

FREIGHT
FORWARDING
AND MULTIMODAL
TRANSPORT
CONTRACTS
SECOND EDITION

DAVID A GLASS

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**FREIGHT FORWARDING AND
MULTIMODAL TRANSPORT
CONTRACTS**

SECOND EDITION

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FREIGHT FORWARDING AND MULTIMODAL TRANSPORT CONTRACTS

SECOND EDITION

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To my wife Jane

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PREFACE TO SECOND EDITION

In the eight years since the first edition of this book there have been some major developments alongside a gradual evolution. The major developments include the adoption by the United Nations of the Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (The Rotterdam Rules) and the adoption by the EU of the Rome I and Rome II Regulations. Whilst the Rotterdam Rules are not yet in force, their adoption now forms a major part of the current discourse across many of the areas covered by this book and their potential impact, particularly on the liabilities and documentation used by parties to multimodal contracts, is charted at various points. The new EU legislation is in addition to the ever burgeoning case law in the areas of conflicts of law and jurisdiction. Whilst only a limited account of these areas is possible, it is hoped that a sufficient guide is given to enable the overall developments to be appreciated in the practical context of the forwarding and multimodal transport industry.

From the evolutionary perspective there have been subtle rather than major changes to the development of documents used in the industry, at least as embodiments of contract terms. In terms of form, the change towards electronic documentation continues apace although still mainly in terms of the development of a paper-free environment rather than one that is entirely paperless. However, this book is focused on the development of standard terms affecting legal liability in which the picture is more one of evolution than revolution. Radical change has not so far affected the main terms used in English practice, although more attention must now be given to the continuing development in respect of logistics contracts in which comprehensive and standardised sets of terms are making more of an appearance. The reader will find that, in many cases, whilst new standard terms have come to replace older ones, they still tend to reflect or build on older forms. Consequently, whilst the book endeavours to reflect standard forms currently in use, reference is still made to some of the older forms, which, whilst no longer in everyday use, may continue to provide a useful comparator for appropriate wording. This is especially true of the ICF (Intercontainer-Interfrigo) terms, which, despite the demise of the company, still provide a major example of comprehensive terms available for international rail container carriage. A particular difficulty, however, in reflecting current usage, is the reluctance of some organisations and companies to make their terms available for discussion in a book such as this. This is unfortunate, since a discussion based on concrete examples can perhaps be of assistance to effective drafting. Special thanks, therefore, are due to those organisations and

PREFACE TO SECOND EDITION

companies that have been willing to let me have sight of and reproduce their terms and conditions.

Among the more notable of the many cases decided since the first edition are: *Datec Electronic Holdings Ltd v. United Parcels Service Ltd*, with a robust view taken by the House of Lords of a contract of carriage despite limitations on acceptable goods sought to be imposed by the contractor; *Jet2.Com Limited v. Blackpool Airport Limited*, which reflects the increasing importance of co-operation duties in the context of long-term business collaboration of the type seen in contract logistics; *Geofizika DD v. MMB International Ltd Greenshields Cowie & Co Ltd (Third Party) (The "Green Island")* where the Court of Appeal has delivered a salutary lesson to forwarders about the potential danger in giving a warranty to insurers of under deck shipment and *Röhlig (UK) Ltd v. Rock Unique Ltd*, where the Court of Appeal has continued to affirm the reasonableness of the time limit in BIFA conditions.

My thanks are due to the staff at Informa for their assistance, particularly the considerable support and assistance given to me by Nicola Whyke and the hard work of Chris Betney and the production team. I am grateful also for the encouragement and support of my wife, my friends and my friends and colleagues at Cardiff Law School, notably James Davey, Cliona Kelly and especially Dominic De Saulles without whose efforts to revive my sometimes flagging spirit this second edition would have been even further delayed.

I have endeavoured to state the law as at the end of August 2012.

David A. Glass
Cardiff

PREFACE TO FIRST EDITION

This book reworks material previously contained in Parts 6 and 7 of *Contracts for the Carriage of Goods by Land, Sea and Air*, first published by LLP in 1993 and maintained, until now, as part of the looseleaf service for that publication. It is hoped that the format now adopted will make the material easier to access. The opportunity has been taken to rewrite some of the material, in some areas substantially, in order to provide what will now be, it is hoped, a clearer account. Equally, it is intended that the overview now provided in Chapter One will enable the links between different parts of the work to become more apparent.

While the previous work placed material on freight forwarding and multimodal transport in distinct parts, they are brought together here. They are naturally linked: the modern world of transport of goods draws on the skills and services of both intermediaries and operators in a movement towards increasing provision of integrated intermodal transport, as well as expanding to capture a market in value-added services. Linked also is the use of the maritime container and other means of consolidating goods that have produced much of the motive power behind the provision of such services.

As in its previous incarnation, the work focuses on standard contract terms and provisions drawn from each of these three streams. This includes terms in direct operation, whether appearing in contract forms in use or as the standard trading conditions of a trade association such as BIFA. It includes also provisions contained in international materials such as rules produced by the International Chamber of Commerce or through the United Nations such as the International Convention on Multimodal Transport. These can provide either a potential source of contract terms or form part of a wider context into which contract terms can be placed. The overall aim is to provide a reference guide to many of the terms themselves and to the legal issues and materials related to them generally from a perspective of English law.

A recent development likely to become an important part of the context is the work being undertaken under the auspices of UNCITRAL towards a new international convention covering carriage of goods by sea and including provisions relevant to door-to-door movements. Discussion of the development so far is included. Some endeavour has also been made to take account of the increasing interest in more widely based logistics contracts.

My thanks are due to the staff at Informa for their assistance, most notably Wendy Gill, Victoria Ophield and Lyn Overton.

I have endeavoured to state the law as at the end of July 2004.

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TABLE OF CONTENTS

<i>Preface to Second Edition</i>	<i>Page</i> vii
<i>Preface to First Edition</i>	ix
<i>Table of Cases</i>	xix
<i>Table of Legislation</i>	lv
<i>Table of International Conventions</i>	lix
<i>Table of Standard Forms</i>	lxv
<i>Bibliographical and Other Abbreviations</i>	lxxiii
1 INTRODUCTION AND OVERVIEW	<i>Para.</i> 1.1
1A Introduction	1.1
1B Terminology and practice	1.7
1B.1 Definitions	1.7
1B.2 Unit load devices	1.11
1B.3 Practical context of operations	1.16
1C The development of forms of contract	1.27
1C.1 The early stages	1.28
1C.2 Second generation bills and TCM	1.32
1C.3 MMTC and later developments	1.37
1C.4 The development and current forms	1.42
2 FREIGHT FORWARDING CONDITIONS	2.1
2A Introduction	2.1
2B Incorporation of general conditions	2.9
2C Standard terms of contract	2.19
2C.1 Definitions and application	2.19
2C.1.1 Forwarding and logistics activities	2.20
2C.1.2 The contracting parties	2.21
2C.2 Compulsory legislation	2.24
2C.2.1 Regimes of liability	2.25
2C.2.2 The Unfair Contract Terms Act 1977	2.26
2C.2.3 Directive on Unfair Terms in Consumer Contracts	2.29
2C.2.4 Paramount clauses	2.30

TABLE OF CONTENTS

2C.2.5	Severence	2.31
2C.3	Authority conditions	2.33
2C.3.1	Express and implied warranties of authority	2.34
2C.3.2	Authority of the owner	2.38
2C.4	Status of the forwarder	2.44
2C.4.1	Introduction to the roles of the forwarder	2.45
2C.4.2	The different roles in detail	2.52
2C.4.3	Criteria determining status	2.67
2C.4.4	The significance of bills of lading	2.81
2C.5	Responsibilities of the forwarder or logistics provider	2.95
2C.5.1	Introduction—duty of care and other obligations	2.96
2C.5.2	Gratuitous services	2.99
2C.5.3	Extent of duty	2.102
2C.5.4	Summary of case law on forwarders' duty of care	2.108
2C.5.5	Duty of good faith	2.123
2C.6	Liberties of the forwarder—as agent	2.124
2C.6.1	Interrelationship of clauses	2.125
2C.6.2	Discretion and instructions	2.126
2C.6.3	Application of UCTA	2.130
2C.6.4	Obedience and negligence	2.132
2C.6.5	Choice of terms	2.133
2C.7	Liberties of the forwarder—as principal	2.134
2C.7.1	Liberty and instructions	2.135
2C.7.2	Liberty to deviate	2.136
2C.7.3	Choice of safest method	2.139
2C.7.4	Subcontracting	2.140
2C.8	Liberty to delegate	2.141
2C.8.1	Delegation of agency	2.142
2C.8.2	Privity of contract with sub-agent	2.144
2C.9	Rights of lien	2.147
2C.9.1	Rights of particular lien	2.148
2C.9.2	Rights of general lien	2.155
2C.9.3	The need for possession	2.159
2C.9.4	Lien only for sums due	2.161
2C.9.5	Active lien	2.162
2C.9.6	Effect of compulsory rules	2.164
2C.10	Brokerages and commissions	2.166
2C.11	Delivery	2.168
2C.11.1	Delivery and transit clauses	2.169
2C.11.2	Power of sale	2.175
2C.12	Limitations of performance—insurance	2.178
2C.12.1	Clauses limiting performance	2.179
2C.12.2	No duty to insure at common law	2.181
2C.12.3	Effect of clauses excluding an obligation to insure	2.182

TABLE OF CONTENTS

2C.12.4 The forwarder effecting insurance as agent	2.183
2C.13 Collection arrangements	2.187
2C.13.1 Restrictions on responsibility for cash on delivery arrangements	2.188
2C.13.2 Exclusion of liability	2.190
2C.14 Advice and information	2.192
2C.14.1 Liability for negligent misstatement	2.193
2C.14.2 Contractual and other bases of liability	2.197
2C.14.3 Effects of disclaimer	2.200
2C.15 Restrictions on acceptable goods	2.203
2C.15.1 Restricting duties and responsibilities for valuable and dangerous goods	2.204
2C.15.2 Dealing with dangerous goods where accepted	2.209
2C.16 Rates and declarations	2.211
2C.17 Customer obligations—warranties	2.214
2C.17.1 The forwarder's scheme of protection	2.215
2C.17.2 Warranties as to goods and interrelationship with protection implied in law	2.217
2C.17.3 Description and particulars of goods	2.223
2C.17.4 Warranty that goods properly packed etc.	2.228
2C.17.5 Warranty as to transport unit	2.229
2C.18 Customer obligations—dangerous goods	2.234
2C.18.1 Express indemnity for dangerous and harmful goods	2.235
2C.18.2 Causation and remoteness issues in respect of liability and indemnity for dangerous goods	2.240
2C.18.3 Scope of indemnity—personal injury and negligence	2.241
2C.19 Customer obligations—promise not to sue	2.244
2C.19.1 Clauses used to protect servants, etc.	2.245
2C.19.2 Undertakings not to sue	2.247
2C.20 Customer obligations—general indemnities	2.250
2C.20.1 Scope of general indemnities and effect of particular words	2.251
2C.20.2 Need for notice of claim?	2.256
2C.20.3 Covering liability for negligence?	2.257
2C.20.4 How far is protection extended beyond common law?	2.258
2C.20.5 Circular indemnity	2.264
2C.21 Customer obligations—payment	2.266
2C.21.1 Payment of sums when due	2.267
2C.21.2 The right of set-off under the general law	2.272
2C.21.3 The rule against deductions from freight	2.275
2C.21.4 Restricting the right of set-off	2.277
2C.21.5 Payment of interest	2.278

TABLE OF CONTENTS

2C.21.6 Collection of freight etc from consignee— continuing duty of the customer	2.281
2C.22 Exclusion of liability	2.282
2C.22.1 Exclusion clauses and context of BIFA clause 24	2.283
2C.22.2 Specified causes	2.286
2C.22.3 Burden of proof	2.288
2C.22.4 Reasonableness	2.289
2C.22.5 Liability for delay	2.291
2C.23 Limitation of liability	2.292
2C.23.1 Limitation of liability clauses—interrelationship of limits	2.293
2C.23.2 Limiting liability for negligence, collateral undertakings and fundamental breach	2.295
2C.23.3 Unexplained causes and fundamental or serious breach	2.297
2C.23.4 The value of the goods for the purpose of fixing compensation	2.298
2C.23.5 Reasonableness and compulsory rules	2.300
2C.24 Limitation of action	2.304
2C.24.1 Notice of claims and time limits	2.305
2C.24.2 Width of notice and time limit clauses	2.307
2C.24.3 Reasonableness and compulsory rules	2.308
2C.24.4 Bringing suit	2.311
2C.25 Law and jurisdiction	2.315
2C.25.1 Express choice of law	2.316
2C.25.2 Absence of an express choice	2.320
2C.25.3 Claims in tort and other non-contractual claims	2.324
2C.25.4 Exclusive jurisdiction clauses	2.329
2C.25.5 Where there is no exclusive jurisdiction clause	2.351
3 MULTIMODAL TRANSPORT	3.1
3A Introduction	3.1
3B Through bills and liability	3.4
3B.1 Introduction	3.5
3B.2 Types of through bill	3.6
3B.3 Through liability bills	3.7
3B.4 Segmented liability bills	3.9
3B.5 Unclear agency clauses	3.11
3B.6 Scope of carriage and Himalaya clauses	3.14
3B.7 Issues of segmented responsibility	3.24
3B.8 Through bills of lading and the Hague Rules	3.34
3C Combined transport bills of lading	3.39
3C.1 Introduction	3.39
3C.2 The ICC Uniform Rules for a combined transport document 1975, Brochure No. 298	3.46
3C.2.1 Introduction	3.46

TABLE OF CONTENTS

3C.3	ICC Rules: application and definitions	3.48
3C.3.1	Application of ICC Rules and the definition of combined transport	3.49
3C.3.2	Port to port and combined transport bills of lading	3.52
3C.4	ICC Rules: documentation	3.55
3C.4.1	Negotiable or non-negotiable documents	3.56
3C.5	ICC Rules: CTO responsibilities	3.59
3C.5.1	Undertaking to perform or procure performance	3.60
3C.6	ICC Rules: Liability of the CTO	3.61
3C.6.1	Network scheme of liability and limitation	3.62
3C.6.2	Cases on the construction of combined transport documents	3.69
3C.6.3	Combined transport documents and mandatory rules	3.78
3C.7	Responsibility of the consignor	3.91
3C.8	Claims and actions	3.92
3D	Multimodal transport—the International Multimodal Transport Convention 1980	3.93
3D.1	Introduction	3.93
3D.2	Definitions and application of the Convention	3.97
3D.2.1	Applications to multimodal transport contracts	3.98
3D.3	Documentation	3.102
3D.3.1	The multimodal transport document	3.103
3D.4	Liability of the MTO	3.106
3D.4.1	Modified network system	3.107
3D.5	Liability of the consignor	3.115
3D.6	Claims and actions	3.116
3D.7	Contractual stipulations	3.117
3D.8	Saving provisions	3.118
3D.8.1	Conflict of Conventions	3.119
3E	Multidoc—the UNCTAD/ICC Rules	3.122
3E.1	Introduction	3.122
3E.2	Definitions and applications of the UNCTAD/ICC Rules	3.124
3E.2.1	Object and application of the Rules	3.125
3E.3	Documentation and responsibilities of the MTO	3.126
3E.3.1	The multimodal transport document and the responsibilities of the MTO	3.127
3E.4	Liability of the MTO	3.128
3E.4.1	Liability for loss, damage or delay	3.129
3E.5	Compensation and limitation of liability	3.132
3E.5.1	Limitation of liability	3.133
3E.6	Liability of the consignor	3.136
3E.6.1	Comparison of provisions	3.137
3E.7	Claims and actions	3.138
3E.8	Non-contractual claims	3.139
3E.8.1	Himalaya protection	3.140

TABLE OF CONTENTS

3F	United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea—The Rotterdam Rules	3.143
3F.1	Introduction	3.143
3F.2	The Convention and multimodal transport—application, parties and documents	3.147
3F.2.1	Application to contracts and operators, exclusion and derogation	3.148
3F.2.2	New documentation in a virtual world	3.156
3F.3	Use of documents	3.159
3F.3.1	Particulars in and evidential effect of documentation	3.160
3F.3.2	Use of documents	3.165
3F.4	The Convention and multimodal transport—liability and conflicts in a multimodal context	3.170
3F.4.1	Towards a new network system?	3.171
4	CONDITIONS RELEVANT TO UNIT-LOADS	4.1
4A	Introduction	4.1
4B	Carriage by rail—freightliner conditions	4.2
4B.1	Definitions	4.5
4B.1.1	The containers and/or goods as a consignment	4.6
4B.2	Basis for providing containers	4.7
4B.2.1	Container safety regulations	4.8
4B.3	Warranties and obligations of the sender	4.9
4B.4	Parties and subcontracting	4.11
4B.4.1	Indirect protective clauses	4.12
4B.5	Marks and consignment notes	4.16
4B.6	Dangerous consignments	4.18
4B.6.1	Dangerous goods regulations	4.19
4B.7	Loading and unloading	4.20
4B.8	Transit and storage	4.21
4B.9	Charges and lien	4.22
4B.10	Liability and limits	4.23
4B.11	The nature of transport and additional conditions	4.27
4B.11.1	Application of the CIM Rules and the CMR Convention	4.28
4C	Carriage by rail—Intercontainer-Interfrigo (ICF) general conditions applicable to combined transport 2000	4.34
4C.1	Introduction	4.34
4C.2	Definitions and preamble	4.37
4C.2.1	Introductory conditions	4.37.1
4C.2.2	Classification of the contract	4.38
4C.3	Offers and agreements	4.41
4C.3.1	Price variation	4.42
4C.4	Orders and instructions	4.43
4C.4.1	The ICF Transfer Note	4.44

TABLE OF CONTENTS

4C.5	Dangerous goods	4.45
4C.6	Provision of UTI	4.46
4C.7	Use of wagons	4.48
4C.8	Condition, loading, storage of UTI	4.50
4C.9	UTI fitted for controlled temperature	4.52
4C.10	Impediments to transport and delivery	4.54
4C.11	Responsibility	4.56
	4C.11.1 The basis of liability	4.57
4D	Carriage by rail—Interfrigo Conditions 1973	4.61
4D.1	Introduction	4.61
4D.2	Liability of Interfrigo	4.62
4E	Carriage of road vehicles by rail	4.65
4E.1	Introduction	4.65
4E.2	Preliminary statement and definitions	4.66
	4E.2.1 Comparison with scope of previous conditions	4.67
4E.3	Object of the contract, obligations of the parties, commencement and termination of contracts and operations	4.68
	4E.3.1 Start of contract and nature of UIRR operation	4.69
4E.4	Customer's liability for the condition of the transport unit and merchandise	4.71
4E.5	Dangerous or unauthorised goods	4.73
4E.6	Payment terms	4.75
4E.7	Liability of the transporting company	4.76
4E.8	Terms of indemnity and closing provisions	4.84
4F	Carriage by road	4.85
4F.1	Introduction	4.85
4F.2	Definition of consignment	4.86
	4F.2.1 The container as a consignment	4.87
4G	Carriage by sea	4.88
4G.1	Introduction	4.88
4G.2	Container consortia	4.89
4G.3	Container bills and waybills etc.	4.92
	4G.3.1 Definitions	4.93
	4G.3.2 Carrier's tariff	4.95
	4G.3.3 Perishable goods	4.97
	4G.3.4 Optional stowage and deck cargo	4.99
	4G.3.5 Description of goods	4.111
	4G.3.5.1 Container bills as evidence of contents of the container	4.112
	4G.3.6 Shipper-packed containers	4.122
	4G.3.6.1 Container supply and the container as packing	4.123
	4G.3.7 Limitation of liability	4.131
	4G.3.7.1 Package limitation	4.132
	<i>Index</i>	469

This page intentionally left blank

TABLE OF CASES

(All references are to paragraph number)

7E Communications Ltd v. Vertex Antennentechnik GmbH [2007] 1 WLR 2175	2.338
A/B Helsingfors Steamship Co Ltd v. Rederiaktiebolaget Rex (The White Rose) [1969] 1 WLR 1098; [1969] 2 Lloyd's Rep 52	2.255
ABCI v. Banque Franco-Tunisienne [2003] EWCA Civ 205; [2003] 2 Lloyd's Rep 146 (CA)	2.351
ABN AMRO Verzekeringen BV v. Geologistics Americas Inc [2003] AMC 834 (SDNY)	2.133, 3.33
ACE Imports Pty v. Companhia de Navegacao Lloyd Brasileiro (The Esmeralda 1) [1988] 1 Lloyd's Rep 206 (Sup Ct NSW)	4.113
ACP Capital Ltd v. IFR Capital plc [2008] EWHC 1627 (Comm); [2008] 2 Lloyd's Rep 695	2.337, 2.344, 2.345
A.E. Farr Ltd v. Admiralty [1953] 1 WLR 965; [1953] 2 Lloyd's Rep 173	2.252
A.E. Pellet & Co Inc v. M.V. Ouirgane [1986] AMC 2749 (SDNY 1986)	3.30, 3.33
AIG Europe, SA v. M/V MSC Lauren [1997] AMC 341 (ED Va 1996); affmd [1988] AMC 1161 (4th Cir.)	3.26, 4.116, 4.119, 4.120
AIG Europe, SA v. QBE International Insurance Ltd [2001] 2 Lloyd's Rep 268	2.3337, 2.338
AIG Europe (UK) Ltd v. Ethniki [1998] 4 All ER 301; affmd [2000] 2 All ER 566; [2000] IL Pr 426 (CA)	2.338, 2.358
AP Moller-Maersk A/S v. Ocean Express Miami [2008] AMC 1236 (SDNY)	3.22
AP Moller-Maersk A/S v. Soaec Villas Cen Sad Fadoul [2010] EWHC 355 (Comm); [2011] 1 Lloyd's Rep 1	2.344
A.R. Brown Mcfarlane & Co Ltd v. C. Shaw Lovell & Sons Ltd (1921) 7 Ll L Rep 36	2.112, 2.261
A/S Hansen-Tangens Rederi III v. Total Transport Corp (The Sagona) [1984] 1 Lloyd's Rep 194	2.261
AS Klaveness Chartering v. Pioneer Freight Futures Co Ltd [2009] EWHC 3386 (Comm); [2010] 2 Lloyd's Rep 613	2.267
A/S D/S Svendborg v. Wansa (t/a Melbourne Enterprises) [1996] 2 Lloyd's Rep 559	2.333
AWB (Geneva) SA v. North America Steamships Ltd [2007] EWCA Civ 739; [2007] 2 Lloyd's Rep 315 (CA)	2.333
Abidin Daver, The. Owners of the Las Mercedes v. Owners of the Abidin Daver [1984] AC 398; [1984] 1 Lloyd's Rep 339 (HL)	2.331
Aberdeen Grit v. Ellerman's Wilson Line 1933 SC 9	3.7
Abraham v. Bullock (1902) 86 LT 796	2.105
Acatos v. Burns (1878) 3 Ex D 282	2.225
Ace Insurance SA-NV (formerly Cigna Insurance Co of Europe SA NV) v. Zurich Insurance Co [2000] 2 Lloyd's Rep 423	2.344
Acme Transport v. Betts [1981] 1 Lloyd's Rep 131 (CA)	4.6, 4.87
Aconcagua, The. Compania Sud Americano de Vapores v. Sinochem Tianjin Import & Export Corp [2010] EWCA Civ 1403; [2011] 1 Lloyd's Rep 683 (CA)	2.219, 2.235
Adamastos Shipping Co Ltd v. Anglo Saxon Petroleum Co Ltd [1959] AC 133; [1958] 1 Lloyd's Rep 73 (HL)	2.303, 3.69
Advent Capital plc v. Ellinas Imports-Exports Ltd [2005] EWHC 1242 (Comm); [2005] 2 Lloyd's Rep 607 (ECJ)	2.329, 2.348
Aectra Refining and Manufacturing Inc v. Exmar NV (The New Vanguard and The Pacifica) [1995] 1 Lloyd's Rep 191; [1995] 1 All ER 641 (CA)	2.273, 2.274
Aegis Spirit, The [1977] 1 Lloyd's Rep 93 (US Ct)	2.87, 4.88, 4.147

