

## BOOK REVIEW

### **Melis Ozdel, *Bills of Lading Incorporating Charterparties* (Hart Publishing, 2015) ISBN: 978 – 1 – 84946 – 679 – 0**

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Dr. Melis Ozdel's book is concerned with a complex, but in practice very important, backwater of maritime law – the set of hurdles which need to be overcome if charterparty terms are to be incorporated within a bill of lading applicable to a particular carriage of goods, known as the 'rules of incorporation'. Across five substantive chapters, this area of law is explored in great depth, beyond the level of detail it is possible for more general texts, such as *Scrutton on Charterparties*, to achieve.

In a dispute about loss or damage to cargo, the cargo interest – the holder of a bill of lading – will be faced with the challenge of ascertaining the actual conditions of carriage. Bills of lading often refer to charterparty terms negotiated between shipowners and charterers, even though the cargo interest has never been provided with a copy of the charterparty referred to in the bill of lading. In these circumstances it is difficult for parties to obtain a complete picture of their obligations under bills of lading.

Important questions arise. What terms govern the legal relations of the cargo interests with the carrier? To what extent can the terms of a charterparty be carried across to a bill of lading? Does merely directing holders of a bill of lading to a charterparty suffice to bind them to the terms of this contract, even though the cargo interest has never been provided with a copy of the charterparty terms?

The answer, broadly, is that holders may be bound by charterparty provisions, as long as the 'rules of incorporation' are overcome. This raises the spectre of the 'unseen' charterparty which may become part of the contract of carriage.

As the conclusion of the book highlights, these questions matter, from a shipowner perspective, because owners who have placed their vessel under charter wish to optimise their position against the charterers *and* third party cargo interests who hold the bill of lading as their contract of carriage. Shipowners often seek to link charterparties and bills of lading by inserting incorporation clauses into bills of lading which can create additional scope for an owner to recover against a bill of lading holder, as an alternative to recovery against the shipper who was the original party to the bill.

From a charterer point of view the practice of placing incorporation clauses in bills of lading is a concern because of the fact they rarely have visibility of the terms of potentially applicable charterparties. Charterers generally lose their interest in cargo upon submission of the bill of lading to third parties.

Conflicting approaches are taken on opposite sides of the Atlantic on the key issues under study in this book. Ozdel illuminates striking differences of approach under English and United States law. She carefully explains the areas of difference between the English and United States rules of incorporation, as well as the numerous instances of similarity across the two jurisdictions. For this reason, the opening chapter addresses a threshold issue in disputes arising from the carriage of goods by sea of determining which legal system should be selected as the law governing the dispute in question. The conflict of law rules of the English and United States systems are considered.

The book is practical as well as conveying an impressive understanding of legal theory. For example, Chapter 2 provides guidance to carriers regarding the formal requirements of incorporation that need to be fulfilled in order to use the provisions of a charterparty against the holders. An issue addressed is whether a *particular* charterparty needs to be specified in the incorporation clause in order for it to be incorporated into the bill of lading. Generally the position under English law is that there is no requirement for the charterparty to be identified whereas US law requires the charterparty to be identified, other than in exceptional circumstances. The Chapter details both the ways charterparties may be incorporated, and *how* they should ideally be identified.

Chapter 2 concludes by drawing attention to the extraordinary position that a cardinal rule of contract law – that parties can only be bound by terms they have seen and agreed to - has no application when the incorporation of charterparties into bills of lading is being considered. US law adopts variable rules of incorporation mainly

founded on the position of the bill of lading holder whereas English law sets its rules without considering the position or the knowledge of bill of lading holders.

Chapter 3 explores the effect of cesser clauses under which CIF sellers who have entered into voyage charterparties, but no longer wish to be bound by the charterparty obligations after they have shipped cargo, expressly include provisions which purport to end charterer's liability when goods are shipped on board and freight is fully paid. Such clauses typically establish rights of lien for payments such as deadfreight, demurrage and damages for detention due under charterparties. There is a description of the way in which the position of a shipowner vis a vis a charterer is weakened when the bill of lading that relates to cargo is negotiated to a third party.

Other distinctive quirks of the law affecting bills of lading and charterparties are discussed. Chapter 4 grapples with the specifics of the wording of incorporation clauses. Chapter 5 asks where there is a charterparty term which is inconsistent with an express bill of lading term, which one prevails? It also considers the effect of all the key carriage of goods by sea Conventions, the Hague, Hague-Visby, Hamburg and Rotterdam Rules. The Conventions have real significance – when they apply, whether by force of law or not, and contradict express bill of lading provisions which have become integrated, questions of consistency apply.

The book consistently advocates that rules of incorporation need to be fair, simple, certain and commercially workable. It argues a central premise: that neither the actual position of the bill of lading holders, nor their actual or constructive knowledge of the charterparty referred to, should be relevant in resolving the issues of incorporation.

This is an impressive piece of scholarship by Melis Ozdel, the product of her doctoral research. Its comprehensiveness is evident from the case law considered: a Table of Cases lists 260 decisions of United States courts, 205 English cases, 9 decisions of the European Union Court of Justice and the important recent Singapore case *The Dolphina*.

Whilst the relevant law (as at 1 June 2014) is covered in a thorough manner, a certain amount of extrapolation and re-interpretation of the rules and principles discussed will need to be undertaken by users in jurisdictions such as Australia, New Zealand and Singapore. For readers in these countries, the book will provide a reference point, not a panacea.

One area not covered in detail is the scenario where a contract of carriage is contained in or evidenced by a type of transport document other than a pure bill of lading, such as an electronic transport document or a sea waybill. These kinds of documents are now very important in international trade. Ozdel notes that, in general, rules of incorporation can be presumed to apply equally to incorporation clauses in these kinds of documents, but there is scope for that assumption to be tested in future litigation.

At first glance this appears to be a weighty tome devoted to an extremely narrow issue. However, a moment's reflection leads to the realisation that the practical significance of the questions under review is enormous. As Ozdel points out, the issues under study can both meaningfully affect the contractual position of carriers and cargo interests, and have considerable impact on the dynamics of relations between buyers and sellers.

The incorporation of charterparty terms into bills of lading may be terrain that has attracted limited academic interest, but it has real importance to the chartering departments of global shipping companies, banks and traders and their legal departments. For the insurance and legal advisers called upon to advise on prospects of success in cargo disputes, vast swings in financial outcomes can hinge on judgments made on fine points of law which are thoroughly analysed here. Melis Ozdel's book will also prove to be a valuable aid for judges and arbitrators called upon to resolve significant cargo disputes.