	3
1 STANDARD TRADE TERMS	5
INTRODUCTION	5
EX WORKS	6
CIF CONTRACTS	6
What is a CIF contract?	6
Judicial definition of a CIF contract	7
Is a CIF contract simply a sale of documents?	10
Duties of the seller under a CIF contract	11
Duty to procure and prepare documents	14
Invoice	14
Bill of lading	15
Insurance	17
Licences	20
Tender of documents	21
Seller's remedies	22
Passing of property	24
Passing of risk	26
Duties of the buyer	27
Buyer's remedies	28
Variants of a CIF contract	31
CIF and arrival contracts	31
CIF CONTRACTS UNDER INCOTERMS 2000	32
Obligations of the seller	32
Obligations of the buyer	34
C&F CONTRACTS	35
C&F AND INCOTERMS	35

FOB CONTRACTS	36
Duties of the seller under a classic FOB contract	38
Seller's remedies	41
Duties of the buyer	42
Buyer's remedies	43
Export and import licences	44
Passing of property	45
Passing of risk	45
VARIANTS OF AN FOB CONTRACT	46
FOB with additional services	46
FAS CONTRACTS	46
FOB contracts under INCOTERMS 2000	47
INCOTERMS 2000 – a brief overview	49
CONCLUSION	51
FURTHER READING	55
2 THE VIENNA CONVENTION ON THE INTERNATIONAL SALE OF GOODS 1980	57
INTRODUCTION	57
THE VIENNA CONVENTION	61
Structure and features	61
Sphere of application	62
Exclusion of issues	66
Party autonomy and the Vienna Convention	68
Trade usage and the Vienna Convention	70
Interpretation of the Vienna Convention	71
Formation of a contract	72
Obligations of the seller	76
Obligations of the buyer	77
Passing of risk	81
Remedies	83
Exemption	91
CONCLUSION: RECENT INTERNATIONAL INITIATIVES	92
UNIDROIT Principles of International Commercial Contracts	92
Principles of European Contract Law	95
FURTHER READING	96

PART II REGULATING THE ELECTRONIC COMMERCE ENVIRONMENT

OVERVIEW	101
3 ELECTRONIC COMMERCE – LEGAL ISSUES AND HARMONISATION	103
INTRODUCTION	103
POLICY CONSIDERATIONS, E-COMMERCE AND INTERNATIONAL REGULATORY MEASURES	104
ELECTRONIC DATA INTERCHANGE (EDI) AND INTERCHANGE AGREEMENTS	107
UNCITRAL MODEL LAW ON E-COMMERCE	108
Background, guiding principles and harmonisation	108
Part I – e-commerce	110
Part II – carriage of goods	115
OTHER INTERNATIONAL INITIATIVES – THE INTERNATIONAL CHAMBER OF COMMERCE	116
THE EU DIRECTIVE ON E-COMMERCE	117
E-commerce, free movement of services and transparency provisions	117
Contractual matters	119
Liability of third party service providers	119
Implementation	120
THE UNITED NATIONS CONVENTION ON THE USE OF ELECTRONIC COMMUNICATIONS IN ELECTRONIC CONTRACTS	120
Scope of application	121
Functional equivalence	122
Time and place of dispatch and receipt	123
Relationship to other instruments	123
CONCLUSION	123
FURTHER READING	124
4 THE ELECTRONIC TRANSACTION AND SECURITY ISSUES	125
INTRODUCTION	125
ELECTRONIC SIGNATURES AND UNCITRAL	126
Founding principles	128
The Model Law on Electronic Signatures	130

THE EU DIRECTIVE ON ELECTRONIC SIGNATURES AND THE UK LEGISLATION: ELECTRONIC COMMUNICATIONS ACT 2000 AND THE ELECTRONIC SIGNATURES REGULATION 2002	136
ELECTRONIC MEDIUM AND COMPUTER MISUSE	138
Legislative developments in different jurisdictions	138
Council of Europe and computer crime	143
Council of Europe and procedural aspects of cybercrime investigation	149
CONCLUSION: A BRIGHT FUTURE FOR E-COMMERCE?	156
FURTHER READING	156