TABLE OF CASES

Aes Ust-Kamenogorsk Hydropower Plant LLP v. Aes Ust-Kamenogorsk Hydropower Plant JSC [2011] EWCA Civ 647; [2012] 1 WLR 920; [2011] 2 Lloyd's Rep 233 (CA)	2.333
Aetna Insurance Co v. General Terminals [1969] AMC 2449	4.116
Africa Express Line Ltd v. Socofi SA [2009] EWHC 3223 (Comm); [2010] 2 Lloyd's Rep 181	2.338
Aggeliki Charis Compania Maritima SA v. Pagnan SpA (The Angelic Grace) [1995] 1 Lloyd's Rep 87 (CA)	2.333
Agnew v. Lansförsäkringsblagens AB [1996] 4 All ER 978 (QBD); [2000] 1 All ER (Comm) 321 (HL)	2.353, 2.354, 2.356, 2.357
Agrosin Pty Ltd v. Highway Shipping Co Ltd (The Mata K) [1998] 2 Lloyd's Rep 614	4.113, 4.115
Ahlers v. Broome & Green Ltd (1938) 62 Ll L Rep 163	2.155
Aiken v. Stewart Wrightson Members Agency Ltd [1995] 2 Lloyd's Rep 618	2.114, 2.144
Ailsa Craig Fishing Co Ltd v. Malvern Fishing Co Ltd (The Strathallan) [1983] 1 WLR 964; [1983] 1 Lloyd's Rep 183 (Note) (HL)	2.187, 2.295
Airbus Industrie GIE v. Patel [1999] 1 AC 119; [1998] 1 Lloyd's Rep 631 (HL)	2.333
Airline Engineering Ltd v. Intercon Cattle Meat Ltd, CA, 24 January 1983, unreported, Lexis	2.239, 2.252
Airspeed Cargo (London) Ltd v. Stag Instruments Ltd, QBD, 8 October 1982, unreported, Lexis	2.296
Aisin Seiki Co Ltd v. Union Pacific Railroad Co [2002] AMC 2911 (SDNY)	3.19
Akiyama v. M.V. Hanjin Marseilles [1999] AMC 650 (9th Cir. 1998)	3.14, 3.17
Albon v. Naza Motor Trading [2007] EWHC 9 (Comm); [2007] 1 Lloyd's Rep 297 (CA)	2.351
Alderslade v. Hendon Laundry Ltd [1945] KB 189; [1945] 1 All ER 244 (CA)	2.147, 2.239, 2.242, 2.295
Alex, The. Lufty Ltd v. Canadian Pacific Railway Co [1974] 1 Lloyd's Rep 106 (Fed Ct Can)	2.18, 3.27, 3.29, 3.31, 4.117
Alexander v. Railway Executive [1951] 2 KB 882	2.187
Alexandros T, The. Starlight Shipping Co v. Allianz Marine & Aviation Versicherungs AG [2011] EWHC 3381 (Comm); [2012] 1 Lloyd's Rep 162	2.337
Alfred Dunhill Ltd v. Diffusion Internationale de Maroquinerie de Prestige Sarl [2002] 1 All ER (Comm) 950	2.362, 2.363
All Pacific Trading v. Hanjin Container Line Inc [1994] AMC 365 (US CA, 9th Cir., 1993)	3.21, 4.140, 4.145
All Pacific Trading v. Hanjin Lines [1991] AMC 2860 (CD Cal 1991)	3.23
Alliance Bank JSC v. Aquanta Corp [2011] EWHC 3281 (Comm); [2012] 1 Lloyd's Rep 181	2.324
Alliance Transportation Co Ltd v. Pike Ltd, <i>Lloyd's List</i> , Mayor's Court, 18 January 1992	2.270
Allianz SpA v. West Tankers Inc (The Front Comor) (Case C-185/07) [2009] 1 AC 1138; [2009] 1 Lloyd's Rep 413	2.348, 2.352
Allied Chemical International Corp v. Lloyd's Brasileiro [1986] AMC 826 (2nd Cir. 1985)	3.31
Allied Signal Technical Services Corp v. M/V Dagmar Maersk [2002] AMC 2433 (Md)	4.120
Allstate Ins. Co v. International Shipping Corp [1985] AMC 760 (11th Cir. 1983), 703 F.2d 497	3.15
Alternative Glass Supplies v. M/V Nomzi [1999] AMC 1080 (SDNY)	4.101
Aluminios Pozuelo Ltd v. S.S. Navigator [1968] AMC 2532 (US CA, 2nd Cir., 1968)	4.142
Amdahl Corp v. Profit Freight Systems [1995] AMC 2694 (9th Cir. 1995)	2.14, 2.17, 3.32, 4.148
American Dornier Machinery Corp v. MSC Gina [2002] AMC 560 (SDNY 2001)	2.103
American Foreign Insurance Assoc. v. Seatrain, 689 F.2d 295, [1983] AMC 2782 (1st Cir. 1982)	4.127
American Home Insurance Co v. Crowley Ambassador [2003] AMC 510 (SDNY)	4.139
American Home Insurance Co v. Dampskibsselskabet AF 1912 [2003] AMC 216 (SD Fla)	3.28
American Home Insurance Co v. Hapag Lloyd Container Linie GmbH [2006] AMC 1239 (2d Cir.)	3.19
American Home Insurance Co v. M/V Tabuk [2002] AMC 184 (SDNY 2001)	4.103
American Home Insurance Co v. Zim Jamaica [2004] AMC 393 (SDNY)	4.116, 4.119, 4.120
American International Specialty Line Insurance Co v. Abbott Laboratories [2003] 1 Lloyd's Rep 267	2.333
American Legacy, The (1980) 15 ETL 385 (Sup Ct France)	4.113
American Motorists Insurance Co (AMICO) v. Cellstar Corp [2002] 2 Lloyd's Rep 216; affmd [2002] EWCA Civ 206; [2003] All ER (D) 26; [2003] ILPr 22 (CA)	2.331, 2.345
Amiri Flight Authority v. BAE Systems plc [2003] 2 Lloyd's Rep 767	2.26
Amorex Machine v. Maersk Mango [1991] AMC 2941 (SD Tex 1991)	4.116
Amphion, The. General Feeds Inc v. Burnham Shipping Corp [1991] 2 Lloyd's Rep 101	2.236

TABLE OF CASES

Anders Maersk, The [1986] 1 Lloyd's Rep 483 (HC HK)	3.37
Andrea Merzario SPA v. Vismara Associates, Court of Cassation, 2.8.1998, No. 8713	3.84
Andrew Weir Shipping Ltd v. Wartsila UK Ltd [2004] EWHC 1284 (Comm); [2004] 2 Lloyd's Rep 377	2.353
Andromeda Marine SA v. O W Bunker & Trading A/S (The Mana) [2006] EWHC 777 (Comm); [2006] 2 Lloyd's Rep 319	2.338
Angelic Grace, The. Aggeliki Charis Compania Maritima SA v. Pagnan SpA [1995] 1 Lloyd's Rep 87 (CA)	2.333
Anglo-Continental Holidays Ltd v. Typaldos Lines (London) Ltd [1967] 2 Lloyd's Rep 61 (CA)	2.138, 2.282
Anglo Overseas Transport Co Ltd v. David Zanellotti Ltd [1952] 1 Lloyd's Rep 232	2.152, 2.262
Anglo Overseas Transport Ltd v. Titan Industrial Corp Ltd [1959] 2 Lloyd's Rep 152	2.57, 2.261
Anglo Irish Beef Processors International v. Federated Stevedores Geelong (The Reefer Badger) [1997] 1 Lloyd's Rep 207 (CA Sup Ct Va)	2.312
Anglo Russ, The. Universal Shipping and Forwarding Co Ltd v. Commercial and Industrial Co Ltd (1919) 1 Ll L Rep 635	2.21, 2.281
Antares (No. 1), The. Kenya Railways v. Antares Co Pte Ltd [1987] 1 Lloyd's Rep 424 (CA)	2.307, 4.104
Antonio Gramsci Shipping Corp v. Stepanovs [2011] EWHC 333 (Comm); [2011] 1 Lloyd's Rep 647	2.338
Anton Durbeck GmbH v. Den Norske Bank ASA [2005] EWHC 2497 (Comm); [2006] 1 Lloyd's Rep 93	2.328
Antwerp, 4.11.77 (1977) 12 ETL 843	2.84
Antwerp United Diamond B.V.B.A. v. Air Europe [1995] 3 All ER 424; [1995] 2 Lloyd's Rep 224 (CA)	3.63, 3.114, 3.132
Antwerpen, The. Glebe Island Terminals Pty v. Continental Seagram Pty [1994] 1 Lloyd's Rep 213 (CA NSW)	2.297, 3.14, 3.52, 4.96
Aqualon (UK) Ltd v. Nilsson International BV; Vallana Shipping Corp [1994] 1 Lloyd's Rep 669	2.55, 2.62, 2.63, 2.67, 2.112, 4.38
Aramis, The [1989] 1 Lloyd's Rep 213 (CA)	2.40
Aratra Potato Co Ltd v. Egyptian Navigation Co (The El Amria) [1981] 2 Lloyd's Rep 119	2.311
Arawa, The. Producers Meats Ltd v. Shaw Savill & Albion Co Ltd [1977] 2 Lloyd's Rep 416; rvsd [1980] 2 Lloyd's Rep 135 (CA)	2.286
Archbolds (Freightage) Ltd v. S. Spanglett Ltd [1961] 1 QB 374 (CA)	4.7
Arctic Electronics Co (UK) Ltd v. McGregor Sea & Air Services Ltd [1985] 2 Lloyd's Rep 510	2.365
Aries Tanker Corp v. Total Transport Ltd (The Aries) [1977] 1 WLR 185; [1977] 1 All ER 398; [1977] 1 Lloyd's Rep 334 (HL)	2.74, 2.275, 2.276, 2.311, 3.176
Ark v. True North Capital [2005] EWHC 1585 (Comm); [2006] 1 All ER (Comm) 138	2.331
Arkwright Mutual Insurance Co v. Bryanston Insurance Co Ltd [1990] 2 QB 649; [1990] 2 Lloyd's Rep 70	2.344
Arkwright Mutual Ins. v. Oriental [1991] AMC 2237 (SDNY 1990)	4.120
Armour & Co Ltd v. Leopold Walford (London) Ltd [1921] 3 KB 473; (1921) 8 Ll L Rep 497	4.101
Asahi America Inc v. M/V Arild Maersk [1986] AMC 53 (SDNY 1985)	3.76
Ascot Commodities NV v. Northern Pacific Shipping (The Irini A) (No. 1) [1999] 1 Lloyd's Rep 196	2.333
Ashmore Benson Pease & Co Ltd v. A.V. Dawson Ltd [1973] 1 WLR 828; [1973] 2 Lloyd's Rep 21 (CA)	2.228, 4.7
Ashton Investment Ltd v. Rusal [2006] EWHC 2545 (Comm); [2007] 1 Lloyd's Rep 311	2.351
Associated British Ports v. Ferryways NV [2008] EWHC 1265 (Comm); [2008] 2 Lloyd's Rep 353	4.134
Associated Metals and Minerals Corp v. M/V Arktis Sky, 978 F.2d 47 (2nd Cir., 1992); [1993] AMC 509	4.125, 4.126
Astrazeneca UK Ltd v. Albermarle International Corp [2010] EWHC 1028 (Comm); [2010] 2 Lloyd's Rep 61	2.331
Astrazeneca UK Ltd v. Albermarle International Corp [2011] EWHC 1574 (Comm); [2011] 2 CLC 252	2.295
Athanasia Comninos and Georges Chr Lemos, The [1990] 1 Lloyd's Rep 277	2.219, 2.227, 2.236
Athenian Harmony, The (No. 2); Derby Resources AG v. Blue Corinth Marine Co Ltd (No. 2) [1998] 2 Lloyd's Rep 425	2.280
Atlanska Plovidba v. Consignaciones Asturianas SA (The Lapad) [2004] EWHC 1273 (Comm); [2004] Lloyd's Rep 109	2.16, 2.331

TABLE OF CASES

Atlantic Coast Yacht Sales Inc <i>v.</i> M/V Leon, In Rem [2003] AMC 1871 (D Md)	4.103
Atlantic Glass Supplies <i>v.</i> M/V Nomzi [1999] AMC 1080 (SDNY)	4.141
Atlantic Lines & Navigation Co Inc <i>v.</i> Hallam Ltd (The Lucy) [1983] 1 Lloyd's Rep 188	2.127
Atlantic Mutual <i>v.</i> President Tyler [1991] AMC 452 (SDNY 1990)	3.23
Atlas, The. Noble Resources Ltd <i>v.</i> Cavalier Shipping Corp [1996] 1 Lloyd's Rep 642	4.113
Atlas Express Ltd <i>v.</i> Kafco (Importers and Distributors) Ltd [1989] QB 833	2.269
Atlas Shipping Agency (UK) Ltd <i>v.</i> Suisse Atlantique Societe d'Armement Maritime SA (The Gulf Grain and The El Amaan) [1995] 2 Lloyd's Rep 188	2.357
Attorney General of Ghana <i>v.</i> Texaco Overseas Tankships Ltd (The Texaco Melbourne) [1993] 1 Lloyd's Rep 471 (CA); affmd [1994] 1 Lloyd's Rep 473 (HL)	2.298
Austracan (USA) Inc <i>v.</i> Neptune Orient Lines Ltd, 612 F.Supp 578; [1985] AMC 2952 (SDNY 1985)	3.26, 4.113
Australia Tallow & Agri-Commodities Pty Ltd <i>v.</i> MISC [2001] NSWCA 16; (2001) 50 NSWLR 576	2.23, 4.93
Axa Sun Life Services plc <i>v.</i> Campbell Martin Ltd [2011] EWCA Civ 133; [2011] 2 Lloyd's Rep 1 (CA)	2.200, 2.277
Axel Johnson Petroleum A.B. <i>v.</i> M.G. Mineral Group AG (The Obelix) [1992] 2 All ER 163 (CA)	2.273, 2.276
Azov Shipping Co <i>v.</i> Baltic Shipping Co (No. 3) [1999] 2 Lloyd's Rep 159	4.89
BAT Switzerland SA <i>v.</i> Exel Europe Ltd [2012] EWHC 694 (Comm); [2012] 2 Lloyd's Rep 1	2.365
BBC Greenland, The. Sideridraulic Systems SpA <i>v.</i> BBC Chartering & Logistic GmbH & Co KG [2011] EWHC 3106 (Comm); [2012] 1 Lloyd's Rep 230	2.315, .107
BGH, 24.6.87 (1 ZR 127/85)	3.84, 3.89
BGH, 17.5.89 (1 ZR 211/87)	3.84
BGH, 17.7.2008 (2008), I ZR 181/05	3.85
BHP Petroleum Ltd <i>v.</i> British Steel plc [1999] 2 Lloyd's Rep 583; affmd [2000] 2 Lloyd's Rep 277 (CA)	2.292, 2.295, 2.295
BP plc <i>v.</i> AON Ltd [2005] EWHC 2554 (Comm); [2006] 1 Lloyd's Rep 549	2.331, 2.335
B. & S. Contracts and Design Ltd <i>v.</i> Victor Green Publications Ltd [1984] ICR 419 (CA) ..	2.286, 2.287
Baghlaf Al Zafer Factory Co BR for Industry Ltd <i>v.</i> Pakistan National Shipping Co (No. 1) [1998] 2 Lloyd's Rep 229 (CA)	2.312, 2.331
Bahamas Oil Refining Co <i>v.</i> Kristiansands Tank Rederie (The Polyduke) [1978] 1 Lloyd's Rep 211	2.240
Balli Trading Ltd <i>v.</i> Afalona Shipping Ltd (The Coral) [1993] 1 Lloyd's Rep 1 (CA)	4.126
Bally Inc <i>v.</i> M/V Zim America (1994) 390 LMLN 3; [1994] AMC 2762 (US CA)	4.119, 4.120
Balmoral Group Ltd <i>v.</i> Borealis (UK) Ltd [2006] 2 Lloyd's Rep 629	2.26
Baltic Flame, The. Petroleo Brasileiro SA <i>v.</i> Mellitus Shipping Inc [2001] EWCA Civ 418; [2001] 2 Lloyd's Rep 203 (CA)	2.351
Bamfield <i>v.</i> Goole and Sheffield Transport Co Ltd [1910] 2 KB 94 (CA)	2.207, 2.224
Bando Silk Co Ltd <i>v.</i> Hyundai Commander [1995] AMC 516 (SDNY 1994)	4.139
Bank of Boston Connecticut (formerly Colonial Bank) <i>v.</i> European Grain & Shipping Ltd (The Dominique) [1989] AC 1056; [1989] 1 Lloyd's Rep 431 (HL)	2.273, 2.276
Bank of New York Mellon <i>v.</i> GV Films [2009] EWHC 2338 (Comm); [2010] 1 Lloyd's Rep 365	2.329, 2.332, 2.333
Bank of Nova Scotia <i>v.</i> Hellenic Mutual War Risk Association (Bermuda) Ltd (The Good Luck) (No. 2) [1991] 2 Lloyd's Rep 191 (HL)	2.220
Bank of Tokyo-Mitsubishi Ltd <i>v.</i> Baskan Gida Sanayi Ve Pazalarma AS [2004] EWHC 945 (Ch); [2004] 2 Lloyd's Rep 394	2.338, 2.347, 2.353, 2.363
Bankers Trust Co <i>v.</i> P.T. Jakarta International Hotels and Development [1999] 1 Lloyd's Rep 910	2.333
Barbara Lloyd Designs Inc <i>v.</i> Mitsui O.S.K. Lines Ltd [2003] AMC 2608 (D ND)	3.21
Barber (Charles) <i>v.</i> William Meyerstein (1869–70) LR 4 HL 317 (HL)	2.90
Barbour <i>v.</i> South Eastern Ry Co (1876) 34 LT 67	2.228
Bardiger (M.) Ltd <i>v.</i> Halberg Spedition Aps, QBD, 26 October 1990, unreported ...	2.55, 2.59, 2.60, 2.62, 2.63, 2.71, 2.72, 2.75
Bas Capital Funding Corp & Others <i>v.</i> Medfinco Ltd & Others [2003] EWHC 1798 (Ch); [2004] 1 Lloyd's Rep 652	2.331, 2.351
Beal <i>v.</i> South Devon Railway Co (1864) 3 H & C 337; 159 ER 560	2.99
Beatson <i>v.</i> Haworth (1793) 6 TR 531	2.137
Beck <i>v.</i> Evans (1812) 16 East. 244	2.228

TABLE OF CASES

Bekol BV v. Terracina Shipping Corp, 13 July 1988, unreported	4.134, 4.146
Belfast Ropework Co Ltd v. Bushell [1918] 1 KB 210	2.105
Belgium Sup Court, 8 Nov 2004, 2005(3) Uniform LR 628	3.85
Belize Trading Ltd (In re complaint of) v. Sun Insurance Co [1994] AMC 1210 (US CA, 11th Cir. 1993)	4.141, 4.145
Ben Shipping Co (Pte) Ltd v. An-Board Baine (The C Joyce) [1986] 2 Lloyd's Rep 285	2.256
Benarty (No. 2), The. R.A. Lister & Co v. E.G. Thomson (Shipping) Ltd and PT Djakarta Lloyd [1985] QB 325; [1984] 2 Lloyd's Rep 244 (HL)	2.318
Benatti v. WPP Holdings Italy srl [2007] EWCA Civ 263; [2007] 1 WLR 2175 (CA)	2.362
Benford Ltd v. Lopecan SL [2004] EWHC 1897 (Comm); [2004] 2 Lloyd's Rep 618	2.273
Benincasa v. Dentalkit Srl (Case C-269/95) [1998] All ER (EC) 135	2.344
Bentex Fashions Inc v. Cargonaut Canada Inc (1995) 95 FTR 192	2.80
Bergen, The (No. 1) [1997] 1 Lloyd's Rep 380	2.365
Bergen, The (No. 2) [1997] 2 Lloyd's Rep 710	2.333
Bergerco USA v. Vegoil Ltd [1984] 1 Lloyd's Rep 440	2.292
Berghoefer GmbH & Co KG v. ASA SA (Case C-221/84) [1985] ECR 2699	2.338
Besix SA v. Wasserreinigungsbau Alfred Kretzschmar GmbH & Co KG (Case C-256/00) [2003] IL Pr 8; [2003] 1 WLR 1113	2.358, 2.359
Beswick v. Beswick [1968] AC 58 (HL)	2.248
Bhatia Shipping & Agencies PVT Ltd v. Alcobex Metals Ltd [2004] EWHC 2323 (Comm); [2005] 2 Lloyd's Rep 336	1.39, 2.316, 2.331, 3.45, 3.58, 3.77
Bier BV (Handelswekerij GJ) and Stichting Reinwater (The Reinwater Foundation) v. Mines de Potasse D'Alsace SA (Case C-21/76) [1978] QB 708; [1976] ECR 1735	2.363
Bigge Equipment Co v. Maxpeed International Transport Co Ltd [2002] AMC 1409 (ND Cal 2001)	3.17
Bim Kemi AB v. Blackburn Chemicals Ltd (No. 1) [2001] EWCA Civ 457; [2001] 2 Lloyd's Rep 93 (CA)	2.273
Binladen BSB Landscaping v. M.V. Nedlloyd Rotterdam, 759 F. 2d. 1006, [1985] AMC 2113 (2d. Cir. 1985)	4.137, 4.141, 4.147
Black & Broom v. J. Coppo & Co (1922) 13 Ll L Rep 347	2.156
Blake v. Richards & Wallington Industries Ltd and Fram Siegart (1974) 16 KIR 151	2.243
Blommer Chocolate Co (The) v. Nosira Sharon Ltd [1994] AMC 1807 (SDNY 1991)	4.126
Blue Anchor Line v. Yangming Marine Transport Corp [1994] AMC 1758 (3rd. Cir. 1994) ...	3.23
Bofors-Uva (A.B.) v. Skandia A.B. Transport [1982] 1 Lloyd's Rep 410	4.38
Bols Distilleries v. Superior Yacht Services Ltd [2006] UKPC 45; [2007] 1 WLR 12 (PC)	2.338, 2.344
Bombadier and Another v. Canadian Pacific Ltd (App Ct Ontario 1991) LMLN 329, (1992) 27 ETL 491	3.21
Bontex Knitting Works Ltd v. St John's Garage [1943] 2 All ER 690	2.105
Booth v. Phillips [2004] EWHC 1437 (Comm); [2004] 2 Lloyd's Rep 457	2.351
Borag, The. Compania Financiera Soleada SA v. Hamoor Tanker Corp Inc [1980] 1 Lloyd's Rep 111; rvsd [1981] 1 WLR 274; [1981] 1 Lloyd's Rep 483 (CA)	2.153
Bosma v. Larsen [1966] 1 Lloyd's Rep 22	2.238, 2.254
Boss Group Ltd v. Boss France SA [1997] 1 WLR 351; [1996] IL Pr 544 (CA)	2.357, 2.358
Boughen v. Frederick Attwood Ltd and Cryoplants Ltd [1978] 1 Lloyd's Rep 413	2.250, 2.257
Boutique Jacob Inc v. Pantainer Ltd [2006] AMC 1940 (Fed Ct Can)	3.19
Bouygues Offshore SA v. Caspian Shipping Co (Nos 1, 3, 4 and 5) [1998] 2 Lloyd's Rep 461 (CA)	2.331, 2.344
Bowmaker, Ltd v. Wycombe Motors Ltd [1946] KB 505	2.149
Bradley v. Waterhouse & Briggs (1828) 3 C & P 318	2.206
Brandt v. Liverpool Brazil and River Plate Steam Navigation Co Ltd [1924] 1 KB 575; (1923-24) 17 Ll L Rep 142 (CA)	2.40
Brass v. Maitland (1856) 6 El & Bl 470	2.207, 2.219
Brazil Oitica Ltd v. The Bill, 55 F.Supp 780 (D Md 1944)	4.144
Brereton v. KLC Freight Services Ltd (1997) 105 OAC 149	2.80
Brij, The [2001] 1 Lloyd's Rep 431 (HC HK)	2.88, 2.89, 2.94, 3.56
Bristol & Exeter Ry. v. Collins (1859) 7 HLC 196	3.7
Bristow Helicopters Ltd v. Sikorsky Aircraft Corp [2004] EWHC 401 (Comm); [2004] 2 Lloyd's Rep 150	2.331
British Aerospace plc v. Dee Howard Co [1993] 1 Lloyd's Rep 368	2.331
British Airways Board v. Laker Airways Ltd [1985] AC 58 (HL)	2.333

TABLE OF CASES

British Anzani (Felixstowe) Ltd v. International Marine Management (UK) Ltd [1980] QB 137	2.273
British Crane Hire Corp Ltd v. Ipswich Plant Hire Ltd [1975] QB 303 (CA)	2.12
British Fermentation Products Ltd v. Compair Reavell Ltd [1999] 2 All ER (Comm) 389	2.27
British Road Services Ltd v. Arthur V. Crutchley & Co Ltd (No. 1) [1968] 1 Lloyd's Rep 271; [1968] 1 All ER 811 (CA)	2.14, 2.15, 2.59, 2.122
British Sugar plc v. Babbini [2004] EWHC 2560 (TCC); [2005] 1 Lloyd's Rep 332	2.337, 2.338
British Sugar plc v. NEI Power Projects Ltd [1997] CLC 622	2.292
Britannia Distribution Co Ltd v. Factor Pace Ltd [1998] 2 Lloyd's Rep 420	2.276
Broken Hill Pty Ltd v. Hapag-Lloyd Aktiengesellschaft (1980) 2 NSWLR 572	3.18
Bronislaw Tarnawski v. Schenker Inc [2003] AMC 2230 (WD Wash (Tacoma))	2.133, 3.21
Brown (J.H.) v. American Express Co, <i>Lloyd's List</i> , 10 June 1921	2.183
Brown Boveri (Australia) Pty v. Baltic Shipping Co (The Nadezhda Krupskaya) [1989] 1 Lloyd's Rep 518 (CA NSW)	2.303
Brown Jenkinson & Co Ltd v. Percy Dalton (London) Ltd [1957] 2 QB 621; [1957] 2 Lloyd's Rep 1 (CA)	3.102
Browner International Ltd v. Monarch Shipping Co Ltd (The European Enterprise) [1989] 2 Lloyd's Rep 185	3.37, 4.92
Brunton v. Electrical Engineering Corp [1892] 1 Ch 434	2.152
Brushfield Sargent & Co Ltd v. Holmwright Engineering Co Ltd [1968] 1 Lloyd's Rep 439	2.269
Bulman & Dickson v. Fenwick & Co [1894] 1 QB 179 (CA)	2.286
Bunga Teratai, The. Nissho Iwai Australia Ltd v. Malaysia International Shipping Corporation, Berhad (1989) 167 CLR 219 (HC Aust)	3.61
Bunge SA v. ADM DO Brasil LTDA (The Darya Radhe) [2009] EWHC 845 (Comm); [2009] 2 Lloyd's Rep 175	2.235, 3.115
Burck Mills Ltd v. Black Sea Steamship Co (The Grumont) (1973) FC 387, [1973] 2 Lloyd's Rep 531	4.128
Burke v. South Eastern Railway Co (1879–80) LR 5 CPD 1	2.10
Burley (C.) Ltd v. Stepney Borough Council (1947) 80 Ll L Rep 289	2.219
Burlington Northern and Santa Fe Railway Co v. Interdom Partners Ltd 2004 WL 734081 (ND Tex, 26 Mar 2004)	4.122
Burns Philip & Co Ltd v. The West Australian Steam Navigation Co Ltd (1923) 33 CLR 135 (HC Aust)	3.33
Burstall & Co v. Grimsdale & Sons (1906) 11 Com Cas 280	3.9
Butler Machine Tool Co Ltd v. Ex-cell-o Corp (England) Ltd [1979] 1 WLR 401 (CA)	2.14, 2.15
Butterworth v. Brownlow (1865) 19 CBNS 409, 144 ER 845	2.61
C Joyce, The. Ben Shipping Co (Pte) Ltd v. An-Board Baine [1986] 2 Lloyd's Rep 285	2.256
CMA CGN SA v. Hyundai Mepo Dockyard Co Ltd [2008] EWHC 2791 (Comm); [2009] 1 Lloyd's Rep 213	2.334, 2.349
C.N. Marine Inc v. Carling O'Keefe Breweries of Canada (1990) LMLN 271	3.31
Cadre SA v. Astra Asigurari SA [2005] EWHC 2626 (Comm); [2006] 1 Lloyd's Rep 560	2.333
Caemint Food Inc v. Lloyd Brasileiro Companhia de Navegacao [1981] AMC 1801 (2d Cir. 1981)	3.28, 4.116
Caldwell v. Sumpters [1972] Ch 478 (CA)	2.160
Calico Printers Association Ltd v. Barclays Bank Ltd (1931) 145 LT 51	2.144
Cameco Inc v. S.S. American Legion (1974) 514 F. 2d. 1291	4.116, 4.194
Canada Steamship Lines Ltd v. The King [1952] AC 192; [1952] 1 Lloyd's Rep 1 (HL)	2.242, 2.295
Canada Trust Co v. Stolzenberg (No. 2) [1998] 1 WLR 547; [2002] 1 AC 1 (HL)	2.338, 2.351
Canadian Forest Products Ltd v. B.C. Rail Ltd [2003] AMC 1135 (Sup Ct Can)	3.26
Canadian Highlander, The. Gosse Millard Ltd v. Canadian Government Merchant Marine [1929] AC 223; (1928) 32 Ll L Rep 91 (HL)	4.25
Canastrand Industries Ltd v. The Lara S [1993] 2 F.C. 553	2.16
Canon USA Inc v. Nippon Liner System Ltd [1994] AMC 348 (ND Ill 1992)	3.18
Canon USA Inc v. Norfolk Southern Railway Company [1997] AMC 1510 (ND Ga, 1996) ...	3.17, 3.18
Canusa Systems Ltd v. The Conmar Ambassador (1998) 146 FTR 314	2.80
Caparo Industries plc v. Dickman [1990] 2 AC 605 (HL)	2.193
Cape Coromin, The. Carrington Slipways Pty Ltd v. Patrick Operations Pty Ltd (1991) 24 NSWLR 745 (CA NSW)	2.49, 2.57, 2.91, 3.23
Captain v. Far Eastern Shipping [1979] 1 Lloyd's Rep 595 (SC BC)	3.33, 3.35, 3.88

TABLE OF CASES

Captain Gregos (No. 1), <i>The. Compania Portoraffi Commerciale SA v. Ultramar Panama Inc</i> (No. 1) [1990] 1 Lloyd's Rep 310 (CA)	2.307, 3.61, 3.106, 4.124
Captain Gregos (No. 2), <i>The. Compania Portoraffi Commerciale SA v. Ultramar Panama Inc</i> (No. 2) [1990] 2 Lloyd's Rep 395 (CA)	2.40
Care Shipping Corp <i>v. Latin American Shipping Corp (The Cebu)</i> [1983] QB 1005; [1983] 1 Lloyd's Rep 302	2.275
Carl Osterberg <i>v. Shipping & Transport Co Ltd</i> (1922) 13 Ll L Rep 562	2.111
Carling O'Keefe <i>v. C.N. Marine</i> [1987] AMC 954; affmd [1990] AMC 997 (Fed App Ct Can)	4.105, 4.137
Carlton, <i>The. Owners of the Carlton v. Port of London Authority</i> [1931] P 186; (1931) 40 Ll L Rep 101	2.240, 2.252
Carol Wright Sales Inc <i>v. Yangming Marine Transport Co</i> [1987] AMC 1195 (NY Sup CA 1986)	3.26, 3.28
Caroline P, <i>The. Telfair Shipping Corp v. Inersea Carriers SA</i> [1984] 2 Lloyd's Rep 466	2.238
Carr <i>v. London & North Western Ry Co</i> (1875) LR 10 CP 307	2.228
Carrington Slipways Pty Ltd <i>v. Patrick Operations Pty Ltd (The Cape Coromin)</i> (1991) 24 NSWLR 745 (CA NSW)	2.49, 2.57, 2.84, 2.91, 3.23
Carvill America Inc <i>v. Camperdown UK Ltd</i> [2005] EWCA Civ 645; [2005] 2 Lloyd's Rep 457 (CA)	2.351
Casio Computer Co Ltd <i>v. Sayo</i> [2001] IL Pr 164	2.362
Caspar Trader, <i>The. Hancock Shipping Co Ltd v. Deacon & Trysail (Private) Ltd</i> [1991] 2 Lloyd's Rep 550	2.255
Caspiana, <i>The. G.H. Denton & Co Ltd v. Palmyra Trading Corp of Panama</i> [1955] 2 Lloyd's Rep 301; rvsd [1956] 1 QB 462; [1955] 2 Lloyd's Rep 722 (CA); affmd [1957] AC 149; [1956] 2 Lloyd's Rep 379 (HL)	2.32, 2.282, 3.88
Cassils & Co & Sassoon <i>v. Holden Wood Bleaching Co</i> (1915) 84 LJB 834	2.148, 2.149, 2.157
Cast Husky, <i>The. Marley Co v. Cast North America</i> (1983) Inc (1995) 405 LMLN 3	3.7
Cast Musko, <i>The. General Motors Corp v. Cast</i> (1993) Ltd (1994) 378 LMLN 2 (Fed Ct Can (Trial Div), 28 Feb 1994)	4.122
Caterpillar Financial Services Corp <i>v. SNC Passion</i> [2004] EWHC 569 (Comm); [2004] 2 Lloyd's Rep 99	2.317
Caterpillar Overseas SA <i>v. Marine Transport Inc</i> , 900 F.2d. 714; [1991] AMC 75 (4th Cir. 1990)	3.14, 3.17, 4.144
Catherine Helen, <i>The. Cathship SA v. Allanasons Ltd</i> [1998] 2 Lloyd's Rep 511	2.238, 2.254
Cathship SA <i>v. Allanasons Ltd (The Catherine Helen)</i> [1998] 2 Lloyd's Rep 511	2.238, 2.254
Cavcar Co <i>v. Suzdal</i> [1984] AMC 609 (3d Cir.)	3.23
Cayo Mambi, <i>The</i> [1933] AMC 1555 (2nd Cir. 1933)	3.32, 3.33
Cebu, <i>The. Care Shipping Corp v. Latin American Shipping Corp</i> [1983] QB 1005; [1983] 1 Lloyd's Rep 302	2.275
Cecil <i>v. Bayat</i> [2010] EWHC 641 (Comm)	2.351
Cel Group Ltd <i>v. Nedlloyd Lines UK Ltd</i> [2003] EWCA Civ 1716; [2004] 1 Lloyd's Rep 381 (CA)	1.16
Celthene Pty Ltd <i>v. W.J.K. Hauliers Pty Ltd</i> [1981] 1 NSWLR 606	3.14
Cenargo Shipping Ltd <i>v. Henry Butcher & Co (A Partnership)</i> , CA, 23 January 1990, unreported, Lexis	2.21
Centennial Ins. Co <i>v. M/V Constellation Enterprise</i> [1987] AMC 1155 (SDNY 1986)	4.120
Center Optical (Hong Kong) Ltd <i>v. Jardine Transport Services (China) Ltd</i> [2001] 2 Lloyd's Rep 678 (HK HC)	2.58, 2.69, 2.94, 3.12, 3.13, 4.146
Certain Underwriters at Lloyd's <i>v. Barber Blue Sea Line</i> [1982] AMC 2638 (11th Cir.)	3.17
Chanda, <i>The. Wibau Maschinenfabrik Hartman SA v. Mackinnon Mackenzie & Co</i> [1989] 2 Lloyd's Rep 494	2.296, 2.298, 2.307, 4.104
Chandris <i>v. Isbrandtsen Moller Co Inc</i> [1951] 1 KB 240; (1950) 84 Ll L Rep 347 (CA)	2.279
Chandris <i>v. Union of India</i> [1956] 1 WLR 147; [1956] 1 Lloyd's Rep 11 (CA)	2.253
Chaparral, <i>The. Unterweser Reederei GmbH v. Zapata Offshore Co</i> [1968] 2 Lloyd's Rep 158 (CA)	2.331
Chapman <i>v. Great Western Railway</i> (1880) 5 QBD 278	2.169, 2.170
Chapman Marine Pty <i>v. Wilhelmsen Lines (The Tarago)</i> [1999] AMC 1221 (Fed Ct NSW) ...	4.100, 4.101, 4.142
Charlotte, <i>The</i> [1908] P 206 (CA)	2.298
Chas Davis (Metal Brokers) Ltd <i>v. Gilyott & Scott Ltd</i> [1975] 2 Lloyd's Rep 422 ..	2.16, 2.264, 4.15
Chaudhry <i>v. Prabhakar and Another</i> [1989] 1 WLR 29 (CA)	2.100, 2.101, 2.186

TABLE OF CASES

Chellaram (K.) & Sons (London) Ltd v. Butlers Warehousing & Distribution Ltd [1978] 2 Lloyd's Rep 412 (CA)	2,156, 2,157
Chevalier Roze, The. Neptune Orient Lines Ltd v. J.V.C. (UK) Ltd [1983] 2 Lloyd's Rep 438	2,58, 2,145, 2,248, 3,14, 4,96
Chevron International Oil Co Ltd v. A/S Sea Team (The T.S. Havprins) [1983] 2 Lloyd's Rep 356	2,331
China Ocean Shipping Co (The Xingcheng) v. Andros (The Andros) [1987] 2 Lloyd's Rep 210 (PC)	3,38
China-Pacific SA v. Food Corp of India (The Winson) [1982] AC 939; [1982] 1 Lloyd's Rep 117 (HL)	2,100, 2,161, 2,173
Chisso America Inc v. M/V Hanjin Osaka [2003] AMC 2796 (D NJ)	3,17
Chitral, The. International Air and Sea Cargo GmbH v. Owners of the Chitral [2000] 1 Lloyd's Rep 529	3,56
Cho Yang Shipping Co Ltd v. Coral (UK) Ltd [1997] 2 Lloyd's Rep 641 (CA)	1,18, 1,20, 2,67, 2,71, 2,79, 2,92, 2,93, 3,23
Choko Star, The. Industrie Chimiche Italia Centrale v. Alexander G. Tsavlis & Sons Maritime Co [1995] 2 Lloyd's Rep 608; [1996] 1 All ER 114	2,314
Cia Panamena de Seguros SA v. Prudential Lines Inc, 416 F.Supp 641 (DCZ 1976)	4,144
Cigna Insurance Asia Pacific v. Expeditors International of Washington [2002] AMC 1085 (CD Cal 2001)	3,21, 3,75
Cigna Insurance Company of Puerto Rico v. The M/V Skanderborg [1996] AMC 600	4,126
Circle Freight International Ltd v. Medeast Gulf Exports Ltd [1988] 2 Lloyd's Rep 427 (CA) ..	2,10, 2,11
Citi-March Ltd v. Neptune Orient Lines Ltd [1997] 1 Lloyd's Rep 72	2,312, 2,331
City Equitable Fire Insurance Co Ltd, Re [1925] Ch 407 (CA)	2,284
Claridge Holt & Co Ltd v. King & Ramsay (1920) 3 Ll L Rep 197	2,48, 2,71
Clark v. Sir William Arrol & Co Ltd 1974 SLT 90	2,243
Claxton Engineering Services Ltd v. TXM Olaj-es Gazkutato KFT [2011] EWHC 345 (Comm); [2011] 1 Lloyd's Rep 510 (CA)	2,348
Clayton v. Woodman & Son (Builders) Ltd [1962] 2 QB 546; rvsd [1962] 2 QB 533 (CA)	2,196
Clemens Horst (E.) Co v. Norfolk and North Western American Steam Shipping Co (1906) 11 Com Cas 141	3,9, 3,31
Cleobulos Shipping Co Ltd v. Intertanker Ltd (The Cleon) [1983] 1 Lloyd's Rep 586 (CA) ...	2,275
Cleon, The. Cleobulos Shipping Co Ltd v. Intertanker Ltd [1983] 1 Lloyd's Rep 586 (CA)	2,275
Cleton (1992) II ULR 186 (Rott DC)	3,87
Cliffe v. Hull & Netherlands Steamship Co Ltd (1921) 6 Ll L Rep 136 (CA)	2,97, 3,9, 3,33
Club Speciality (Overseas) Inc v. United Marine (1939) Ltd [1971] 1 Lloyd's Rep 482	2,108, 2,171, 2,181, 2,258
Coca-Cola Financial Corp v. Finsat International Ltd (The Ira) [1996] 2 Lloyd's Rep 274; [1996] 3 WLR 849; [1998] QB 43 (CA)	2,277
Coggs v. Bernard (1703) 2 Ld Raym 909; 92 ER 107	2,99
Cohen v. Brantford International Ltd, CA, 8 December 1987, unreported	2,284
Coldman v. Hill [1919] 1 KB 443 (CA)	2,111
Colgate Palmolive Co v. M/V Atlantic Conveyor [1997] AMC 1478 (SDNY 1996)	3,20
Colgate Palmolive Co v. S.S. Dart Canada, 724 F.2d. 313; [1984] AMC 305 (2d Cir. 1983)	3,19
Coli Shipping (UK) Ltd v. Andrea Merzario Ltd [2002] 1 Lloyd's Rep 608	1,18, 1,20, 2,56, 2,57, 2,92, 2,94, 3,31
Collbran, Re [1956] Ch 250	2,267
Collen v. Wright (1857) 8 E. & B 647	2,35
Colley v. Brewers Wharf and Transport Ltd (1921) 9 Ll L Rep 5	2,72, 2,105, 2,106
Colombiana, The. Compania Colombiana de Seguros v. Pacific Steam Navigation Co [1965] 1 QB 101; [1963] 2 Lloyd's Rep 479	2,312
Colverd (A. F.) & Co Ltd v. Anglo-Overseas Transport Co Ltd [1961] 2 Lloyd's Rep 352	2,52, 2,62, 2,105, 2,116, 2,182
Comalco Aluminium Ltd v. Mogul Freight Services Pty Ltd (The Oceanic Trader) (1993) 113 ALR 677	2,84, 4,124
Comandate Marine Corp v. Pan Australia Shipping Pty [2006] FCAFC 192; [2008] 1 Lloyd's Rep 119	2,333
Commercial Bank of the Near East Ltd v. A, B, C, and D [1989] 2 Lloyd's Rep 319	2,331
Commercial Marine & Piling Ltd v. Pierse Contracting [2009] EWHC 2241 (TCC); [2009] 2 Lloyd's Rep 659	2,323, 3,255