PART III TRANSPORTATION OF CARGO

OVERVIEW	159
5 TRANSPORTATION OF GOODS BY SEA – CHARTERPARTIES	161
INTRODUCTION	161
TYPES OF CHARTERPARTIES	162
Voyage charterparty	162
Time charterparty	163
Demise charterparty	163
COMMON LAW IMPLIED OBLIGATIONS IN A VOYAGE CHARTERPARTY	164
Nomination of a safe port	164
Not to ship dangerous goods	168
COMMON LAW IMMUNITIES	169
USUAL EXPRESS TERMS	169
CONCLUSION	171
FURTHER READING	172
6 BILLS OF LADING	173
INTRODUCTION	173
NATURE OF A BILL OF LADING	174
Bill of lading as a receipt	174
Bills within the Carriage of Goods by Sea Act 1971	174
Bills outside the Carriage of Goods by Sea Act 1971	175
Enforceability of indemnity agreements for issuing clean bills of lading	178
Bill of lading as evidence of contract of carriage	180

Bill of lading as contract of carriage	181
Bill of lading as document of title	181
Delivery against bills of lading	183
RIGHTS AND LIABILITIES OF CONSIGNEE/ENDORSEE	185
Problems caused by the Bill of Lading Act 1855	186
Position of pledgees	186
Right to sue and bulk goods	187
The implied contract approach	187
The special contract approach	188
Liability in tort	188
Endorsement of bill of lading after delivery	189
THE CARRIAGE OF GOODS BY SEA ACT 1992	189
Rights of suit	189
Transfer of rights	190
Imposition of liabilities	193
BILLS OF LADING AND FRAUD	195
ELECTRONIC DATA INTERCHANGE (EDI) AND THE CARRIAGE OF GOODS BY SEA ACT 1992	197
Advantages and disadvantages of using electronic documents	198
Electronic bills of lading: the SEADOCS scheme, CMI Rules for Electronic Bills of Lading	201
CONCLUSION	204
FURTHER READING	204
7 BILLS OF LADING AND COMMON LAW	207
INTRODUCTION	207
IMPLIED OBLIGATIONS ON THE PART OF THE SHIPOWNER	207
Seaworthiness	208
Due dispatch	212
Deviation	213
Negligence	216
IMPLIED OBLIGATIONS ON THE PART OF THE SHIPPER	217
SHIPOWNER'S IMMUNITIES	218
COMMON LAW EXCEPTIONS	218
Act of God	218
Act of Queen's enemies	218
Inherent vice	218

CONTRACTUAL EXCEPTIONS	219
Perils of the sea	219
Arrest or restraint of princes	220
Hostilities and riots	220
Strikes	220
Latent defects	221
Fire	221
OTHER TERMS IN BILLS OF LADING	221
Responsibility for loading	221
Freight	222
Lien	225
CONCLUSION	226
FURTHER READING	226
8 CARRIAGE OF GOODS BY SEA: BILLS OF LADING AND THE CARRIAGE OF GOODS BY SEA ACT 1971 (HAGUE-VISBY RULES)	229
INTRODUCTION	229
INTERPRETATION OF THE HAGUE-VISBY RULES IN THE ENGLISH COURTS	231
CARRIER'S RESPONSIBILITIES AND LIABILITIES	233
Duty to provide a seaworthy ship	235
Cargo management	240
Documentary responsibilities	242
Duty to pursue the contract voyage	243
CARRIER'S IMMUNITIES	246
Unseaworthiness	246
Negligence in navigation or management of the ship	246
Fire	248
Perils of the sea	250
Act of God	250
Act of war, public enemies and riots	250
Act of authorities and quarantine	251
Act or omission of shipper	251
Strikes and lock outs	251
Saving life or property and deviation	252
Wastage and inherent vice	252
Defective packing and marking	252
Latent defects	252

Catch-all exception	253
LIMITATION OF LIABILITY	254
Liability for 'loss or damage'	254
Liability in contract and in tort and availability of limitation	254
Calculation of liability	259
Loss of limitation	261
Time limitation	262
SHIPPER'S DUTIES AND IMMUNITIES	264
Delivery for loading	264
Shipper's guarantee	264
Dangerous goods	265
General average	267
Status of terms not included in the Rules	267
SCOPE OF APPLICATION	268
Incorporation of charterparty terms in bills of lading	273
Kinds of carriage	274
Kinds of cargo	275
Period of application	278
CONTRACTING OUT	280
THE FUTURE	283
FURTHER READING	283
9 THE HAMBURG RULES AND RECENT DEVELOPMENTS (THE ROTTERDAM RULES)	285
INTRODUCTION	285
INTERPRETATION OF THE CONVENTION	288
SCOPE OF APPLICATION	289
Carrier's responsibilities and liabilities	292
Carrier's exceptions	297
Electronic data interchange (EDI) and the Hamburg Rules	298
Contracting out	299
Carrier's rights	300
Liability limits	301
Shipper's responsibilities	302
Shipper's undertaking to indemnify carrier	303
Choice of forum	303
Hamburg Rules – the future	304

THE UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL CARRIAGE OF GOODS WHOLLY OR PARTLY BY SEA – THE ROTTERDAM RULES	305
Scope of application	306
Carrier's responsibilities, liabilities and rights	308
Documentary responsibilities	311
Shipper's liabilities	312
Contracting out	312
Liability limits	312
Choice of forum	314
Innovative provisions	314
CONCLUSION	316
FURTHER READING	329
10 INTERNATIONAL CARRIAGE OF GOODS BY AIR	331
INTRODUCTION	331
THE WARSAW SYSTEM	331
Warsaw Convention 1929	332
Warsaw Convention as amended by the Hague Protocol 1955	333
Guadalajara Convention 1961	333
Guatemala Protocol 1971	333
Montreal Additional Protocols Nos 1–3	333
Montreal Additional Protocol No 4	334
APPROACH TO INTERPRETATION OF THE WARSAW CONVENTION IN THE ENGLISH COURTS	335
SCOPE OF APPLICATION OF THE WARSAW CONVENTION (UNAMENDED AND AMENDED VERSIONS)	335
CONTRACTING OUT	337
DOCUMENTARY RESPONSIBILITIES	338
Amended version	338
Unamended version	339
Montreal ⁴	340
AIR WAYBILL AND NEGOTIABILITY	340
ELECTRONIC DATA INTERCHANGE (EDI) AND THE WARSAW REGIME	341
CARRIER LIABILITY	341
Period of responsibility	342
Liability limits	343
Payment of interest	344

Loss of limits of liability	345
Availability of limitation to parties other than carrier	347
CONSIGNOR'S RESPONSIBILITIES AND RIGHTS	348
CONSIGNEE'S RESPONSIBILITIES AND RIGHTS	349
PROCEEDINGS	349
Choice of forum	349
Arbitration	353
By whom	354
Time limitation	355
THE MONTREAL CONVENTION	355
FURTHER READING	360
11 INTERNATIONAL CARRIAGE OF GOODS BY RAIL	361
INTRODUCTION	361
INTERPRETATION OF THE CIM	362
SCOPE OF APPLICATION	362
Status of carrier	363
Combined transport	363
DOCUMENTARY RESPONSIBILITIES	364
The consignment note	364
Evidential value	366
Examination and verification	366
ELECTRONIC DATA INTERCHANGE (EDI) AND THE CIM RULES	367
CONTRACTING OUT	367
CARRIER'S RESPONSIBILITIES AND LIABILITIES	368
Period of responsibility and liability for loss, damage or delay	368
Liability amount	370
Documentary formalities	371
CARRIER'S RIGHTS	371
CONSIGNOR'S RESPONSIBILITIES AND RIGHTS	371
Loading operations	371
Responsibilities in respect of customs documents, loading and packing of goods	372
Payment of charges	372
Choice of route and transit	372
Modification of contract	373