TABLE OF CASES

Commercial Union Insurance Co <i>v.</i> M/V Bremer Express [1999] AMC 2002 (SDNY)	3.32, 3.73
Commonwealth Petrochemicals <i>v.</i> S.S. Puerto Rico, 455 F.Supp 310 (D Md 1978); <i>rvsd</i> 607 F. 2d. 322 (4th Cir. 1979), [1979] AMC 2772	4.145, 4.147
Commonwealth Portland Cement Co Ltd <i>v.</i> Weber Lohmann & Co Ltd [1905] AC 66 (PC)	2.257
Compagnie Generale Maritime <i>v.</i> Diakan Spirit SA (The Ymnos) (No. 2) [1982] 2 Lloyd's Rep 574	4.88
Compania Colombiana de Seguros <i>v.</i> Pacific Steam Navigation Co (The Colombiana) [1965] 1 QB 101; [1963] 2 Lloyd's Rep 479	2.312
Compania Financiera Soleada SA <i>v.</i> Hamoor Tanker Corp Inc (The Borag) [1980] 1 Lloyd's Rep 111; <i>rvsd</i> [1981] 1 WLR 274; [1981] 1 Lloyd's Rep 483 (CA)	2.153
Compania Portorrafti Commerciale SA <i>v.</i> Ultramar Panama Inc (The Captain Gregos) (No. 1) [1990] 1 Lloyd's Rep 310 (CA)	2.307, 3.61, 3.106
Compania Portorrafti Commerciale SA <i>v.</i> Ultramar Panama Inc (The Captain Gregos) (No. 2) [1990] 2 Lloyd's Rep 395 (CA)	2.40
Compania Sud Americano de Vapores <i>v.</i> Sinochem Tianjin Import & Export Corp (The Aconcagua) [2010] EWCA Civ 1403; [2011] 1 Lloyd's Rep 683 (CA)	2.219, 2.235
Compania Sud Americano de Vapores <i>v.</i> Shipmair BV (The Teno) [1977] 2 Lloyd's Rep 289	2.275
Comptoir Franco-Anglais d'Exportation <i>v.</i> Yan Oppen (1922) 13 Ll L Rep 59	2.127, 2.128
Connolly Shaw <i>v.</i> Nordenfeldske S.S. (1934) 50 TLR 418	2.136
Consumers Distributing Company Ltd <i>v.</i> Dart Containerline Co Ltd (Fed Ct Can, No. T-2480-76, unreported)	3.89
Continental Bank N.A. <i>v.</i> Aeakos Compania Naviera SA [1994] 1 WLR 588; [1994] 1 Lloyd's Rep 505 (CA)	2.331, 2.334, 2.347, 2.349
Continental Distributing Co Inc <i>v.</i> M/V Sea-Land Commitment [1992] AMC 1743	4.113
Continental Distributing Co Inc <i>v.</i> M/V Sea-Land Commitment [1994] AMC 82 (SDNY 1992)	4.118, 4.119
Continental Fertilizer Co Ltd <i>v.</i> Pionier Shipping CV (The Pionier) [1995] 1 Lloyd's Rep 223	2.312
Continental Insurance Co Ltd <i>v.</i> CLX Services [2003] AMC 2251 (Sup Ct Cal 2002)	3.89, 4.139
Cooper <i>v.</i> General Accident Fire and Life Assurance Corp [1922] 2 Ir R 214	2.283
Coopers Payen Ltd <i>v.</i> Southampton Container Terminal Ltd [2003] EWCA Civ 1223; [2004] 1 Lloyd's Rep 331	2.122
Coral, The. Balli Trading Ltd <i>v.</i> Afalona Shipping Ltd [1993] 1 Lloyd's Rep 1	4.126
Coral Int'l Inc <i>v.</i> Saudi Nat'l Lines, 439 So. 2d 1035 (CA Fl)	4.102
Cordis Dow Corp <i>v.</i> S.S. President Kennedy [1985] AMC 2756 (ND Cal 1984)	3.30
Coreck Maritime GmbH <i>v.</i> Handelsveem BV (Case C-387/98) [2000] ECR I-9337	2.337, 2.343
Cory Brothers Shipping Ltd <i>v.</i> Baldan Ltd [1997] 2 Lloyd's Rep 58	2.261
County & District Properties Ltd <i>v.</i> C. Jenner & Son Ltd [1976] 2 Lloyd's Rep 728	2.238, 2.254
Cour d'Appel, Paris, 22.1.1993, Bulletin des Transports 1993, No. 2523, p. 402	4.76, 4.79
Cour d'Appel, Paris, 16.2.1996, Bulletin des Transports 1996, No. 2663, p. 402	3.52
Cour d'Appel, Paris, 10.4.1996 and 6.6.1996, Bulletin des Transports 1996, No. 2671, p. 557	4.79
Cour d'Appel, Paris, 19.2.2003, 2003 (4) ULR 1012	3.90
Cour d'Appel, Rouen, 7.2.1985, [1987] DMF 510	4.126
Cour d'Appel, Rouen, 28.2.2002	4.146
Cour de Cassation, 4.7.2000, (2000) 35 ETL 524	3.52
Coutinho Caro & Co (Canada) <i>v.</i> Owners of the Vessel Ermua (1979) 100 DLR (3d) 461; <i>rvsd</i> (1981) 121 DLR 571 (Fed. CA Can)	4.113
Cowper <i>v.</i> J.G. Goldner Pty Ltd (1986) 40 SASR 457	2.116
Cox <i>v.</i> London & North Western Ry Co (1862) 3 F & F 77	2.228
Crawford & Law <i>v.</i> Allan Line Steamship Co Ltd [1912] AC 130 (HL)	3.25, 3.33
Crédit Suisse Financial Products <i>v.</i> Société Générale D'Enterprises [1996] 5 Bank. LR 220; [1997] CLC 168 (CA)	2.338
Credit Suisse First Boston (Europe) Ltd <i>v.</i> MLC (Bermuda) Ltd [1999] 1 Lloyd's Rep 767 ...	2.332
Credit Suisse First Boston (Europe) Ltd <i>v.</i> Seagate Trading Co Ltd [1999] 1 Lloyd's Rep 784	2.332
Crispin Co <i>v.</i> M.V. Morning Park, 578 F.Supp 359 (SD Tex 1984); [1985] AMC 766	4.145
Croudace Construction Ltd <i>v.</i> Cawoods Concrete Products Ltd [1978] 2 Lloyd's Rep 55 (CA) ...	2.292
Cunard Steamship Co Ltd <i>v.</i> Buerger [1927] AC 1; (1926) 25 Ll L Rep 215 (HL)	3.35
DCI Management Group Inc and Continental Insurance Co <i>v.</i> M.V. Miden Agan No. 03 Civ 448 (DLC) (Westlaw) SDNY, 14 May 2004	4.149
DHL GBS (UK) Ltd <i>v.</i> Fallimento Finmatica [2009] EWHC 291 (Comm); [2009] 1 Lloyd's Rep 430	2.348

TABLE OF CASES

DRL Ltd <i>v.</i> Wincanton Group Ltd [2011] EWCA Civ 839 (CA)	2.161
DSV Silo und Verwaltungsgesellschaft mbH <i>v.</i> Owners of the Sennar (The Sennar) (No. 2) [1985] 1 WLR 490; [1985] 1 Lloyd's Rep 521 (HL)	2.331
Daewoo Heavy Industries Ltd <i>v.</i> Klipriver Shipping Ltd [2003] EWCA Civ 451; [2003] 1 All ER (Comm) 801; [2003] 2 Lloyd's Rep 1 (CA)	2.296, 2.307, 4.104
Daewoo International (America) Corp <i>v.</i> Sea-Land Orient Ltd [1998] AMC 2718 (D NJ); [2000] AMC 197 (3rd Cir. 1999)	4.116, 4.119
Dampskibsselskabet Danmark <i>v.</i> Poulsen 1913 SC 1043	2.286
Danzas <i>v.</i> National Bank of Alaska [1964] AMC 1832 (DC Alaska)	2.188
Daphne L, The; Feoso Maritime Co Ltd <i>v.</i> Faith Maritime Co Ltd, Sing CA, 25 August 2003	2.149
Dar es Salaam Motor Transport <i>v.</i> Mehta [1970] HCD 179 (Tanzania)	2.104
Darya Radhe, The. Bunge SA <i>v.</i> ADM DO Brasil LTDA [2009] EWHC 845 (Comm); [2009] 2 Lloyd's Rep 175	2.235, 3.115
Date & Cocke <i>v.</i> G.W. Sheldon & Co (London) Ltd (1921) 7 Ll L Rep 53	2.52, 2.105, 2.106, 2.116, 2.231
Datec Electronic Holdings Ltd <i>v.</i> United Parcels Service Ltd [2007] UKHL 23; [2007] 1 WLR 1325; [2007] 2 Lloyd's Rep 114 (HL)	2.14, 2.203, 2.284
David Agmashenebeli, The. Owners of Cargo Lately Laden on Board the David Agmashenebeli <i>v.</i> Owners of the David Agmashenebeli [2002] EWHC 104 (Admlty); [2003] 1 Lloyd's Rep 92	4.116
David Taylor & Son Ltd <i>v.</i> Bowden Transport Ltd [1966] 1 Lloyd's Rep 287	2.292
Davinder Singh <i>v.</i> M/V Saudi Dirayah [1993] AMC 2636 (SD Tex 1991)	3.13
Dawes <i>v.</i> Peck (1799) 8 TR 330	2.21
De Bloos (A.) Sprl <i>v.</i> Bouyer SA (Case C-14/76) [1976] ECR 1497	2.355, 2.358
De Bussche <i>v.</i> Alt (1878) 8 Ch D 286 (CA)	2.141
Deaville <i>v.</i> Aeroflot Russian International Airlines [1997] 2 Lloyd's Rep 67	2.333, 2.365
Deepak Fertilisers & Petrochemicals Corp <i>v.</i> ICI Chemicals and Polymers Ltd [1999] 1 Lloyd's Rep 387 (CA)	2.247, 2.248, 2.252, 2.292
Dei Dogi <i>v.</i> Summa Trading Corp [1990] AMC 1628	4.113
Deltamax Freight System <i>v.</i> M/V Aristotelis [1999] AMC 1789 (DC Cal 1998)	4.101
Denby (Mark Edmund) <i>v.</i> Hellenic Mediterranean Line Co Ltd [1994] 1 Lloyd's Rep 320	2.347
Derby Resources AG <i>v.</i> Blue Corinth Marine Co Ltd (The Athenian Harmony) (No. 2) [1998] 2 Lloyd's Rep 425	2.280
Deutsche Bank AG <i>v.</i> Asia Pacific Communications Inc [2008] EWCA Civ 1094; [2008] 2 Lloyd's Rep 619 (CA)	2.344
Dexter Ltd (In Administrative Receivership) <i>v.</i> Harley (2001) Times, 2 April	2.362
District Court, Antwerp, Vol. II ETL 279	3.84
District Court, Rotterdam, 24.1.1992	3.85
Dock Services Ltd <i>v.</i> Caledonian Stevedoring Co Ltd (1948-49) 82 Ll L Rep 179	2.237
Dole Dried Fruit & Nut Co <i>v.</i> Trustin Kerwood Ltd [1990] 2 Lloyd's Rep 309 (CA)	2.273
Dolphina, The [2011] SGHC 273 (Sing HC); [2012] 1 Lloyd's Rep 304	2.317
Dolphin Maritime and Aviation Services Ltd <i>v.</i> Sveriges Angfartygs Assurans Forening [2009] EWHC 716 (Comm); [2009] 2 Lloyd's Rep 123	2.363
Domicrest Ltd <i>v.</i> Swiss Bank Corp [1999] 1 Lloyd's Rep 80; [1998] 3 All ER 577	2.363
Dominique, The. Bank of Boston Connecticut (formerly Colonial Bank) <i>v.</i> European Grain & Shipping Ltd [1989] AC 1056; [1989] 1 Lloyd's Rep 431 (HL)	2.273, 2.276
Donald Stewart & Co <i>v.</i> John Lofthouse & Co (1921) 9 Ll L Rep 386 (CA)	2.261
Donohue <i>v.</i> Armco Inc [2001] UKHL 64; [2002] 1 Lloyd's Rep 425 (HL)	2.331, 2.333
Donner <i>v.</i> London & Hamburg Agency (1923) 15 Ll L Rep 63	2.108
Donovan <i>v.</i> Laing Wharton and Down Construction Syndicate Ltd [1893] 1 QB 629 (CA)	2.105
Dopplemayr Lifts Ltd <i>v.</i> Hapag-Lloyd Aktiengesellschaft [1982] 2 CF 772	3.31, 3.74
Dornoch Ltd <i>v.</i> Mauritius Union Assurance Co Ltd [2006] 2 Lloyd's Rep 475	2.338
Dresser UK and Others <i>v.</i> Falcongate Freight Management (The Duke of Yare) [1991] 2 Lloyd's Rep 557	2.340, 2.341, 2.343
Du Pont de Nemours <i>v.</i> The Mormacvega 493 F. 2d. 97 (2d. Cir. 1974); [1974] AMC 67; [1974] 1 Lloyd's Rep 296	4.101, 4.103, 4.149
Duden, The. Sotrade Denizcilik Sanayi Ve Ticaret SA <i>v.</i> Amadou Lo [2008] EWHC 2762 (Comm); [2009] 1 Lloyd's Rep 145	2.333
Duffield <i>v.</i> Scott (1789) 3 Term Rep 374	2.256
Dugdale <i>v.</i> Lovering (1874-75) LR 10 CP 196	2.261

TABLE OF CASES

Duke of Yare, The. Dresser UK and Others <i>v.</i> Falcongate Freight Management [1991] 2 Lloyd's Rep 557	2.24, 2.340
Dumez France and Tracoba <i>v.</i> Hessische Landesbank (Case C-364/93) [1990] ECR I-2719 ...	2.363
E.E. Caledonia Ltd (formerly Occidental Petroleum (Caledonia)) <i>v.</i> Orbit Valve Co Europe plc [1994] 2 Lloyd's Rep 239 (CA)	2.24, 2.257
EMI (New Zealand) Ltd <i>v.</i> Wm Holyman & Sons Pty Ltd and Another (The Maheno) [1977] 1 Lloyd's Rep 1; [1976] 2 NZLR 5677 (Sup Ct NZ)	2.53, 2.57, 2.58, 2.59, 2.80
E.M.S. Industrie SA <i>v.</i> Polskie Towarzystwo Stevetowe [1986] AMC 217 (EDNY 1985)	4.94
East India Co <i>v.</i> Pullen (1726) 2 Stra. 690	2.105
East West Corp <i>v.</i> DKBS 1912 [2003] EWCA Civ 83; [2003] 1 All ER (Comm) 525 (CA) ...	2.59, 2.60, 3.37, 3.52
Eastern Kayam Carpets Ltd <i>v.</i> Eastern United Freight Ltd, QBD, 6 December 1983, unreported, Lexis	2.30, 2.52, 2.8, 2.188, 2.310
Eastman Chemical International AG <i>v.</i> NMT Trading and Eagle Transport [1972] 2 Lloyd's Rep 25	2.104, 2.105, 2.117, 2.181
Econet Satellite Services Ltd <i>v.</i> VEE Networks Ltd [2006] EWHC 1664 (Comm); [2006] 2 Lloyd's Rep 423	2.273
Edwards <i>v.</i> Newland & Co (E Burchett, Third Party) [1950] 2 KB 534 (CA)	2.105
Effer SpA <i>v.</i> Kantner (Case C-38/81) [1982] ECR 825	2.357
Effort Shipping Co Ltd <i>v.</i> Linden Management SA (The Giannis NK) [1998] AC 605; [1998] 1 Lloyd's Rep 337; [1998] 2 WLR 206; [1998] 1 All ER 495 (HL)	2.219, 2.235, 3.115
Egon Oldendorff <i>v.</i> Libera Corp (No.1) [1995] 2 Lloyd's Rep 64	2.317
El Amria, The. Aratra Potato Co Ltd <i>v.</i> Egyptian Navigation Co [1981] 2 Lloyd's Rep 119	2.331
El Greco (Australia) Pty Ltd <i>v.</i> Mediterranean Shipping Co SA [2004] FCAFC 202; [2004] 2 Lloyd's Rep 537 (Fed Ct Aus)	4.134, 4.146, 4.147, 4.148, 4.149, 4.153
El-Khateib <i>v.</i> Eurofreighter [1980] AMC 893 (SDNY 1979)	3.35
Elbe Maru, The. Nippon Yusen Kaisha <i>v.</i> International Import and Export Co [1978] 1 Lloyd's Rep 206	2.145, 2.248, 2.249, 2.255
Elder Dempster & Co Ltd <i>v.</i> Paterson Zochonis & Co Ltd [1924] AC 522; (1924) 18 Ll L Rep 319 (HL)	4.13
Elderslie Steamship Co Ltd <i>v.</i> Borthwick [1905] AC 93 (HL)	2.286
Electric Supply Stores Ltd <i>v.</i> Gaywood (1909) 100 LT 855	2.149
Electro-Tec Corp <i>v.</i> S.S. Dart Atlantica, 598 F.Supp 929 (D.C. Md. 1984), [1985] AMC 1606 ...	4.103
Elektrim SA <i>v.</i> Vivendi Holdings 1 Corp [2008] EWCA Civ 1178; [2009] 1 Lloyd's Rep 59 (CA)	2.333
Elektronska Industrija Oour TVA <i>v.</i> Transped Oour Kintinentalna Spedicna [1986] 1 Lloyd's Rep 49	2.55, 2.69, 2.72, 2.74, 2.77
Elena Shipping Ltd <i>v.</i> Aidenfield Ltd (The Elena) [1986] 1 Lloyd's Rep 425	2.276
Eleftheria, The. Owners of Cargo Lately Laden on Board the Eleftheria <i>v.</i> Owners of the Eleftheria [1970] P 94; [1969] 1 Lloyd's Rep 237	2.331
Ellerman Lines Ltd <i>v.</i> Read [1928] 2 KB 144 (CA)	2.333
Elof Hansson Agency Ltd <i>v.</i> Victoria Motor Haulage Co Ltd (1938) 54 TLR 666; (1938) 60 Ll L Rep 332	2.12, 2.133
Emery Air Freight Corp <i>v.</i> Nerine Nurseries Ltd [1997] 3 NZLR 723	2.79, 2.87, 2.92, 3.23
Emilio Clot & Co <i>v.</i> Compagnie Commerciale du Nord SA (1921) 8 Ll L Rep 380 ...	2.4, 2.80, 2.86
Empresa Cubana Importadora de Alimentos <i>v.</i> Octavia Shipping Co SA (The Kefalonia Wind) [1986] 1 Lloyd's Rep 273	2.311
Encyclopaedia Britannica <i>v.</i> The Hong Kong Producer, 422 F. 2d. 7 (2d. Cir. 1969), [1969] AMC 1741; [1969] 2 Lloyd's Rep 536	4.101
English Electric Valve Co Inc <i>v.</i> M/V Hoegh Mallard, 814 F.2d. 84 (2d. Cir. 1987)	4.101
Enviroco Ltd <i>v.</i> Farstad Supply A/S (The Far Service) [2009] EWCA Civ 1399; [2010] 2 Lloyd's Rep 375 (CA); [2010] UKSC 18; [2010] 2 Lloyd's Rep 387 (SC)	2.247, 2.252, 2.264
Epsilon Rosa, The. Welex AG <i>v.</i> Rosa Maritime Ltd [2003] EWCA Civ 938; [2003] 2 Lloyd's Rep 509	2.333
Equitas Ltd <i>v.</i> Allstate Insurance Co [2009] Lloyd's Rep IR 227	2.345
Erich Gasser GmbH <i>v.</i> MISAT Srl (Case C-116/02) [2004] 1 Lloyd's Rep 222	2.347, 2.348, 2.349
Esmerelda 1, The. ACE Imports Pty <i>v.</i> Companhia de Navegacao Lloyd Brasileiro [1988] 1 Lloyd's Rep 206 (Sup Ct NSW)	4.113
Esso Petroleum Co Ltd <i>v.</i> Milton [1997] 1 WLR 938 (CA)	2.273

TABLE OF CASES

Etablissement Biret et Cie SA <i>v.</i> Yukeiteru Kaiun K.K. & Nissui Shipping Corp (The Sun Happiness) [1984] 1 Lloyd's Rep 381	2.80
Etablissements Gustave Brunet SA <i>v.</i> M.V. Nedlloyd Rosario [1997] AMC 803 (SDNY 1996)	4.101, 4.103
Euro Cellular (Distribution) plc <i>v.</i> Danzas Ltd [2003] EWHC 3161 (Comm); [2004] 1 Lloyd's Rep 521	2.122, 2.288, 2.297
European Enterprise, The. Browner International Ltd <i>v.</i> Monarch Shipping Co Ltd [1989] 2 Lloyd's Rep 185	3.37, 4.92, 4.150
Eurus, The. Total Transport Corp <i>v.</i> Arcadia Petroleum Ltd [1996] 2 Lloyd's Rep 408; affmd [1998] 1 Lloyd's Rep 351 (CA)	2.237, 2.240, 2.2, 2.261
Eurymedon, The. New Zealand Shipping Co Ltd <i>v.</i> A.M. Satterthwaite & Co Ltd [1975] AC 154; [1974] 1 Lloyd's Rep 534 (PC NZ)	2.146, 3.61, 4.13
Evans <i>v.</i> Glasgow District Council (Negligence) 1979 SLT 270 (1 Div)	2.243, 2.295
Evans (J.) & Son (Portsmouth) Ltd <i>v.</i> Andrea Merzario Ltd [1975] 1 Lloyd's Rep 162; revsd [1976] 1 WLR 1078; [1976] 2 Lloyd's Rep 165 (CA)	2.47, 2.5, 2.86, 2.127, 2.128, 2.191, 2.296, 4.104, 4.106
Evalis <i>v.</i> SIAT [2003] 2 Lloyd's Rep 377	2.317, 2.337, 2.349
Excalibur Ventures LLC <i>v.</i> Texas Keystone Inc [2011] EWHC 1624 (Comm); [2011] 2 Lloyd's Rep 289	2.333
Exercise Shipping Co Ltd <i>v.</i> Bay Maritime Lines Ltd (The Fantasy) [1992] 1 Lloyd's Rep 235 (CA)	4.88
Exeter, The. Lyons-Magnus <i>v.</i> American Hawaiian; 41 F. Supp. 575; [1941] AMC 1550 (SDNY 1941)	3.38
Exportadora Valle de Colina SA <i>v.</i> A.P. Moller-Maersk A/S [2010] EWHC 3224 (Comm)	3.63
F.A. Machinery Logistics Inc <i>v.</i> M/V Jebel Ali [1998] AMC 2963 (SD Ga)	4.142
F.H. Bertling Ltd <i>v.</i> Tube Developments Ltd [1999] 2 Lloyd's Rep 55 (Ct Sess Scot)	2.21, 2.22, 2.127, 2.258
F.M.C. Corp <i>v.</i> Marjorie Lykes, 851 F.2d. 78 (2d Cir. 1988)	4.144
FR Lurssen Werft GmbH & Co <i>v.</i> Halle [2010] EWCA Civ 587; [2010] 2 Lloyd's Rep 265 (CA)	2.320
F.S. Stowell Ltd <i>v.</i> Nicholls & Co (Brighton) Ltd [1963] 2 Lloyd's Rep 275	2.292
Falconbridge Nickel <i>v.</i> Chimo Shipping Ltd [1974] SCR 933; [1969] 2 Lloyd's Rep 277 (Ex Ct Can)	4.134
Fantasy, The. Exercise Shipping Co Ltd <i>v.</i> Bay Maritime Lines Ltd [1992] 1 Lloyd's Rep 235 (CA)	4.88
Far Service, The. Enviroco Ltd <i>v.</i> Farstad Supply A/S [2009] EWCA Civ 1399; [2010] 2 Lloyd's Rep 375 (CA); [2010] UKSC 18; [2010] 2 Lloyd's Rep 387 (SC)	2.247, 2.252, 2.264
Federal Commerce & Navigation Co Ltd <i>v.</i> Molena Alpha Inc (The Nanfri, The Benfri, The Lorfri) [1978] QB 927; [1978] 2 Lloyd's Rep 132 (CA); affmd in part [1979] AC 757; [1979] 1 Lloyd's Rep 201 (HL)	2.273, 2.274, 2.275
Federal Schelde, The. Miles International Corp <i>v.</i> Federal Commerce & Navigation Co Ltd [1978] 1 Lloyd's Rep 285 (Sup Ct Quebec)	4.118
Federated Department Stores <i>v.</i> Brinke, 450 F.2d 1223 (5th Cir. 1971)	4.126
Feoso Maritime Co Ltd <i>v.</i> Faith Maritime Co Ltd (The Daphne L), Sing CA, 25 August 2003	2.149
Ferrexpo AG <i>v.</i> Gilson Investments Ltd [2012] EWHC 721 (Comm); [2012] 1 Lloyd's Rep 588	2.345
Ferryways NV <i>v.</i> Associated British Ports [2008] EWHC 225 (Comm); [2008] 1 Lloyd's Rep 639	2.27, 2.292, 2.306, 2.308
Fesco Angara, The. OceanConnect UK Ltd <i>v.</i> Angara Maritime Ltd [2010] EWCA Civ 1050; [2011] 1 Lloyd's Rep 399 (CA)	2.333
Finagra (UK) Ltd <i>v.</i> OT Africa Line Ltd [1998] 2 Lloyd's Rep 622	3.52, 3.71
Finnrose, The. Fort Sterling Ltd <i>v.</i> South Atlantic Cargo Shipping NV [1994] 1 Lloyd's Rep 559	2.312
Fiona, The. Mediterranean Freight Services Ltd <i>v.</i> B.P. Oil International Ltd [1994] 2 Lloyd's Rep 506 (CA)	2.242
Fiona Trust & Holding Corp <i>v.</i> Privalov [2007] UKHL 40; [2008] 1 Lloyd's Rep 254 (HL) ...	2.337, 2.340, 2.344
Fireman's Fund Insurance Co <i>v.</i> Orient Overseas Container Line Ltd [2003] AMC 1795	3.54
Fireman's Fund Insurance Co <i>v.</i> Tropical Shipping and Construction Co Ltd [2001] AMC 2474 (11th Cir.)	4.140, 4.142