CONSIGNEE'S RESPONSIBILITIES AND RIGHTS	373
Charges and delivery	373
Modification of contract	373
PROCEEDINGS	374
By whom	374
Against whom	374
Choice of forum	375
Time limitation	375
CONCLUSION	376
FURTHER READING	376
12 INTERNATIONAL CARRIAGE OF GOODS BY ROAD	377
INTRODUCTION	377
INTERPRETATION OF THE CMR BY THE ENGLISH COURTS	377
SCOPE OF APPLICATION	378
Combined transport	380
CONTRACTING OUT	382
DOCUMENTARY RESPONSIBILITIES	383
ELECTRONIC DATA INTERCHANGE (EDI) AND THE CMR	385
CARRIER'S LIABILITIES AND RIGHTS	386
Roadworthy vehicle	386
Period of responsibility	386
Liability for loss, damage and delay	386
Carrier liability and 'cash on delivery'	389
Liability amount	389
Availability of limitation	390
Loss of limitation of liability	390
Carrier's rights	391
SENDER'S RESPONSIBILITIES AND RIGHTS	392
Dangerous goods	392
Packing	392
Customs formalities	393
Choice of route	393
Modification of contract	393
CONSIGNEE'S RIGHTS AND RESPONSIBILITIES	394
Modification of contract	394
Freight and supplementary charges	394

PROCEEDINGS	394
By whom	394
Against whom	395
Jurisdiction	396
Arbitration	397
Time limitation	398
CMR – THE FUTURE	399
FURTHER READING	399
13 INTERNATIONAL MULTIMODAL TRANSPORT	401
INTRODUCTION	401
FREIGHT FORWARDER – AGENT OR PRINCIPAL?	403
Responsibilities and liabilities of an agent	407
Agent's rights	408
UNIFICATION EFFORTS BY THE INDUSTRY	408
BIFA Standard Trading Conditions	409
FIATA NEGOTIABLE MULTIMODAL BILL OF LADING	412
Applicability of FIATA Bill terms	413
Responsibilities, liabilities and rights of the freight forwarder	413
Consignor's responsibilities	414
Provision for combined transport in unimodal conventions	414
The United Nations Convention on International Multimodal Transport 1980 – its future	415
CONCLUSION	417
FURTHER READING	425
 PART IV FINANCING AND INSURANCE	
OVERVIEW	429
14 MARINE INSURANCE	431
INTRODUCTION	431
SCOPE AND NATURE OF MARINE INSURANCE CONTRACTS	432
Obtaining marine insurance cover	432
Payment of premium	434
Different kinds of policies	435
PRINCIPLES OF MARINE INSURANCE LAW	437
A contract of utmost good faith	437

Insurable interest	442
Subrogation and double insurance	443
Assignment	445
WARRANTIES ON THE PART OF THE INSURED – IMPLIED AND EXPRESS	446
Implied warranties (seaworthiness, legality)	446
Express warranties	448
DEVIATION	448
LIABILITY OF INSURER	449
Doctrine of proximate causation	449
Types of losses	450
INSTITUTE CARGO CLAUSES (A), (B) AND (C)	452
Historical background	452
Institute Cargo Clauses (A)	453
Institute Cargo Clauses (B)	455
Institute Cargo Clauses (C)	456
CONCLUSION	456
FURTHER READING	461
15 LETTERS OF CREDIT	463
INTRODUCTION	463
OPEN ACCOUNT	463
BILLS OF EXCHANGE	464
DOCUMENTARY BILL	467
LETTERS OF CREDIT	468
Law relating to letters of credit	469
Letters of credit: their nature and advantages	470
Stages in a documentary credit transaction	471
Characteristics of letters of credit – autonomy and strict compliance	474
Ambiguous instructions from buyer and linkage of documents	483
Types of letters of credit	483
The opening of a letter of credit	491
Waiver and variation	493
Tender of documents by seller (beneficiary)	494
Obligations of the bank(s) to the seller	496
The fraud exception	500
Information technology (IT) and letters of credit	502