TABLE OF CASES

Firmin & Collins Ltd <i>v.</i> Allied Shippers Ltd [1967] 1 Lloyd's Rep 633	2.117, 2.173, 2.186
Fisher <i>v.</i> Smith (1878–79) 4 App Cas 1 (HL)	2.152
Fishman & Tobin Inc <i>v.</i> Tropical Shipping and Construction Co Ltd [1999] AMC 1051 (SD Fla); affmd [2001] AMC 1663	4.140, 4.141
Flamar Interoccean <i>v.</i> Denmac (The Flamar Pride and The Flamar Progress) [1990] 1 Lloyd's Rep 434	2.27, 2.300
Floreana, In re The [1999] AMC 2930 (SD Tex)	4.143
Fonderie Officine Meccaniche Tacconi SpA <i>v.</i> Heinrich Wagner Sinto Maschinenfabrik GmbH (HWS) (Case C–334/00) [2002] ECR I–7357	2.357, 2.362
Fort Sterling Ltd <i>v.</i> South Atlantic Cargo Shipping NV (The Finnrose) [1994] 1 Lloyd's Rep 559	2.313
Forum Craftsman, The [1984] 2 Lloyd's Rep 102; affmd [1985] 1 Lloyd's Rep 291 (CA)	2.341
Fothergill <i>v.</i> Monarch Airlines Ltd [1981] AC 251; [1980] 2 Lloyd's Rep 295 (HL)	3.96
Fowles <i>v.</i> G.W. Ry, 7 Ex 699	3.7
Fox and Associates Inc <i>v.</i> M/V Hanjin Yokohama [1998] AMC 1090 (CD Cal 1997)	4.113, 4.119
Frankfurt 13.10.1989 (Transportrecht 1990, No. 5, p. 196; Bulletin des Transports Internationaux Ferroviaires 1990, p. 116)	4.82
Frans Maas (UK) Ltd <i>v.</i> Samsung Electronics (UK) Ltd [2004] EWHC 1502; [2004] 2 Lloyd's Rep 251	2.11, 2.16, 2.295, 2.296, 2.301, 2.309
Freedom Maritime Corp <i>v.</i> International Bulk Carriers (The Khian Captain (No. 2)) [1986] 1 Lloyd's Rep 429	2.275, 2.278
Freeman <i>v.</i> Birch (1833) 3 QB 492, 114 E.R. 596	2.21
Freight Systems Ltd <i>v.</i> Korea Shipping Corp (The Korea Wonis-Sun) [1990] HKLY 151 (LMLN No. 290)	2.78, 3.13, 3.23
Frenkel <i>v.</i> MacAndrews & Co Ltd [1929] AC 545; (1929) 33 Ll L Rep 191 (HL)	2.136, 2.137
Front Comor, The. Allianz SpA <i>v.</i> West Tankers Inc (Case C–185/07) [2009] 1 AC 1138; [2009] 1 Lloyd's Rep 413	2.348, 2.352
Front Comor, The. West Tankers Inc <i>v.</i> RAS Riunione Adriatica di Sicurtà SpA [2007] UKHL 4; [2007] 1 Lloyd's Rep 391 (HL)	2.352
Front Comor, The. West Tankers Inc <i>v.</i> Allianz SpA [2012] EWHC 854 (Comm); [2012] 2 Lloyd's Rep 103	2.348
Fruit of the Loom <i>v.</i> Arawak [2000] AMC 387 (SD Fla, 1998)	3.7, 3.19, 3.76
Fujitsu Computer Products Corp <i>v.</i> Bax Global Inc [2005] EWHC 2289 (Comm); [2005] 2 CLC 760	3.78
GHSP Inc <i>v.</i> AB Electronic Ltd [2010] EWHC 1828 (Comm); [2011] 1 Lloyd's Rep 432	2.15
GIE Group Concorde <i>v.</i> Master of the “Vessel Suhadiwarno Panjan” (Case C–440/97) [1999] ECR I–6307; [1999] Euro CL 10; [2000] All ER (EC) 865	2.355, 2.358
Gabriele Wehr, The (1990) 25 ETL 589 (SC Neth)	3.68
Gagniere (A.) & Co Ltd <i>v.</i> Eastern Company of Warehouses Insurance & Transport of Goods with Advances Ltd (1921) 7 Ll L Rep 188	2.4, 2.86
Galatia, The. M Golodetz & Co Inc <i>v.</i> Czarnikow-Rionda Co Inc [1979] 2 Lloyd's Rep 450	4.113
Galaxy Special Maritime Enterprise <i>v.</i> Prima Ceylon Ltd (The Olympic Galaxy) [2006] EWCA Civ 528; [2006] 2 Lloyd's Rep 27 (CA)	2.351
Gallaher <i>v.</i> British Road Services and Containerway & Roadferry Ltd [1974] 2 Lloyd's Rep 441 ...	2.295, 2.296
Gallimore <i>v.</i> Moore (1867) 6 SCR (NSW) 388	2.149
Garlick <i>v.</i> W. & H. Rycroft Ltd [1982] CAT 277; [1984] 134 New LJ 607	2.100, 2.117
Garnham, Harris & Elton <i>v.</i> Alfred W. Ellis (Transport) [1967] 1 WLR 940; [1967] 2 Lloyd's Rep 22	2.48, 2.49, 2.51, 2.140, 2.296, 2.307
Gebr. Bellmer K.G. <i>v.</i> Terminal Services Houston, 711 F. 2d 622 (5th Cir. 1983)	4.145
Geering <i>v.</i> Stewart Transport [1967] NZLR 802	2.105
Gefco (UK) Ltd <i>v.</i> Mason (No. 1) [1998] 2 Lloyd's Rep 585 (CA)	1.26, 2.25
Geldof Metaalconstructie NV <i>v.</i> Simon Carves Ltd [2010] EWCA Civ 667; [2011] 1 Lloyd's Rep 517 (CA)	2.267, 2.273
General Feeds Inc <i>v.</i> Burnham Shipping Corp (The Amphion) [1991] 2 Lloyd's Rep 101	2.235
General Motors Corp <i>v.</i> Cast (1993) Ltd (The Cast Muskox) (1994) 378 LMLN 2 (Fed Ct Can (Trial Div), 28 Feb 1994)	4.122
Geofizika DD <i>v.</i> MMB International Ltd Greenshields Cowie & Co Ltd (Third Party) (The Green Island) [2010] EWCA Civ 459; [2010] 2 Lloyd's Rep 1 (CA)	2.118–2.120, 2.132, 4.100

TABLE OF CASES

George Mitchell (Chesterhall) Ltd <i>v.</i> Finney Lock Seeds Ltd [1983] 2 AC 803; [1983] 2 Lloyd's Rep 272 (HL)	2.31, 2.292
George Pulman & Sons Ltd <i>v.</i> F.E. Crowe (t/a Crowe & Co) (1920) 3 Ll L Rep 100	2.109, 2.111
Giannis NK, The. Effort Shipping Co Ltd <i>v.</i> Linden Management SA [1998] AC 605; [1998] 1 Lloyd's Rep 337; [1998] 2 WLR 206; [1998] 1 All ER 495 (HL)	2.219, 2.235, 3.115
Gibbon <i>v.</i> Paynton (1796) 4 Burr 2298	2.205
Giblin <i>v.</i> McMullen (1867–69) LR 2 PC 317 (PC Aus)	2.99
Gillespie Bros & Co Ltd <i>v.</i> Roy Bowles Transport Ltd, Rennie Hogg Ltd (Third Party) [1973] QB 400; [1973] 1 Lloyd's Rep 10 (CA)	2.227, 2.250, 2.292, 2.295, 4.5, 4.6
Gillette Industries Ltd <i>v.</i> W.H. Martin Ltd [1966] 1 Lloyd's Rep 57 (CA)	2.97, 2.113
Giorgis Carras, The. Louis Dreyfus Commodities Ltd <i>v.</i> Bolster Shipping Co Ltd [2010] 1732 (Comm); [2011] 1 Lloyd's Rep 455	2.333
Glasgow West Housing Association Ltd <i>v.</i> Siddique 1998 SLT 1081	2.132
Glebe Island Terminals Pty <i>v.</i> Continental Seagram Pty (The Antwerpen) [1994] 1 Lloyd's Rep 213 (CA NSW)	2.297, 3.14
Glencore Grain Ltd <i>v.</i> Agros Trading Co Ltd [1999] 2 Lloyd's Rep 410; [1999] CLC 1696 (CA)	2.273
Glencore International A.G. <i>v.</i> Metro Trading International Inc (No. 1) [1999] 2 Lloyd's Rep 632	2.347
Glynn <i>v.</i> Margetson & Co [1893] AC 351 (HL)	2.136
Glyn Mills Currie & Co <i>v.</i> East and West India Dock Co (1881–82) LR 7 App Cas 591 (HL)	2.90
Glyphics Media Inc <i>v.</i> M/V Conti Singapore [2003] AMC 851 (SDNY)	3.21
Godafoss, The, 1.6.2012 (Neth SC)	3.85
Gomer & Co <i>v.</i> Pitt & Scott Ltd (1922) 12 Ll L Rep 115 (CA)	2.101, 2.199
Good Luck, The (No. 2). Bank of Nova Scotia <i>v.</i> Hellenic Mutual War Risk Association (Bermuda) Ltd [1991] 2 Lloyd's Rep 191 (HL)	2.220
Goodwin Ferreira & Co Ltd <i>v.</i> Lamport & Holt Ltd (1929) 34 Ll L Rep 192	4.123
Gore <i>v.</i> Van der Lann [1967] 2 QB 31; [1967] 1 Lloyd's Rep 145 (CA)	2.248
Gosse Millard Ltd <i>v.</i> Canadian Government Merchant Marine Ltd (The Canadian Highlander) [1929] AC 223; (1928) 32 Ll L Rep 91 (HL)	4.25
Gould <i>v.</i> South Eastern & Chatham Ry Co [1920] 2 KB 191	2.228, 4.128
Goya Foods Inc <i>v.</i> S.S. Italia [1987] AMC 817 (2d Cir. 1983)	3.28
Grace Plastics Ltd <i>v.</i> The Bernd Wesch II (1971) FC 387	4.128
Granite State Insurance Co <i>v.</i> Hanjin Shipping Co Ltd [1995] AMC 196 (CD Cal 1994)	3.18
Granite State Insurance Co <i>v.</i> M/V Caraïbe [1994] AMC 686 (USDC Puerto Rico 1993)	4.143
Granville Oils & Chemicals Ltd <i>v.</i> Davies Turner & Co Ltd, Leeds District Registry Mercantile Court, 21 October 2002; [2003] EWCA Civ 570; [2003] 2 Lloyd's Rep 356 (CA)	2.11, 2.44, 2.75, 2.112, 2.178, 2.186, 2.301, 2.309
Great American Insurance Companies <i>v.</i> M/V Romeral [1997] AMC 2431 (ED La)	4.101, 4.103
Great Northern Railway Co <i>v.</i> L.E.P. Transport & Depository Ltd [1922] 2 KB 742; (1922) 11 Ll L Rep 133 (CA)	2.219, 2.224, 2.227, 2.235
Great Northern Railway <i>v.</i> Swaffield (1874) LR 9 Ex 132	2.169, 2.173
Great Northern Railway <i>v.</i> Witham (1873) LR 9 CP 16	2.292
Great Western Railway <i>v.</i> Bagge (1885) 15 QBD 625	2.21
Great Western Railway <i>v.</i> James Durnford (1928) 139 LT 145	2.240, 2.252
Green Island, The. Geofizika DD <i>v.</i> MMB International Ltd Greenshields Cowie & Co Ltd (Third Party) [2010] EWCA Civ 459; [2010] 2 Lloyd's Rep 1 (CA)	2.118–2.120, 4.100
Green (R.W.) Ltd <i>v.</i> Cade Bros. Farm [1963] 1 Lloyd's Rep 602	2.31, 2.292, 2.308
Green (R.H.) & Silley Weir Ltd <i>v.</i> British Railways Board [1985] 1 All ER 237; (1985) 17 BLR 94	2.254
Greene Wood & McLean <i>v.</i> Templeton Insurance Ltd [2009] EWCA Civ 65; [2009] 1 WLR 2013 (CA)	2.351
Greeves <i>v.</i> West India and Pacific S.S. (1870) 22 LT 615	3.7, 3.9
Grimaldi Compagnia di Navigazione SpA <i>v.</i> Sekiyo Lines Ltd (The Seki Rolette) [1998] 2 Lloyd's Rep 638	2.311
Grogan <i>v.</i> Robin Meredith Plant Hire, <i>The Times</i> , 20 February 1996 (CA)	2.10
Gromal (UK) Ltd (in liquidation) <i>v.</i> W.T. Shipping Ltd, CA, 13 July 1984, unreported, Lexis	2.161, 2.254, 2.261, 2.262, 2.267
Gross Machinery Group <i>v.</i> M/V Alligator Independence [1994] AMC 732 (SDNY 1992)	3.23
Groupe Chegaray/V De Chalus <i>v.</i> P&O Containers [2001] AMC 1858 (11th Cir.) ..	4.140, 4.145, 4.149

TABLE OF CASES

Grovit <i>v.</i> De Nederlandsche Bank NV [2005] EWHC 2944 (QB); [2006] 1 Lloyd's Rep 636 (QBD); [2007] EWCA Civ 953; [2008] 1 WLR 51 (CA)	2.364
Grovit <i>v.</i> De Nederlandsche Bank NV [2010] EWCA Civ 459; [2010] 2 Lloyd's Rep 1 (CA)	2.352
Grumont, The. Burck Mills Ltd <i>v.</i> Black Sea Steamship Co (1973) FC 387, [1973] 2 Lloyd's Rep 531	4.128
Guadano <i>v.</i> S.S. Cap Vincent [1973] FC 726	4.101
Gudermes, The. Mitsui & Co Ltd <i>v.</i> Novorossiysk Shipping Co [1991] 1 Lloyd's Rep 456	2.40
Guignan Freres <i>v.</i> Cox (1920) 5 Ll L Rep 49	2.186
Gulf Bank KSC <i>v.</i> Mitsubishi Heavy Industries Ltd [1994] 1 Lloyd's Rep 323	2.331
Gulf Grain, The and The El Amaan. Atlas Shipping Agency (UK) Ltd <i>v.</i> Suisse Atlantique Societe d'Armement Maritime SA [1995] 2 Lloyd's Rep 188	2.357
HIH Casualty & General Insurance Ltd <i>v.</i> Chase Manhattan Bank [2003] UKHL 6; [2003] 1 All ER (Comm) 349 (HL)	2.242, 2.295, 2.309
HSBC Insurance Ltd <i>v.</i> Scanwell Container Line Ltd [2001] AMC 1621; [2002] AMC 411 (CD Cal 2001)	3.33, 3.75
Habib Bank Ltd <i>v.</i> Central Bank of Sudan [2006] EWHC 1767 (Comm); [2006] 2 Lloyd's Rep 412	2.280
Hadley <i>v.</i> Baxendale (1854) 9 Ex 341	2.226, 2.298
Hadley Design Associates Ltd <i>v.</i> The Lord Mayor and Citizens of the City of Westminster [2003] EWHC 1617 (TCC); [2004] TCLR 1	2.27
Haemopharm Inc <i>v.</i> M/V MSC Indonesia [2002] AMC 1297 (SDNY)	4.139, 4.140, 4.141
Hair and Skin Trading Co Ltd <i>v.</i> Norman Airfreight Carriers Ltd and World Transport Agencies [1974] 1 Lloyd's Rep 443	2.55, 2.67, 2.7, 2.261, 2.264
Haji-Ioannou <i>v.</i> Frangos [1999] 2 Lloyd's Rep 337 (CA)	2.344
Hall <i>v.</i> Heart of England Balloon Ltd, Birm CC, 13.10.2009; [2010] 1 Lloyd's Rep 373	2.311
Halm Industries <i>v.</i> Timur Star [1985] AMC 391 (SDNY 1984)	2.87, 3.14, 3.20, 3.23, 3.89
Hamburg Star, The [1994] 1 Lloyd's Rep 399	3.31, 4.89
Hamed el Chiatty & Co (t/a Travco Nile Cruise Lines) <i>v.</i> Thomas Cook Group Ltd (The Nile Rhapsody) [1994] 1 Lloyd's Rep 382 (CA)	2.344
Hamlyn & Co <i>v.</i> Talisker Distillery [1894] AC 202 (HL)	2.316
Hanak <i>v.</i> Green [1958] 2 QB 9 (CA)	2.273
Hancock Shipping Co Ltd <i>v.</i> Deacon & Trysail (Private) Ltd (The Caspar Trader) [1991] 2 Lloyd's Rep 550	2.255
Hanjin Marseilles, The. Trane Co <i>v.</i> Hanjin Shipping Co Ltd [2001] 2 Lloyd's Rep 735 (HK HC)	3.70
Happy Ranger, The. Parsons Corp <i>v.</i> C.V. Scheepvaartonderneming Happy Ranger [2001] 2 Lloyd's Rep 357 (CA)	3.37, 3.56, 3.70, 4.104
Hari Bhum, The [2004] 1 Lloyd's Rep 206	2.329, 2.333
Harlow & Jones Ltd <i>v.</i> P.J. Walker Shipping & Transport Ltd [1986] 2 Lloyd's Rep 141 ..	2.66, 2.251
Harper (A.C.) & Co Ltd <i>v.</i> R.D. Mackechnie & Co (1925) 22 Ll L Rep 514	2.178
Harpers Trading (Singapore) Pte Ltd <i>v.</i> R.F.L. International (The Planeta) (1994, unreported, NSW)	4.126
Harris <i>v.</i> G.W. Rly (1876) 1 QBD 515	2.10
Harris (L.) (Harella) Ltd <i>v.</i> Continental Express Ltd and Burn Transit Ltd [1961] 1 Lloyd's Rep 251	2.18, 2.52, 2.58, 2.62, 2.69, 2.105, 2.172, 2.264
Harrison and Sons Ltd <i>v.</i> R.T. Stewart Transport Ltd (1993) 28 ETL 747	2.366
Harrods (Buenos Aires) Ltd (No. 2), Re [1992] Ch.72 (CA)	2.344, 2.345
Hartford Fire Insurance Co <i>v.</i> Novocargo USA [2003] AMC 851 (SDNY)	3.21, 4.93
Hartford Fire Insurance Co <i>v.</i> OOCL Bravery [2000] 1 Lloyd's Rep 394; [2000] AMC 1305 (SDNY 1999), rvsd [2001] AMC 25 (2d Cir., 2000)	3.7, 3.75, 3.77
Hartford Fire Insurance Co <i>v.</i> Pacific Far East Line Inc [1974] AMC 1475 (9th Cir., 1974) ...	4.142
Hartford Fire Insurance Co <i>v.</i> Savannah [1991] AMC 1923 (SDNY 1991)	3.27, 4.120
Hartford Fire Insurance Co <i>v.</i> Trans Freight Lines Inc [1998] AMC 1161 (4th Cir.), [1994] AMC 1650 (Mass 1994)	4.118, 4.119
Hatton <i>v.</i> Car Maintenance Co Ltd [1915] 1 Ch 621	2.151
Hatzl <i>v.</i> XL Insurance Co Ltd [2009] EWCA Civ 223; [2010] 1 WLR 470; [2009] 1 Lloyd's Rep 555 (CA)	2.365
Havhelt, The [1993] 1 Lloyd's Rep 523	2.312, 2.331
Hayes-Leger Assocs <i>v.</i> M.V. Oriental Knight, 765 F.2d 1076 (11th Cir. 1985); [1986] AMC 1724	4.141, 4.142, 4.147, 4.153