PERFORMANCE BONDS/GUARANTEES AND STANDBY LETTERS OF CREDIT	503
Performance bonds/guarantees	503
Standby letters of credit	504
OTHER MEANS OF MINIMISING RISK OF NON-PAYMENT	507
CONCLUSION	510
FURTHER READING	511
 PART V DISPUTE RESOLUTION	
OVERVIEW	515
16 CIVIL JURISDICTION	517
INTRODUCTION	517
THE DEFENDANT'S DOMICILE	521
SUBMISSION BY APPEARANCE	525
ORDINARY CONTRACTS	526
TORT CLAIMS	533
ANCILLARY JURISDICTION	536
Co-defendants	536
Third parties	538
Counterclaims	539
JURISDICTION CLAUSES	540
INSURANCE, CONSUMER AND EMPLOYMENT CONTRACTS	545
Insurance	546
Consumer contracts	548
Employment contracts	552
SIMULTANEOUS ACTIONS	554
INTERIM RELIEF	559
CONCLUSION	561
FURTHER READING	561
17 CHOICE OF LAW	563
INTRODUCTION	563
THE PROPER LAW – EXPRESS CHOICE	566
THE PROPER LAW – IMPLIED CHOICE	570

THE PROPER LAW – CLOSEST CONNECTION	573
PARTICULAR ISSUES	581
ENGLISH PUBLIC POLICY AND OVERRIDING MANDATORY RULES	584
CERTAIN PARTICULAR TYPES OF CONTRACT	589
Consumer contracts	589
Contracts for the carriage of passengers	593
Employment contracts	593
Insurance contracts	597
TORTS AND RESTITUTIONARY OBLIGATIONS	601
CONCLUSION	605
FURTHER READING	605
18 FOREIGN JUDGMENTS	607
INTRODUCTION	607
EUROPEAN JUDGMENTS	607
EXTERNAL JUDGMENTS	615
CONCLUSION	622
FURTHER READING	622
19 ARBITRATION	623
INTRODUCTION	623
CHARACTERISTICS	623
ARBITRATION IN INTERNATIONAL COMMERCIAL CONTRACTS	629
Institutional arbitration	629
<i>Ad hoc</i> arbitration	630
ARBITRATION UNDER ENGLISH LAW	631
Applicable substantive law	635
Stay of court proceedings	637
Challenging arbitral awards	638
Recent trends: arbitration online	643
FOREIGN ARBITRAL AWARDS	644
CONCLUSION	648
FURTHER READING	649

20	MEDIATION (CONCILIATION): AN ALTERNATIVE FORM OF DISPUTE RESOLUTION	651
	INTRODUCTION	651
	INTERNATIONAL DEVELOPMENTS	653
	DEVELOPMENTS IN ENGLAND	656
	FEATURES AND ASSOCIATED ISSUES	657
	Mediation agreement	657
	Confidentiality and mediator immunity	660
	Settlement agreement and enforceability	662
	MEDIATION ONLINE	663
	RECENT DEVELOPMENTS – THE EU DIRECTIVE	664
	CONCLUSION	666
	FURTHER READING	667
	 PART VI CORRUPTION	
	OVERVIEW	671
21	FIGHTING CORRUPTION IN INTERNATIONAL BUSINESS	673
	INTRODUCTION	673
	DEFINING CORRUPTION	676
	THE OECD CONVENTION	678
	Liability of legal persons	679
	Sanctions	680
	Enforcement	680
	Other provisions	681
	THE UN CONVENTION	682
	Offences	682
	Investigation and other procedural aspects	685
	Asset recovery	687
	Sanctions	690
	Implementation	692
	Criminal law, its limitations and preventive measures	692
	BUSINESS CODES OF CONDUCT	694
	CONCLUSION	696
	FURTHER READING	696

APPENDICES

APPENDIX 1: GENCON (AS REVISED 1922 AND 1976)	697
APPENDIX 2: GENCON (AS REVISED 1922, 1976 AND 1994)	701
APPENDIX 3: NYPE 93	705
APPENDIX 4: CONGENBILL	717
APPENDIX 5: GENWAYBILL	719
APPENDIX 6: MULTIDOC 95	721
APPENDIX 7: NEGOTIABLE FIATA MULTIMODAL TRANSPORT BILL OF LADING	723
<i>Index</i>	725