TABLE OF CASES

Hedley Byrne & Co Ltd v. Heller & Partners Ltd [1964] AC 465; [1963] 1 Lloyd's Rep 485 (HL)	2.193, 2.197, 2.201, 2.235, 2.357
Heinz-Wattie Ltd v. Hamburg Sudamerikanische Dampfschiffahrts-gesellschaft (No. 2), HC NZ, 24 March 2000, Auckland Registry CP451/96	2.312
Hellaby v. Weaver (1851) 17 LTOS 271	2.105
Henderson v. Merrett Syndicates Ltd (No. 1) [1995] 2 AC 145; [1994] 2 Lloyd's Rep 468; [1994] 3 All ER 506 (HL)	2.96, 2.114, 2.132, 2.144, 2.145, 2.196, 2.197, 2.199, 2.201, 2.357
Henderson v. Merrett Syndicates Ltd (No. 2) [1996] PNLR 32	2.97
Henderson v. Stevenson (1870-75) LR 2 Sc & Div 470; (HL)	2.10
Heron II, The. Koufos v. C. Czarnikow Ltd [1969] 1 AC 350; [1967] 2 Lloyd's Rep 457 (HL)	2.299
Herr-Voss Corp v. Columbus Line [1994] AMC 77 (D Md 1992)	3.17, 3.47
Heskell v. Continental Express Ltd (1949-50) 83 Ll L Rep 438	2.58, 2.111, 2.298
Heugh v. L. & N.W. Ry. (1870) LR 5 Ex 51	2.169
Hewden Tower Cranes Ltd v. Wolffkran GmbH [2007] EWHC 857 (TCC); [2007] 2 Lloyd's Rep 138	2.337, 2.338, 2.340, 2.343, 2.362
Hibernian, The [1907] P 277 (CA)	3.9, 3.31
Hida Maru, The. Kuwait Oil Co (KSC) v. Idemitsu Tankers KK [1981] 2 Lloyd's Rep 510 (CA)	2.331
Higginbotham v. G.N. Ry (1861) 2 F & F 796; 175 ER 1289	4.25
Highland Crusader Offshore Partners LLP v. Deutsche Bank AG [2009] EWCA Civ 725; [2009] 2 Lloyd's Rep 617 (CA)	2.331, 2.333
Hippisley v. Knee Bros. [1905] 1 KB 1	2.167
Hiram Walker & Sons Inc v. Kirk Line [1993] AMC 965; [1995] AMC 879 (11th Cir. 1992, 1994)	3.14
Hirdaramani v. OCS, Hong Kong H Ct, 18 July 2000	2.112
Hirst v. Page (1891) 7 TLR 537	2.151
Hispanica de Petroles SA v. Vencedora Oceanica Navegacion SA (The Kapetan Markos NL) (No. 1) [1986] 1 Lloyd's Rep 211 (CA)	2.312
Hoare v. Great Western Railway (1877) 37 LT 186	2.187
Hobbs v. Peters Transport Co Pty Ltd (1971) 124 CLR 220	2.116
Holland Colombo Trading Society Ltd v. Alawdeen (Segu Mohamed Khaja) [1954] 2 Lloyd's Rep 45 (PC)	3.10
Hollandia, The and The Morviken. Owners of Cargo on Board the Morviken v. Owners of the Hollandia [1983] 1 AC 565; [1983] 1 Lloyd's Rep 1 (HL)	2.318
Hollier v. Rambler Motors (A.M.C.) Ltd [1972] 2 QB 71 (CA)	2.147
Holstencruiser, The. Iverans Rederei A/S v. M.S. Holstencruiser Seeschiffahrts GmbH & Co K.G. [1992] 2 Lloyd's Rep 378	3.7, 4.88
Holwell Securities Ltd v. Hughes [1974] 1 WLR 155 (CA)	2.147
Homburg Houtimpport BV v. Agrosin Private Ltd (The Starsin) [2003] UKHL 12; [2003] 2 WLR 711; [2004] 1 AC 715 (HL)	2.245, 2.247, 2.252, 3.20, 3.37, 3.84
Homecraft Weavers Ltd v. George Ewer & Co Ltd (1945) 78 Ll L Rep 496	2.49, 2.140
Hong Kong and Shanghai Banking Corp v. Kloeckner & Co AG [1990] 2 QB 514; [1989] 2 Lloyd's Rep 323	2.277
Horn Linie GmbH & Co v. Panamericana Formas e Impresos SA (The Hornbay) [2006] EWHC 373 (Comm); [2006] 2 Lloyd's Rep 44	2.317, 2.331
Hornbay, The. Horn Linie GmbH & Co v. Panamericana Formas e Impresos SA [2006] EWHC 373 (Comm); [2006] 2 Lloyd's Rep 44	2.317, 2.331
Horne v. Midland Railway Co (1873) LR 8 CP 131	2.291
Hotel Services Ltd v. Hilton International Hotels (UK) Ltd [2000] 1 All ER (Comm) 750 (CA)	2.292
Hough v. P & O Containers Ltd [1998] 2 Lloyd's Rep 318; [1998] 3 WLR 851	2.344
Houghland v. R.R. Low (Luxury Coaches) Ltd [1962] 1 QB 694 (CA)	2.99, 2.100, 2.122
Houlden & Co v. S.S. Red Jacket (The Red Jacket) [1977] AMC 1382 (SDNY 1977); affmd 582 F. 2d. 1271 (2d Cir.), cert den 439 U.S. 1128; [1979] AMC 2018; [1978] 1 Lloyd's Rep 300 (US Ct)	4.103, 4.127, 4.153
Houlder v. General Steam Navigation (1862) 3 F & F 170	2.170
Howard v. Shirlstar Container Transport [1990] 3 All ER 366 (CA)	4.7
Howard Marine & Dredging Co Ltd v. A. Ogden & Sons (Excavations) Ltd [1978] QB 574; [1978] 1 Lloyd's Rep 334 (CA)	2.197, 2.198
Hugh Mack & Co Ltd v. Burns & Laird Lines Ltd (1944) 77 Ll L Rep 377 (CA NI)	2.82, 2.90
Hunt & Winterbotham Ltd v. Morny & Co (1922) 12 Ll L Rep 286	2.285, 2.296

TABLE OF CASES

Hunt & Winterbotham (West of England) v. B.R.S. Parcels [1962] 1 QB 617; [1961] 2 Lloyd's Rep 422 (CA)	2.297
Huntoon Co v. Kolynos Inc [1930] 1 Ch 528 (CA)	2.220
IFE Fund SA v. Goldman Sachs International [2006] EWHC 2887 (Comm); [2007] 1 Lloyd's Rep 264	2.201
I.M. Properties plc v. Cape & Dagleish [1998] 3 WLR 457; [1998] 3 All ER 203	2.279
I.N.A. v. American Argosy [1984] AMC 1547 (2d Cir.)	2.87, 3.23
I.N.A. v. Dart Containerline, 629 F.Supp 781 (ED Va 1985) [1987] AMC 42	4.101, 4.103, 4.116
I.N.A. v. Frio Brazil [1990] AMC 2506 (MD Fla)	4.119, 4.141
INA v. Savannah [1998] AMC 1029 (SDNY 1997)	3.14
I.P. Metal Ltd v. Ruote Oz SpA [1993] 2 Lloyd's Rep 60; affmd [1994] 2 Lloyd's Rep 560 (CA) ...	2.338, 2.339, 2.346
I.T.O. Ltd v. Miida Electronics Inc [1986] AMC 2580 (Sup Ct Can, 1986)	3.13, 3.14
Idefjord, The [1940] AMC 1280 (2d Cir. 1940)	3.33
Ilsinger v. Dreschers (C-180/06) [2009] ECR I-3961	2.335
Immediate Transportation Co Ltd v. Speller Willis & Co (1920) 2 Ll L Rep 645 ..	2.49, 2.72, 2.167, 2.173, 2.258
Import Export Metro Ltd v. Compania Sud Americana De Vapores [2003] 1 Lloyd's Rep 405	2.331
Invros, The. Transocean Liners Reederei GmbH v. Euxine Shipping Co Ltd [1999] 1 Lloyd's Rep 848	2.295
Inco Europe Ltd v. First Choice Distribution [1999] 1 WLR 270; [1999] 1 All ER 820 (CA)	2.55, 2.64, 2.70, 2.72, 2.77
Indemnity Insurance Co of North America v. Hanjin Shipping Co [2003] AMC 2705 (7th Cir.)	3.70
Indemnity Insurance Co of North America v. Schneider Freight USA [2001] AMC 2153 (C.D. Cal.)	3.17, 3.21
India (Republic of) v. India Steamship Co Ltd (The Indian Endurance and The Indian Grace) (No. 2) [1997] 3 WLR 818; [1998] 1 Lloyd's Rep 1 (HL)	2.312, 2.333
Indian Oil Corp Ltd v. Vanol Inc, "Indian Oil" [1991] 2 Lloyd's Rep 634; revsd [1992] 2 Lloyd's Rep 563 (CA)	2.17
Industrie Chimiche Italia Centrale v. Alexander G. Tsaviris & Sons Maritime Co (The Choko Star) [1995] 2 Lloyd's Rep 608; [1996] 1 All ER 114	2.314
Industrie Tessili Italiana Como v. Dunlop AG (Case 12/76) [1976] ECR 1473	2.355, 2.358
Ines, The. M.B. Pyramid Sound NV v. Briese-Schiffahrts GmbH & Co K.G. M.S. "Sina" [1995] 2 Lloyd's Rep 144	3.11, 3.31
Ingersoll Milling Machine Co v. M.V. Boden [1987] AMC 1131 (SDNY 1985, 1986)	4.101
Insurance Co of North America v. Blue Star (North America) [1997] AMC 2434; (1997) 467 LMLN (SDNY)	4.101, 4.103
Insurance Co of North America v. M/V Frio Brazil [1990] AMC 2506	4.149
Insurance Co of North America v. Ocean Lynx [1991] AMC 64 (11th Cir. 1990)	3.23, 3.38
Insurance Co of North America v. S.S. Zim, Hong Kong [1988] AMC 1047	3.47
Insured Financial Structures Ltd v. Elektrocieplownia Tychy SA [2003] EWCA Civ 110; [2003] 2 WLR 851	2.344
Inter-American Foods Inc v. Coordinated Caribbean Transport Inc, 313 F.Supp 1334 (SD Va 1970)	4.116, 4.141
Intercargo Insurance Company v. L.C. Shipping Inc [1998] AMC 2561 (App Div Sup Ct County LA)	4.113
Intercontainer Interfrigo SC (ICF) v. Balkenende Oosthuizen BV (Case C-133/08) [2010] 2 Lloyd's Rep 400	2.322, 2.323, 4.39
Interfoto Picture Library Ltd v. Stiletto Visual Programmes Ltd [1989] QB 433 (CA)	2.10
International Air and Sea Cargo GmbH v. Owners of the Chitral (The Chitral) [2000] 1 Lloyd's Rep 529	3.56
International Art Depositories v. Davies Turner & Co Ltd, <i>Lloyd's List</i> , 27 April 1928	2.186
International Bulk Shipping and Services Ltd v. Minerals and Metals Trading Corp of India [1996] 1 All ER 1017; [1996] 2 Lloyd's Rep 474 (CA)	2.314
International Distillers and Vintners Ltd (t/a Percy Fox & Co) v. J.F. Hillebrand (UK) Ltd, <i>The Times</i> , 25 January 2000	2.314
International Factory Sales v. The Alexander Serafimovich [1976] 1 FC 35	4.137
Internet Broadcasting Corp v. MAR LLC [2009] EWHC 744 (Ch)	2.295

TABLE OF CASES

Investors Compensation Scheme Ltd <i>v.</i> West Bromwich Building Society (No. 1) [1998] 1 WLR 896 (HL)	2.240
Ion, The. Unicoopjapan and Marubeni-Iida Co <i>v.</i> Ion Shipping Co [1971] 1 Lloyd's Rep 541	2.32
Ira, The; Coca-Cola Financial Corp <i>v.</i> Finsat International Ltd [1996] 2 Lloyd's Rep 274; [1996] 3 WLR 849; [1998] QB 43 (CA)	2.277
Irini A, The (No. 1). Ascot Commodities NV <i>v.</i> Northern Pacific Shipping [1999] 1 Lloyd's Rep 196	2.333
Ishag <i>v.</i> Allied Bank International, Fuhs and Kotalimbora [1981] 1 Lloyd's Rep 92	2.90
Island Archon, The. Triad Shipping Co <i>v.</i> Stellar Chartering and Brokerage Inc [1994] 2 Lloyd's Rep 227 (CA)	2.261
Italia Di Navigazione SpA <i>v.</i> M.V. Hermes I, 724 F.2d 21 (2d Cir. 1983)	4.102
Iverans Rederei A/S <i>v.</i> M.S. Holstencruiser Seeschiffahrts GmbH & Co K.G. (The Holstencruiser) [1992] 2 Lloyd's Rep 378	3.7, 4.88
J. Spurling Ltd <i>v.</i> Bradshaw [1956] 1 WLR 461; [1956] 1 Lloyd's Rep 392 (CA)	2.297
J.C.B. Sales Ltd <i>v.</i> M.V. Seijin [1996] AMC 1507 (SDNY)	2.87
J.I. Macwilliam Co Inc <i>v.</i> Mediterranean Shipping Co SA (The Rafaela S) [2003] EWCA Civ 556; [2003] 2 Lloyd's Rep 113; [2003] All ER (Comm) 219 (CA); [2005] UKHL 11; [2005] 1 Lloyd's Rep 347; [2005] 2 AC 423 (HL)	2.82, 2.84, 2.88, 3.6
JP Morgan Europe Ltd <i>v.</i> Primacom AG [2005] EWHC 508 (Comm); [2005] 2 Lloyd's Rep 665	2.347
Jaffer Esmail & Co <i>v.</i> Sorabjee M. Hooker, 6 EALR 35	2.109
Jagenberg Inc <i>v.</i> Georgia Ports Authority [1995] AMC 2333 (SD Ga 1995)	3.15, 3.20
James <i>v.</i> Europe West Indies Lines (UK) Ltd, (CA), 8 October 1997, unreported	2.47
James & Co Scheepvaart en Handelsmij BV <i>v.</i> Chinecrest Ltd [1979] 1 Lloyd's Rep 126 (CA)	2.276
James Archdale & Co Ltd <i>v.</i> Comservices Ltd [1954] 1 WLR 459 (CA)	2.243, 2.252
James Buchanan & Co Ltd <i>v.</i> Hay's Transport Services Ltd [1972] 2 Lloyd's Rep 535	2.59, 2.100
James N. Kirby Pty Ltd <i>v.</i> Norfolk Southern Railway Co; <i>sub nom</i> Norfolk Southern Railway Co <i>v.</i> James N. Kirby Pty Ltd [2002] AMC 2113 (11th Cir.); <i>revsd</i> 543 U.S. 14; [2004] AMC 2705	2.87, 3.17, 3.19, 3.22, 3.60, 3.127, 3.141
James Vale & Co <i>v.</i> Van Oppen & Co Ltd (1921) 6 Ll L Rep 167; 37 TLR 367	2.178, 2.183, 2.186
Jarl Trä AB <i>v.</i> Convoys Ltd [2003] 2 Lloyd's Rep 459	2.157, 2.161
Jay Bola, The. Payabi <i>v.</i> Armstel Shipping Corp [1992] 2 Lloyd's Rep 48	2.311, 2.312
Jenkins <i>v.</i> Smith (1969) 6 DLR (3d) 309	2.100
Jet2.Com Ltd <i>v.</i> Blackpool Airport Ltd [2012] EWCA Civ 417; 2012 WL 1067776	2.123
Jindal Iron and Steel; Co Ltd <i>v.</i> Islamic Solidarity Shipping Co (The Jordan II) [2004] UKHL 49; [2005] 1 Lloyd's Rep 57(HL)	4.125, 4.126
Jockey International Inc <i>v.</i> M/V Leverkusen Express [2002] AMC 2377 (SDNY)	3.21
Jogia (A Bankrupt), Re [1988] 1 WLR 484	2.331
John Carter (Fine Worsteds) Ltd <i>v.</i> Hanson Haulage (Leeds) Ltd [1965] 1 QB 495; [1965] 1 Lloyd's Rep 49 (CA)	2.49, 2.140
John Dee Group Ltd <i>v.</i> WMH (21) Ltd (formerly Magnet Ltd) [1997] BCC 518	2.277
John McCann & Co <i>v.</i> Pow [1974] 1 WLR 1643 (CA)	2.142
John Rigby (Haulage) <i>v.</i> Reliance Marine Insurance Co [1956] 2 QB 468; [1956] 2 Lloyd's Rep 10 (CA)	2.78, 3.13
Johnson <i>v.</i> Taylor Bros & Co Ltd [1920] AC 144; (1919) 1 Ll L Rep 183 (HL)	2.351
Johnson Matthey & Co <i>v.</i> Constantine Terminals Ltd [1976] 2 Lloyd's Rep 215	2.23, 2.116
Johnson Matthey Bankers Ltd <i>v.</i> State Trading Corp of India Ltd [1984] 1 Lloyd's Rep 427 ...	2.15
Joint Stock Asset Management Co Ingosstrakh-Investments <i>v.</i> BNP Paribas SA [2012] EWCA Civ 644; [2012] 1 Lloyd's Rep 649	2.333, 2.351
Jones <i>v.</i> European and General Express Co Ltd (1920) 4 Ll L Rep 127	2.45, 2.114, 2.183
Jones <i>v.</i> Williams (1841) 7 M & W 493	2.256
Jordan II, The. Jindal Iron and Steel; Co Ltd <i>v.</i> Islamic Solidarity Shipping Co [2004] UKHL 49; [2005] 1 Lloyd's Rep 57(HL)	4.125, 4.126
Joseph Travers & Sons Ltd <i>v.</i> Cooper [1915] 1 KB 73 (CA)	2.187, 2.295
Junior Gallery Ltd <i>v.</i> NOL Ltd [1999] AMC 565 (SDNY 1998)	3.26, 4.126
K/S A/S Seateam & Co <i>v.</i> Iraqi National Oil Co (The Sevonina Team) [1983] 2 Lloyd's Rep 640	2.22
Kala Ltd <i>v.</i> International Freight Services (UK) Ltd, QBD, 7 June 1988 unreported, Lexis ...	2.55, 2.79, 2.112, 2.151, 2.154, 2.159, 2.161, 2.173, 2.253, 2.263, 2.267, 2.281

TABLE OF CASES

Kalfelis v. Bankhaus Schröder, Munchmeyer, Hengst & Co (t/a Hema Beteiligungsgesellschaft mbH) (Case C-189/87) [1988] ECR 5565	2.353, 2.354, 2.355, 2.356, 2.362
Kallang Shipping SA v. AXA Assurances Senegal (The Kallang) [2006] EWHC 2825; [2007] 1 Lloyd's Rep 160	2.333
Kallang Shipping SA v. AXA Assurances Senegal (The Kallang (No. 2)) [2008] EWHC 2761; [2009] 1 Lloyd's Rep 124	2.333
Kamali v. City & Country Properties [2006] EWCA Civ 1879; [2007] 1 WLR 1219 (CA)	2.351
Kamil Export (Australia) Pty Ltd v. NPL (Australia) Pty Ltd (The Ocean Trader) (1993) 113 AR 677, [1996] 1 VR 538 (Sup Ct Vict)	3.36, 3.90, 4.124
Kanematsu (Hong Kong) Ltd v. Eurasia Express Line [1997] CLY No. 4494; [1998] CLY No. 472 (CA)	3.11
Kapetan Markos NL, The (No. 1). Hispanica de Petroles SA v. Vencedora Oceanica Navegacion SA [1986] 1 Lloyd's Rep 211 (CA)	2.312
Kapitan Sakharov, The [2000] 2 Lloyd's Rep 255 (CA)	4.126, 4.127
Kaukomarkkinat O/Y v. Elbe Transport-Union GmbH (The Kelo) [1985] 2 Lloyd's Rep 85	2.40
Kaupthing Singer & Friedlander Ltd (In Administration), Re [2009] EWHC 740; [2009] 2 Lloyd's Rep 154	2.277
Keeton Sons & Co Ltd v. Carl Prior Ltd [1986] BTLC 30	2.10, 2.11, 2.28, 2.61, 2.290
Kefalonia Wind, The. Empresa Cubana Importadora de Alimentos v. Octavia Shipping Co SA [1986] 1 Lloyd's Rep 273	2.311
Kells & Co Ltd v. Clyde Shipping Co Ltd (1920) 3 Ll L Rep 243	2.297
Kelo, The. Kaukomarkkinat O/Y v. Elbe Transport-Union GmbH [1985] 2 Lloyd's Rep 85	2.40
Kenya Railways v. Antares Co Pte Ltd (The Antares) (No. 1) [1987] 1 Lloyd's Rep 424 (CA)	2.307
Kherson, The [1992] 2 Lloyd's Rep 261	2.344
Khian Captain, The (No. 2). Freedom Maritime Corp v. International Bulk Carriers [1986] 1 Lloyd's Rep 429	2.275, 2.278
Kia Steel Co Ltd v. M/V Mares Maersk [1999] AMC 2068	4.103
Kilroy Thompson Ltd v. Perkins & Homer Ltd [1956] 2 Lloyd's Rep 49	2.292
Kim Meller Imports Pty Ltd v. Eurolevant SpA & Ors, NSW Sup Ct, 6 February 1989, unreported	2.86
Kitts v. Atlantic Transport (1902) 7 Com Cas 227	3.9
Kleinwort Benson Ltd v. Glasgow City Council (No. 2) [1999] 1 AC 153 (HL)	2.357, 2.362
Kloeckner & Co .G v. Gatoil Overseas Inc [1990] 1 Lloyd's Rep 177	3.347
Knorr-Bremse Systems for Commercial Vehicles Ltd v. Haldex Brake Products GmbH [2008] EWHC 156 (Pat); [2008] 2 All ER (Comm) 448	2.337
Kodak v. Racine Terminal (Montreal) Ltd [1999] AMC 2628 (Fed Ct Can)	3.16
Komori America Corp v. Howland Hook Container Terminal [1998] AMC 2894 (SDNY)	3.14
Konica Business Machines U.S.A Inc v. Intransit Container Inc [1997] AMC 2685 (Comm Mass, 1996); affmd [1998] AMC 2705 (9th Cir.)	3.66
Konica Business Machines v. Vessel Sea-Land Consumer and Sea-Land Service Inc [1995] AMC 1065; affmd [1998] AMC 2705 (9th Cir.)	4.101, 4.103
Konkola Copper Mines plc v. Coromin Ltd [2005] EWHC 898 (Comm); [2005] 2 Lloyd's Rep 555 (QBD); [2006] EWCA Civ 5; [2006] 1 Lloyd's Rep 410 (CA)	2.337, 2.345
Konkola Copper Mines plc v. Coromin Ltd (No. 2) [2006] EWHC 1093 (Comm); [2006] 2 Lloyd's Rep 446	2.331, 2.337
Korea Wonis-Sun, The. Freight Systems Ltd v. Korea Shipping Corp [1990] HKLY 151 (LMLN No 290)	2.78, 3.13, 3.23
Kosta Melas, The. S.L. Sethia Liners v. Naviagro Maritime Corp [1981] 1 Lloyd's Rep 18	2.275
Koufos v. C. Czarnikow Ltd (The Heron II) [1969] 1 AC 350; [1967] 2 Lloyd's Rep 457 (HL)	2.299
Kribi, The (No. 1) OT Africa Line Ltd v. Hijazy (No. 1) [2001] 1 Lloyd's Rep 76	2.333, 2.339
Kronhofer v. Maier (Case C-168/02) [2005] 1 Lloyd's Rep 284	2.363
Kruger & Co Ltd v. Moel Tryvan Ship Co Ltd [1907] AC 272 (HL)	2.237
Kukje Hwajae Insurance Co Ltd v. M/V Hyundai Liberty [2002] AMC 1598 (9th Cir.)	3.21
Kuliachar Sweater Industries Ltd v. Frans Maas (UK) Ltd, QBD, 4 April 2000, unreported, Lexis	2.279
Kum v. Wah Tat Bank Ltd [1971] AC 439; [1971] 1 Lloyd's Rep 439 (PC Mal)	2.83
Kurz v. Stella Musical Veranstaltungen GmbH [1992] 1 All ER 630	2.344
Kuwait Oil Co (KSC) v. Idemitsu Tankers KK (The Hida Maru) [1981] 2 Lloyd's Rep 510 (CA)	2.331

TABLE OF CASES

La Pintada, The (No. 1). <i>President of India v. La Pintada Compania Navigacion SA</i> (No. 1) [1985] AC 104; [1984] 2 Lloyd's Rep 9 (HL)	2.279
Laceys (Wholesale) Footwear Ltd <i>v. Bowler International Freight Ltd</i> [1997] 2 Lloyd's Rep 369 (CA)	2.10, 2.11, 2.17, 2.181
Lafarge Plasterboard Ltd <i>v. Fritz Peters & Co KG</i> [2000] 2 Lloyd's Rep 689	2.338
Lafi Office & International Business S.L. <i>v. Meriden Animal Health Ltd</i> [2000] 2 Lloyd's Rep 51	2.347
Lambert (Iris Frances) <i>v. Lewis</i> (Donald Richard) [1982] AC 225; [1981] 2 Lloyd's Rep 17 (HL)	2.228
Lamport & Holt Lines <i>v. Coubro & Scrutton</i> (M. & I.) Ltd (The Raphael) [1982] 2 Lloyd's Rep 42 (CA)	2.242
Landauer & Co <i>v. Smits & Co</i> (1921) 6 Ll L Rep 577	2.53, 2.7, 2.80, 2.298
Landcatch Ltd <i>v. Marine Harvest Ltd</i> 1985 SLT 478 (2 Div)	2.28
Langley, Beldon & Gaunt Ltd <i>v. Morley</i> [1965] 1 Lloyd's Rep 297	2.80, 2.112, 2.153, 2.155, 2.159
Lapad, The. <i>Atlanska Plovidba v. Consignaciones Asturianas SA</i> [2004] EWHC 1273 (Comm); [2004] 2 Lloyd's Rep 109	2.16, 2.331
Laroche <i>v. Spirit of Adventure</i> (UK) Ltd [2009] EWCA Civ 12; [2009] QB 778 (CA)	2.311
Lavington Bros. <i>v. Cooper & Co, World Carriers, Mayor's Ct, 16 October 1922</i>	2.109
Leaf <i>v. Canadian Shipping</i> (1878) 1 WN 220	2.149
Learoyd Bros & Co and Huddersfield Fine Worsteds <i>v. Pope & Sons</i> (Dock Carriers) [1966] 2 Lloyd's Rep 142	2.105
Leather's Best Inc <i>v. S.S. Mormaclynx</i> , 313 F.Supp 1373 (SDNY 1970); [1970] 1 Lloyd's Rep 527; affmd, 451 F.2d 800 (2d Cir. 1971); [1971] AMC 2383	4.135, 4.147
Leather's Best Intl. <i>v. Lloyd Sergipe</i> [1991] AMC 1929 (SDNY 1991)	4.103, 4.113, 4.119
Leathertex Divisione Sintetici SpA <i>v. Bodetex BVBA</i> (Case C-420/97) [1999] ECR I-6747	2.358
Lee Cooper Ltd <i>v. C.H. Jeakins & Sons Ltd</i> [1967] 2 QB 1; [1964] 1 Lloyd's Rep 300 ..	2.57, 2.69, 2.75, 2.264
Lehmann Timber, The. <i>Metall Market OOO v. Vitorio Shipping Co Ltd</i> [2012] EWHC 844 (Comm); [2012] 2 Lloyd's Rep 73	2.161
L'Estrange <i>v. F. Graucob Ltd</i> [1934] 2 KB 394	2.10
Levi Strauss & Co <i>v. Sea-Land Service Inc</i> [2003] AMC 1447 (SDNY)	3.21, 4.120
Levi Strauss & Co <i>v. Tropical Shipping & Construction Ltd</i> [2003] AMC 283 (SD Fla 2002)	3.76
Levison <i>v. Patent Steam Carpet Cleaning Co Ltd</i> [1978] QB 69 (CA)	2.297
Lexmar Corp and Steamship Mutual Underwriting Association (Bermuda) Ltd <i>v. Nordisk Skibsforsikring</i> and Northern Tankers (Cyprus) Ltd [1997] 1 Lloyd's Rep 717	2.347
Lickbarrow <i>v. Mason</i> (1794) 5 Term Rep 683	2.82, 2.90, 3.9
Lime Intl. <i>v. Alpha N.A. Line</i> [1979] AMC 2693 (SDNY 1979)	4.101
Limnos, The. <i>Serena Navigation Ltd v. Dera Commercial Establishment</i> [2008] EWHC 1036 (Comm); [2008] 2 Lloyd's Rep 166	2.292, 3.61, 3.106, 3.132
Lindenhall, The [1945] P 8; (1945) 78 Ll L Rep 215 (CA)	2.240
Lisboa, The. <i>Mike Trading & Transport Ltd v. R. Pagnan & Fratelli</i> [1980] 2 Lloyd's Rep 546 (CA)	2.333, 2.334
Lister <i>v. Lancashire and Yorkshire Railway Co</i> [1903] 1 KB 878	2.139, 2.231
Lister <i>v. Romford Ice and Cold Storage Co Ltd</i> [1957] AC 555; [1956] 2 Lloyd's Rep 505 (HL)	2.248
London-Calais Shipping Co Ltd <i>v. J. & B. Harding Ltd</i> (1924) 18 Ll L Rep 272	2.257
London Chatham and Dover Railway Co <i>v. South Eastern Railway Co</i> [1893] AC 429 (HL)	2.279
London and Lancashire Fire Insurance Co Ltd <i>v. Bolands Ltd</i> [1924] AC 836; (1924) 19 Ll L Rep 1 (HL UK-Irl)	2.283
London and North Eastern Railway Co <i>v. Furness Shipbuilding Co</i> (1934) 150 LT 382	2.240
London and North Western Railway Co <i>v. Hudson & Sons Ltd</i> [1920] AC 324 (HL)	2.228
Long <i>v. District Messenger & Theatre Ticket Co</i> (1916) 32 TLR 596	2.203, 2.208
Losinjska Plovidba <i>v. Transco Overseas Ltd</i> (The Orjula) [1995] 2 Lloyd's Rep 395	2.219, 2.224, 2.235
Lotus Cars Ltd <i>v. Southampton Cargo Handling plc</i> (The Rigoletto) [2000] 2 Lloyd's Rep 532 (CA)	2.146, 3.13
Louis Dreyfus <i>v. Paterson S.S.</i> [1930] AMC 1555	3.7
Louis Dreyfus Commodities Ltd <i>v. Bolster Shipping Co Ltd</i> (The Giorgis Carras) [2010] 1732 (Comm); [2011] 1 Lloyd's Rep 455	2.333
Lubbe <i>v. Cape Plc</i> (No. 2) [2000] 2 Lloyd's Rep 383 (HL)	2.344
Lucy, The. <i>Atlantic Lines & Navigation Co Inc v. Hallam Ltd</i> [1983] 1 Lloyd's Rep 188	2.127

TABLE OF CASES

Lucky-Goldstar International (America) Inc <i>v.</i> S.S. California Mercury [1991] AMC 1018 (SDNY 1990)	3.17
Lufty Ltd <i>v.</i> Canadian Pacific Railway Co (The Alex) [1974] 1 Lloyd's Rep 106 (Fed Ct Can)	2.18, 3.27, 3.29, 3.31, 4.50, 4.117
Luigi Riva Di Fernando <i>v.</i> Simon Smits Co Ltd (1920) 2 Ll L Rep 279; affmd (1920) 4 Ll L Rep 264 (CA)	2.71, 2.91, 2.298
Lukoil-Kalingradmorneft plc <i>v.</i> Tata Ltd and Global Marine Transportation (No. 2) [1999] 2 Lloyd's Rep 129 (CA)	2.67, 2.149
Lund (J.O.) Ltd <i>v.</i> Anglo Overseas Transport Co Ltd [1955] 1 Lloyd's Rep 142	2.158, 2.201, 2.262
Lynch Bros. <i>v.</i> Edwards & Fase (1921) 6 Ll L Rep 371	2.53
Lyons-Magnus <i>v.</i> American Hawaiian (The Exeter) 41 F.Supp. 575; [1941] AMC 1550 (SDNY 1941)	3.38
M. Golodetz & Co Inc <i>v.</i> Czarnikow-Rionda Co Inc (The Galatia) [1979] 2 Lloyd's Rep 450	4.113
M.B. Pyramid Sound NV <i>v.</i> Briese Schifffahrts GmbH & Co K.G. M.S. "Sina" (The Ines) [1995] 2 Lloyd's Rep 144	3.11, 3.31
M.C. Machinery Systems Inc <i>v.</i> Maher Terminals Inc [2001] AMC 927 (NJ Sup Ct 2000)	3.20
MC Pearl, The; Mahavir Minerals Ltd <i>v.</i> Cho Yang Shipping Co Ltd [1997] 1 Lloyd's Rep 566 ...	2.311
MISC <i>v.</i> VISA Australia [2003] V.S.C.A. 64, 30 May 2003	4.93
MRG (Japan) Ltd <i>v.</i> Engelhard Metals Japan Ltd [2004] 1 Lloyd's Rep 731	2.351
MRI Trading AG <i>v.</i> Erdenet Mining Corp LLC [2012] EWHC 1988 (Comm)	2.123
MSC Mediterranean Shipping Co SA <i>v.</i> Polish Ocean Lines (The Tychy) (No. 1) [1999] 2 Lloyd's Rep 11 (CA)	1.17, 4.89
MSC Napoli, The. Metvale Ltd <i>v.</i> Monsanto International SARL [2008] EWHC 3002 (Admlty); [2009] 1 Lloyd's Rep 246	4.89
McCarren & Co <i>v.</i> Humber International Transport and Truckline Ferries (Poole) (The Vechscroon) [1982] 1 Lloyd's Rep 301	4.92
McCrone <i>v.</i> Boots Farm Sales Ltd 1981 SLT 103 (O.H.)	2.27
McKinnon <i>v.</i> Acadian Lines Ltd (1978) 81 DLR (3d) 480	2.116, 2.169
McNealy <i>v.</i> Pennine Insurance Co Ltd [1978] 2 Lloyd's Rep 18 (CA)	2.185, 2.186
Mackender <i>v.</i> Feldia AG [1967] 2 QB 590; [1966] 2 Lloyd's Rep 449 (CA)	2.331
Macrae & Dick <i>v.</i> Philip 1982 SLT (Sh Ct) 5	2.203
Madow <i>v.</i> S.S. Liberty Exporter [1978] AMC 425 (2d Cir. 1978)	3.26, 3.28, 3.33
Maersk Air Ltd <i>v.</i> Expeditors International (UK) Ltd [2003] 1 Lloyd's Rep 391	1.20, 2.57, 2.271
Maersk Line Ltd <i>v.</i> United States of America [2008] AMC 278 (4th Cir.)	4.141
Maersk Olie & Gas A/S <i>v.</i> Firma M De Haan (Case C-39/02) [2005] 1 Lloyd's Rep 210	2.365
Maersk-Sealand <i>v.</i> Ali Hussein Akar [2003] EWHC 797 (Comm)	2.311
Maersk-Sealand <i>v.</i> Eurocargo Express, LLC [2004] AMC 1098	4.96
Mahavir Minerals Ltd <i>v.</i> Cho Yang Shipping Co Ltd (The MC Pearl) [1997] 1 Lloyd's Rep 566 ...	2.311, 2.331
Maheno, The. EMI (New Zealand) Ltd <i>v.</i> Wm Holyman & Sons Pty Ltd and Another [1977] 1 Lloyd's Rep 1; [1976] 2 NZLR 5677 (Sup Ct NZ)	2.53, 2.57, 2.58, 2.59, 2.80
Mahkutai, The [1996] AC 650; [1996] 2 Lloyd's Rep 1 (PC HK)	2.146, 2.342, 4.13
Mainschiffahrts Genossenschaft eG (MSG) <i>v.</i> Les Gravieres Rhénanes Sarl (Case C-106/95) [1997] 3 WLR 179	2.338, 2.339, 2.358
Maira, The [1988] 2 Lloyd's Rep 126 (CA); rvsd [1990] 1 AC 637; [1990] 2 Lloyd's Rep 225 (HL)	2.104
Mana, The. Andromeda Marine SA <i>v.</i> O W Bunker & Trading A/S [2006] EWHC 777 (Comm); [2006] 2 Lloyd's Rep 319	2.338
Mannesman Demag Corp <i>v.</i> M/V Concert Express [2000] AMC 2935 (5th Cir.)	3.20, 3.71, 3.75
Mantovani <i>v.</i> Carapelli SpA [1980] 1 Lloyd's Rep 375 (CA)	2.334
Maple Leaf Macro Volatility Master Fund <i>v.</i> Rouvroy [2009] EWHC 257 (Comm); [2009] 1 Lloyd's Rep 475	2.337, 2.353, 2.363
Marbig Rexel Pty <i>v.</i> A.B.C. Container Line NV (The TNT Express) [1992] 2 Lloyd's Rep 636 (Sup Ct NSW)	2.231, 4.46, 4.116, 4.117, 4.130
Marbrook Freight <i>v.</i> KMI (London) [1979] 2 Lloyd's Rep 341 (CA)	2.112, 3.30
Marcatania, The HK (Ct of 1st inst, 2 December 2011)	4.89
Marcelino Gonzales y Compania S en C <i>v.</i> James Nourse Ltd [1936] 1 KB 565; (1935) 53 Ll L Rep 151	3.35
Margolis <i>v.</i> Newson Bros Ltd (t/a General Shipping & Forwarding Co) (1941) 71 Ll L Rep 47	2.109, 2.145

TABLE OF CASES

Marielle Bolten, The. <i>Whitsea Shipping and Trading Corp v. El Paso Rio Clara Ltda</i> [2009] EWHC 2552 (Comm); [2010] 1 Lloyd's Rep 648	2.247, 2.248, 2.342, 3.16, 3.84
<i>Marifortuna Naviera SA v. Government of Ceylon</i> [1970] 1 Lloyd's Rep 247	2.303
<i>Marinari v. Lloyds Bank plc</i> (Case C-364/93) [1996] 2 WLR 159; [1995] ECR I-2719	2.363
<i>Marine Office of American Corp v. N.Y.K. Line</i> [1987] AMC 652 (ND Ill 1985)	3.33
<i>Marinor Associates Inc v. M/V Panama</i> , 2011 WL 710616 (SD Tex)	4.101
<i>Mariola Marine Corp v. Lloyd's Register of Shipping</i> (The Morning Watch) [1990] 1 Lloyd's Rep 547	2.195
<i>Marlborough Hill, The v. Cowan & Sons</i> [1921] 1 AC 92	2.90
<i>Marley Co v. Cast North America</i> (1983) Inc (The Cast Husky) (1995) 405 LMLN 3	3.7
<i>Marston Excelsior Ltd v. Arbuckle Smith & Co Ltd</i> [1971] 2 Lloyd's Rep 306 (CA)	2.69, 2.70, 2.74, 2.112, 2.114, 2.284
<i>Mathew v. T.M. Sutton Ltd</i> [1994] 1 WLR 1455	2.279
<i>Mason v. Morrow's Moving & Storage Ltd</i> [1978] 4 WWR 534	2.117
<i>Masri v. Consolidated Contractors Group SAL</i> (Holding Company) [2005] EWCA Civ 1436; [2006] 1 Lloyd's Rep 391 (CA)	2.353
<i>Masri v. Consolidated Contractors International Co</i> [2008] EWCA Civ 624; [2008] 2 Lloyd's Rep 301 (CA)	2.345
<i>Masri v. Consolidated Contractors International Co</i> [2008] EWCA Civ 876; [2009] 1 Lloyd's Rep 42 (CA)	2.345
<i>Mata K, The. Agrosin Pty Ltd v. Highway Shipping Co Ltd</i> [1998] 2 Lloyd's Rep 614	4.113, 4.115
<i>Matsushita Electric Corp of America v. S.S. Aegis Spirit</i> , 414 F.Supp 894 (WD Wash 1976); [1977] 1 Lloyd's Rep 97	3.28, 4.94, 4.120, 4.135, 4.145
<i>Maurice Desagnes, The</i> [1977] 1 Lloyd's Rep 290 (Fed Ct Can)	2.81
<i>Mayfair Photographic Supplies (London) Ltd v. Baxter Hoare & Co Ltd and Stenbridge</i> [1972] 1 Lloyd's Rep 410	2.116, 2.138, 2.139
<i>Mayhew Foods v. Overseas Containers Ltd</i> [1984] 1 Lloyd's Rep 317	3.15, 3.35, 3.36, 3.58, 3.87
<i>Mazda Motors of America Inc v. M/V Cougar Ace</i> [2009] AMC 1220 (9th Cir.)	3.19
<i>Mazur Media Ltd v. Mazur Media GmbH</i> [2004] EWHC 1566 (Ch); [2005] 1 Lloyd's Rep 41	2.345, 2.356, 2.363
<i>Meddich & Meddich v. Cullen & Harvey</i> (1983) 36 SASR 542	2.102, 2.128, 2.132
<i>Mediterranean Freight Services Ltd v. B.P. Oil International Ltd</i> (The Fiona) [1994] 2 Lloyd's Rep 506 (CA)	2.242
<i>Mediterranean Marine v. Clarke</i> [1980] AMC 1732	3.23
<i>Mediterranean Shipping Company SA Geneva v. Royale Gulf Shipping Co Inc</i> [2002] AMC 2562 (SD Tex (Houston Div) 2001)	3.21
<i>Midway Packaging Ltd v. Meurer Maschinen GmbH & Co KG</i> [1990] 2 Lloyd's Rep 112 (CA)	2.358
<i>Mendelssohn v. Normand</i> [1970] 1 QB 177 (CA)	2.296
<i>Mersey Docks and Harbour Board v. Coggins & Griffith (Liverpool) Ltd</i> [1947] AC 1; (1946) 79 Ll L Rep 569 (HL)	2.105
<i>Messier Dowty Ltd v. Sabena SA</i> (No. 2) [2000] 1 WLR 2040; [2000] 1 Lloyd's Rep 428 (CA) ...	2.331
<i>Metaalhandel J.A. Magnus BV v. Ardfields Transport Ltd</i> [1988] 1 Lloyd's Rep 197 ...	2.59, 2.96, 2.105, 2.116, 2.122, 2.172, 2.288
<i>Metal Distributors (UK) Ltd v. ZCCM Investment Holdings plc</i> [2005] EWHC 156 (Comm); [2005] 2 Lloyd's Rep 37	2.273
<i>Metall Market OOO v. Vitorio Shipping Co Ltd</i> (The Lehmann Timber) [2012] EWHC 844 (Comm); [2012] 2 Lloyd's Rep 73	2.161
<i>Metro Leather Corporation v. M/V Savannah</i> [1994] AMC 2178 (SDNY 1992)	4.102
<i>Mervale Ltd v. Monsanto International SARL</i> (The MSC Napoli) [2008] EWHC 3002 (Admlty); [2009] 1 Lloyd's Rep 246	4.89
<i>Micada Compania Naviera SA v. Texim</i> [1968] 2 Lloyd's Rep 57	2.225, 2.237
<i>Middle East Tankers and Freighters Bunker Services SA v. Abu Dhabi Container Lines P.J.S.C.</i> [2002] EWHC 957 (Comm); [2002] 2 Lloyd's Rep 643	2.339
<i>Middle Eastern Oil LLC v. National Bank of Abu Dhabi</i> [2008] EWHC 2895 (Comm); [2009] 1 Lloyd's Rep 251	2.331
<i>Midgulf International Ltd v. Groupe Chimique Tunisien</i> [2010] EWCA Civ 66; [2010] 2 Lloyd's Rep 543 (CA)	2.348
<i>Midland Rubber Co Ltd v. Robert Park & Co</i> (1922) 11 Ll L Rep 260	2.86
<i>Miguel de Larrinaga Steamship Co Ltd v. D.L. Flack & Son</i> (1925) 21 Ll L Rep 284 (CA)	2.282

TABLE OF CASES

Mike Trading and Transport Ltd v. R. Pagnan & Fratelli (The Lisboa) [1980] 2 Lloyd's Rep 546 (CA)	2.333, 2.334
Mildred v. Maspons (1882–83) 8 App Cas 874 (HL)	2.148
Miles International Corp v. Federal Commerce & Navigation Co Ltd (The Federal Schelde) [1978] 1 Lloyd's Rep 285 (Sup Ct Queb)	4.118
Millwall, The [1905] P 155 (CA)	2.256
Milor Srl v. British Airways plc [1996] QB 702 (CA)	2.367
Ministry of Food v. Lamport & Holt Line Ltd [1952] 2 Lloyd's Rep 371	2.224, 2.235
Minster Investments Ltd v. Hyundai Precision & Industry Co Ltd [1988] 2 Lloyd's Rep 621	2.363
Mires v. Solebay (1677) 2 Mod 242; 86 ER 1050	2.159
Mitchell v. Lancashire and Yorkshire Railway (1875) LR 10 QB 256	2.100, 2.169, 2.170
Mitchell Cotts & Co v. Steel Bros & Co Ltd [1916] 2 KB 610	2.219
Mitsubishi Corp v. Eastwind Transport Ltd [2004] EWHC 2924 (Comm); [2005] 1 Lloyd's Rep 383	2.295
Mitsui & Co v. American Export Lines (The Red Jacket) [1981] AMC 331; 636 F. 2d. 807 (2d Cir. 1981)	2.233, 4.135
Mitsui & Co Ltd v. Novorossiysk Shipping Co (The Gudermes) [1991] 1 Lloyd's Rep 456	2.40
Mitsui Marine Fire Insurance & Co Ltd v. Hanjin Shipping Co Ltd [2004] AMC 577	2.87, 3.20, 3.22
Mitsui Sumitomo Insurance Co Ltd v. Evergreen Marine Corp [2010] AMC 2775 (2d Cir.) ...	3.20
Monarch Airlines Ltd v. London Luton Airport Ltd [1998] 1 Lloyd's Rep 403	2.28, 2.284, 2.290
Monica Textile Corporation v. S.S. Tana (2d Cir. 1991) [1991] AMC 2378; [1992] AMC 609, LMLN 323	4.139, 4.145
Mooney Ltd v. Farrell Lines, 616 F.2d 619 (2d Cir. 1980), [1980] AMC 505	3.27, 3.33, 4.128
Mora Shipping Inc v. Axa Corporate Solutions Assurance SA [2005] EWCA Civ 1069; [2005] 2 Lloyd's Rep 769 (CA)	2.358
Morgan Stanley v. China Haisheng Juice Holdings [2009] EWHC 2409 (Comm); [2010] 1 Lloyd's Rep 265	2.333
Mormacoak, The, 451 F. 2d. 24 (2d Cir. 1971)	4.144
Morning Watch, The. Mariola Marine Corp v. Lloyd's Register of Shipping [1990] 1 Lloyd's Rep 547	2.195
Morris v. C.W. Martin & Sons Ltd [1966] 1 QB 716; [1965] 2 Lloyd's Rep 63 (CA)	2.23, 2.100, 2.133, 2.341, 3.12, 3.61, 4.13
Morris Graphics v. Trans Freight Lines [1990] AMC 2764	4.144
Morrow Crane v. Affiliated F.M. Ins. [1990] AMC 601 (D.Ore 1987)	3.33
Morten v. Hilton Gibbes & Smith [1937] 2 KB 176 (Note) (HL)	2.126
Morviken, The; Owners of Cargo on Board the Morviken v. Owners of the Hollandia (The Hollandia and the Morviken) [1983] 1 AC 565; [1983] 1 Lloyd's Rep 1 (HL)	2.302, 2.335
Moto Vespa SA v. M.A.T. (Britannia Express) and Mateu & Mateu SA and Vincente Belloch Galvez [1979] 1 Lloyd's Rep 175	2.57
Mr Deo Antoine Homawoo v. GMF Assurance SA, Ms Adeline Verbeke, Mr Stephane Pecquer [2010] EWHC 1941 (QB); 2010 WL 2888056	2.324
Mulliner v. Florence (1877–78) 3 QBD 484 (CA)	2.162
Mutual Life & Citizens Assurance Co Ltd v. Evatt [1971] AC 793; [1970] 2 Lloyd's Rep 441 (PC Aus)	2.193
Myrick v. Michigan Central Ry, 107 U.S. 102	3.7
N. & J. Vlassopoulos Ltd v. Ney Shipping Ltd (The Santa Carina) [1977] 1 Lloyd's Rep 478 (CA)	2.261
N.S. Tractors v. M.V. Tarros Gage [1986] AMC 2050 (Fed Ct)	4.134
Nabb Brothers Ltd v. Lloyds International (Guernsey) Ltd [2005] EWHC 405 (Ch); [2005] IL Pr 37	2.351
Nadezhda Krupskaya, The. Brown Boveri (Australia) Pty v. Baltic Shipping Co [1989] 1 Lloyd's Rep 518 (CA NSW)	2.303, 4.132
Nanfri, The, The Benfri, The Lorfri. Federal Commerce & Navigation Co Ltd v. Molena Alpha Inc [1978] QB 927; [1978] 2 Lloyd's Rep 132 (CA); affmd in part [1979] AC 757; [1979] 1 Lloyd's Rep 201 (HL)	2.273, 2.274, 2.275
National Shipping Co of Saudi Arabia v. Diversified Freight Logistics Inc [2004] AMC 188	2.87
Naviera Mogor SA v. Societe Metallurgique de Normandie (The Nogar Marin) [1988] 1 Lloyd's Rep 412 (CA)	2.261
Nea Tyhi, The [1982] 1 Lloyd's Rep 606	2.279, 4.104, 4.106

TABLE OF CASES

Nederlandsch-Amerikaansche Stoomvaart Maatschappij, NV v. Royal Mail Lines Ltd (The Nieuw Amsterdam) [1958] 1 Lloyd's Rep 412	2,237, 2,238
Neill & Co Ltd v. The Shaw Savill and Albion Co (1890) 8 NZLR 331 (SCNZ)	3,26
Nelson Lines (Liverpool) Ltd v. James Nelson & Sons Ltd [1908] AC 16 (HL)	4,92
Nelson Pine Industries Ltd v. Seatrans New Zealand Ltd (The Pembroke) [1995] 2 Lloyd's Rep 290 (HC NZ)	4,105
Neptune The (1867) 16 LT 36	4,103
Neptune Orient Lines Ltd v. J.V.C. (UK) Ltd (The Chevalier Roze) [1983] 2 Lloyd's Rep 438	2,58, 2,145, 2,248, 3,14, 4,96
Neuenberger Schweiz v. Aldebaran [1990] AMC 1886 (SDNY)	4,103
New Hart Builders Ltd v. Brindley [1975] Ch 342	2,147
New Holland Australia Pty Ltd v. TTA Australia Pty Ltd (The Resolution Bay) (1995) 397 LMLN 4 (SC NSW)	3,52
New Horizon, The; Tramp Shipping Corp v. Greenwich Marine Inc [1975] 1 WLR 1042; [1975] 2 Lloyd's Rep 314 (CA)	2,282
New Vanguard, The and The Pacifica. Aectra Refining and Manufacturing Inc v. Exmar NV [1995] 1 Lloyd's Rep 191; [1995] 1 All ER 641 (CA)	2,273, 2,274
New York Marine & General Ins. Co v. S/S Ming Prosperity [1996] AMC 1161 (SDNY)	4,120
New York Star, The. Port Jackson Stevedoring Pty Ltd v. Salmond & Spraggon (Australia) Pty Ltd [1981] 1 WLR 138; [1980] 2 Lloyd's Rep 317 (PC Aus)	2,60, 2,146, 3,13, 3,14
New Zealand Express Co Ltd v. Minahan [1916] NZLR 816	2,105
New Zealand Netherlands Society "Oranje" Inc v. Kuys [1973] 1 WLR 1126 (PC, NZ)	2,50
New Zealand Shipping Co Ltd v. A.M. Satterthwaite & Co Ltd (The Eurymedon) [1975] AC 154; [1974] 1 Lloyd's Rep 534 (PC NZ)	2,146, 3,61, 4,13
Newsat Holdings Ltd v. Zani [2006] EWCA Civ 342; [2006] 1 Lloyd's Rep 707 (CA)	2,351
Nicholson v. Revill (1836) 4 A. & E. 675	2,42
Nieuw Amsterdam, The. Nederlandsch-Amerikaansche Stoomvaart Maatschappij, NV v. Royal Mail Lines Ltd [1958] 1 Lloyd's Rep 412	2,237, 2,238
Nikolay Malakhov Shipping Co Ltd v. Seas Sapfor Ltd (1998) 44 NSWLR 371 (CA NSW) ...	2,311
Nikolay Malakhov, The. Seas Sapfor Ltd v. Far Eastern Shipping (1995) 416 LMLN 2 (Sup Ct NSW)	2,314
Nile Dutch Africa Line B.V. v. Delta Lloyd Schadeverzekering (The NDS Provider), C06/082HR, 1.2.2008	4,126
Nile Rhapsody, The; Hamed el Chiaty & Co (t/a Travco Nile Cruise Lines) v. Thomas Cook Group Ltd [1994] 1 Lloyd's Rep 382 (CA)	2,344
Nippon Yusen Kaisha v. International Import and Export Co (The Elbe Maru) [1978] 1 Lloyd's Rep 206	2,145, 2,248, 2,249, 2,255
Nipponkoa Insurance Co Ltd v. Wallenius Wilhelmsen Lines [2003] AMC 1907 (SDNY 2003) ...	3,15
Nissho Iwai Australia Ltd v. Malaysian International Shipping Corporation, Berhad (The Bunga Teratai) (1989) 167 CLR 219 (HC Aust)	3,61
Noble v. R.H. Group Ltd and Another [1993] PIQR P235 (CA), 5 February 1993	2,30, 2,257
Noble Resources Ltd v. Cavalier Shipping Corp (The Atlas) [1996] 1 Lloyd's Rep 642	4,113
Nogar Marin, The. Naviera Magor SA v. Societe Metallurgique de Normandie [1988] 1 Lloyd's Rep 412 (CA)	2,261
Nordglimt, The [1988] QB 183; [1987] 2 Lloyd's Rep 470	2,311, 2,312
Norfolk Southern Railway Co v. James N Kirby Pty Ltd, 543 US 14; [2004] AMC 2705	3,19
Novus Aviation Ltd v. Onur Air Tasimacilik AS [2009] EWCA Civ 122; [2009] 1 Lloyd's Rep 576 (CA)	2,351
Nurnberger AllgemeineVersicherungs AG v. Portbridge Transport International BV (Case C-148/03) [2005] 1 Lloyd's Rep 592	2,364
OGH, 28.2.2001 (2003) BTIF 10	4,29
OLG Dusseldorf, 4 July 1996 (1998) 23 ETL 438	4,59, 4,79
OT Africa Line Ltd v. Hijazy (The Kribi) (No. 1) [2001] 1 Lloyd's Rep 76; 2001 WL 949819	2,333, 2,334, 2,340
OT Africa Line Ltd v. Magic Sportswear Corp [2005] EWCA Civ 710; [2005] 2 Lloyd's Rep 170 (CA)	2,331
OT Africa Line Ltd v. Magic Sportswear Corp 2006 FCA 284; [2005] 2 Lloyd's Rep 85	2,331
O'Brien v. MGN Ltd [2001] EWCA Civ 1279; [2002] CLC 33 (CA)	2,10
O'Connell Machinery Co Inc v. M.V. Americana, 797 F.2d. 1130 (2d Cir. 1986)	4,102
O'Connor v. B.D.B. Kirby & Co [1972] 1 QB 90; [1971] 1 Lloyd's Rep 454 (CA)	2,225

TABLE OF CASES

O'Hanlan <i>v.</i> Great Western Railway (1865) 6 B & S 484	2.298
O'Sullivan <i>v.</i> Williams [1992] 3 All ER 385 (CA)	2.224
Obelix, The. Axel Johnson Petroleum AB <i>v.</i> M.G. Mineral Group AG [1992] 2 All ER 163 (CA)	2.273, 2.276
Obestain Inc <i>v.</i> National Mineral Development Corp Ltd (The Sanix Ace) [1987] 1 Lloyd's Rep 465	2.298
Ocarina Marine Ltd <i>v.</i> Marcard Stein & Co [1994] 2 Lloyd's Rep 524	2.16, 2.331, 2.338
Ocean Chemical Transport Inc <i>v.</i> Exnor Craggs Ltd [2000] 1 Lloyd's Rep 446 (CA) ...	2.10, 2.17, 2.309
OceanConnect UK Ltd <i>v.</i> Angara Maritime Ltd (The Fesco Angara) [2010] EWCA Civ 1050; [2011] 1 Lloyd's Rep 399 (CA)	2.333
Ocean Trader, The. Kamil Export (Australia) Pty Ltd <i>v.</i> NPL Australia Pty Ltd (1993) 113 A.L.R. 677, [1996] 1 VR 538 (Sup Ct Vict)	3.36, 3.90
Oceanic Trader, The. Comalco Aluminium Ltd <i>v.</i> Mogul Freight Services Pty Ltd (1993) 113 A.L.R. 677	2.84, 4.124
Official Assignee of Madras <i>v.</i> Mercantile Bank of India Ltd [1935] AC 53 (PC Ind)	2.83
Okehampton, The [1913] P 173 (CA)	2.90
Omark Industries <i>v.</i> Associated Container Transportation [1977] AMC 230 (D Ore 1976)	4.149
Onego Shipping & Chartering BV <i>v.</i> JSC Arcadia Shipping (The Socol 3) [2010] EWHC 777 (Comm); [2010] 2 Lloyd's Rep 221	2.242
Onisilos, The. Salamis Shipping (Panama) SA <i>v.</i> Edm van Meerbeeck & Co SA [1971] 2 QB 550; [1971] 2 Lloyd's Rep 29 (CA)	2.287
Orient Overseas Container Lines (UK) Ltd <i>v.</i> Sea Land Service Inc [2001] AMC 1005 (SDNY 2000)	4.142, 4.146
Orion Insurance Co <i>v.</i> M/V Humacao [1994] AMC 1922 (SDNY 1994)	3.21, 4.134, 4.143
Orjula, The. Losinjaska Plovidba <i>v.</i> Transco Overseas Ltd [1995] 2 Lloyd's Rep 395	2.219, 2.224, 2.235
Osman <i>v.</i> J. Ralph Moss Ltd [1970] 1 Lloyd's Rep 313 (CA)	2.186
Outboard Marine International <i>v.</i> S.S. American Lancer [1976] AMC 1839 (SDNY 1976)	3.35, 4.118
Overbrooke Estates Ltd <i>v.</i> Glencombe Properties Ltd [1974] 1 WLR 1335	2.14, 2.191
Overseas Medical Supplies Ltd <i>v.</i> Orient Transport Services Ltd [1999] 2 Lloyd's Rep 273 (CA) ...	2.28, 2.178, 2.185, 2.294, 2.301
Overseas Union Insurance Ltd <i>v.</i> New Hampshire Insurance Co (Case C-351/89) [1992] 1 Lloyd's Rep 204	2.350
Owners of the Bowditch <i>v.</i> Owners of the Po (The Po) [1991] 2 Lloyd's Rep 206 (CA)	2.344
Owners of Cargo on Board the Morviken <i>v.</i> Owners of the Hollandia (The Hollandia and the Morviken) [1983] 1 AC 565; [1983] 1 Lloyd's Rep 1 (HL)	2.318
Owners of Cargo Lately Laden on Board the David Agmashenebeli <i>v.</i> Owners of the David Agmashenebeli (The David Agmashenebeli) [2002] EWHC 104 (Admty); [2003] 1 Lloyd's Rep 92	4.116
Owners of Cargo Lately Laden on Board the Eleftheria <i>v.</i> Owners of the Eleftheria (The Eleftheria) [1970] P 94; [1969] 1 Lloyd's Rep 237	2.331
Owners of Cargo Lately Laden on Board the Rewia <i>v.</i> Caribbean Liners (Caribtainer) Ltd (The Rewia) [1991] 1 Lloyd's Rep 69; rvsd [1991] 2 Lloyd's Rep 325 (CA)	2.339
Owners of Cargo Lately Laden on Board the River Gurara <i>v.</i> Nigerian National Shipping Line Ltd (The River Gurara) [1996] 2 Lloyd's Rep 53; affmd [1998] QB 610; [1997] 4 All ER 498; [1998] 1 Lloyd's Rep 225 (CA)	4.113, 4.134, 4.146, 4.147, 4.149, 4.13
Owners of Cargo Lately Laden on Board the Taty <i>v.</i> Owners of the Taty (The Taty) (Case C-406/92) [1994] ECR I-5439; [1995] 1 Lloyd's Rep 302	2.365
Owners of the Carlton <i>v.</i> Port of London Authority (The Carlton) [1931] P 186; (1931) 40 Ll L Rep 101	2.240, 2.252
Owners of the Las Mercedes <i>v.</i> Owners of the Abidin Daver (The Abidin Daver) [1984] AC 398; [1984] 1 Lloyd's Rep 339 (HL)	2.331
Owusu <i>v.</i> Jackson [2002] EWCA Civ 877; 2002 WL 1039653	2.337, 2.345
P & O Nedlloyd BV <i>v.</i> Arab Metals Co (The UB Tiger) [2006] EWCA Civ 1300; [2007] 2 Lloyd's Rep 148 (CA)	2.216, 2.314, 3.14
P & O Nedlloyd BV <i>v.</i> Arab Metals Co (No. 2) [2006] EWCA Civ 1717; [2007] 2 Lloyd's Rep 231; [2007] 1 WLR 2288 (CA)	2.174, 2.110, 2.216
P.S.A. Transport Ltd <i>v.</i> Newton, Landsdowne & Co Ltd [1956] 1 Lloyd's Rep 12	2.258

TABLE OF CASES

P.S. Chellaram & Co Ltd v. China Ocean Shipping Co (The Zhi Jiang Kou) [1989] 1 Lloyd's Rep 413 (Sup Ct NSW); rvsd [1991] 1 Lloyd's Rep 493 (CA NSW)	2.248, 2.249, 3.36, 4.137
P.T. Indonesia v. Orient [2002] AMC 2209 (SD Fla (Miami Div))	3.7
P.T. Indonesia Epsom Indemnity v. Orient Overseas Container Line [2002] AMC 2769 (SD Fla (Miami Div))	3.75
P.T. Keraton Selaras v. M/V Cartagena de Indias [1997] AMC 2218 (ED Penn)	4.143
PT Pan Indonesia Bank Ltd TBK v. Marconi Communications International Ltd [205] EWCA Civ 422; [2007] 2 Lloyd's Rep 72 (CA)	2.323
Pacific Associates Inc v. Baxter [1990] 1 QB 993 (CA)	2.196
Pacific Tall Ships Co v. Kuehne and Nagel Inc [2000] AMC 866, 2250 (ND Ill, Eastern Div) ..	2.58, 2.113, 2.196
Packing, The. Tokio Fire and Marine Insurance Co Ltd v. Hyundai Merchant Marine Co Ltd [1989] AMC 2672 (ND Ill 1989), LMLN 263	3.14, 3.17, 3.18
Pannell v. U.S. Lines, 263 F.2d 497 (2d. Cir. 1959), [1959] AMC 935	4.145
Paquet (M.) & Co v. Dart Containerline [1973] AMC 926 (NY Civ Ct 1973)	4.116
Parker v. Lewis (1873) LR 8 Ch App 1035	2.256
Parker v. South Eastern Railway Co (1877) 46 LJKB 768	2.10
Parker Hannifin Corp v. Ceres Marine Terminals [1996] AMC 1573 (D Md)	3.13
Parnass Intl. v. Sea-Land Service, 595 F.Supp 153; [1985] AMC 485 (SDNY 1984)	3.47
Parsons Corp v. C.V. Scheepvaartonderneming Happy Ranger (The Happy Ranger) [2001] 2 Lloyd's Rep 357 (CA)	3.37, 3.56, 3.70, 4.104
Partenreederei M.S. Tilly Russ v. Haven & Vervoerbedrijf Nova (Case C-71/83) [1985] QB 931	2.338, 2.339, 2.343
Patec v. Translink, Sing HC, 3 December 2002	2.300, 2.301, 2.309, 3.38
Patel v. Keeler & Co [1923] AD 506	2.108
Paul Smith Ltd v. H & S International Holding Inc [1991] 2 Lloyd's Rep 127	2.16
Payabi v. Armstel Shipping Corp (The Jay Bola) [1992] 2 Lloyd's Rep 48	2.311, 2.312
Peek v. North Staffordshire Railway Co (1863) 10 HL Cas 473	2.301
Peereboom (G.) v. World Transport Agency Ltd (1921) 6 Ll L Rep 170	2.111
Pembroke, The. Nelson Pine Industries Ltd v. Seatrans New Zealand Ltd [1995] 2 Lloyd's Rep 290 (HC NZ)	4.105
Penney (J.C.) Co Inc v. American Express Co Inc and American Export Lines Inc [1952] AMC 901 (SDNY)	2.87
Perishables Transport Co v. Spyropoulos (N.) (London) Ltd [1964] 2 Lloyd's Rep 379	2.261
Perugina Chocolates and Confections Inc v. S.S. Ro Ro Genova [1987] AMC 801 (SDNY 1986)	4.116
Perusahaan Pertambangan Minyak Dan v. Chainat Navee M/V, 136 F.Supp 2d 586 (FD Fla 2001)	4.138
Peters Fabrics Inc v. S.S. Hermes [1984] AMC 1685 (SDNY 1984)	4.119, 4.128
Petroleo Brasileiro SA v. Mellitus Shipping Inc (The Baltic Flame) [2001] EWCA Civ 418; [2001] 2 Lloyd's Rep 203 (CA)	2.351
Petromec Inc v. Petroleo Brasileiro SA Petrobras [2005] EWCA Civ 891; [2006] 1 Lloyd's Rep 161 (CA)	2.123
Philips-Van Heusen Corp v. Mitsui O.S.K. Lines Ltd [2003] AMC 2471 (MD Pa 2002)	3.20
Phillip Alexander Securities & Futures Ltd v. Bamberger [1997] IL Pr 73 (CA)	2.329
Phillips Products v. Hyland [1987] 1 WLR 659; [1987] 2 All ER 620 (CA)	2.192, 2.203, 2.23, 2.301
Phoenix v. Eagle Tide [2001] AMC 1019	3.75
Phoenix Assurance Co of New York a/s/o Tommy Hilfiger USA Inc v. M/V Eagle Tide [2001] AMC 1019 (SDNY 1999)	3.26, 3.28, 3.31
Photo Production Ltd v. Securicor Transport Ltd [1980] AC 827; [1980] 1 Lloyd's Rep 545 (HL)	2.292, 2.296
Pickfords Ltd v. Perma Products Ltd (1947) 80 Ll L Rep 513	2.240
Pioneer Container, The [1994] 2 AC 324; [1994] 1 Lloyd's Rep 593; [1994] 2 All ER 250 (PC HK)	1.17, 2.90, 2.140, 2.146, 2.157, 2.341, 3.12, 3.21, 3.33, 3.61
Pioneer Land, The [1957] AMC 50 (SDNY 1956)	3.9, 3.26, 3.35
Pionier, The. Continental Fertilizer Co Ltd v. Pionier Shipping CV [1995] 1 Lloyd's Rep 223	2.312
Pisani (C.A.) & Co Ltd v. Brown Jenkinson & Co Ltd (1939) 64 Ll L Rep 340	2.45, 2.58
Plaimar v. Waters Trading Co Ltd (1945) 72 CLR 304 (Aust HC)	3.10, 3.37
Planeta, The; Harpers Trading (Singapore) Pte Ltd v. R.F.L. International (1994, unreported, NSW)	4.126
Plastique Tags Inc v. Asia Transline Inc [1996] AMC 2304 (11th Cir.)	4.113

TABLE OF CASES

Platzhoff v. Lebean (1865) 4 F & F 545	2.80
Po, The; Owners of the Bowditch v. Owners of the Po [1991] 2 Lloyd's Rep 206 (CA)	2.344
Podar Trading Co, Bombay v. Francois Tagher, Barcelona [1949] 2 KB 277; (1948-49) 82 Ll L Rep 705	2.279
Polskie Linie Oceaniczne v. Hooker Chemical Corp, 499 F.Supp 94 (SDNY 1980)	4.127
Polskie Ratownictwo Okretowe v. Rallo Vito & C SNC [2009] EWHC 2249 (Comm)	2.338
Polyduke, The. Bahamas Oil Refining Co v. Kristiansands Tank Rederie [1978] 1 Lloyd's Rep 211	2.240
Port Jackson Stevedoring Pty Ltd v. Salmond & Spraggon (Australia) Pty Ltd (The New York Star) [1981] 1 WLR 138; [1980] 2 Lloyd's Rep 317 (PC Aus)	2.60, 2.146, 3.13, 3.14
Port Swettenham Authority v. T.W. Wu & Co Sdn Bhd [1979] AC 580; [1979] 1 Lloyd's Rep 11 (PC Mal)	2.100, 2.122
Poseidon Freight Forwarding Co Ltd v. Davies Turner Southern Ltd [1996] 2 Lloyd's Rep 388 (CA)	2.11
Powell Duffryn plc v Wolfgang Petereit (Case C-214/89) [1992] ECR I-1745; [1992] IL Pr 300	2.338
Prebena Wire Bending Machinery Ltd v. Transit Worldwide Corp [1999] AMC 2623 (SDNY) ...	3.17
President of India v. La Pintada Compania Navigacion SA (The La Pintada) (No. 1) [1985] AC 104; [1984] 2 Lloyd's Rep 9 (HL)	2.279
Presvale Trading Co Ltd v. Sutch & Searle [1967] 1 Lloyd's Rep 131	2.116
Prima US Inc v. Panalpina Inc [2000] AMC 2897 (2d Cir.)	2.87
Princes Buitioni v. Hapag-Lloyd A.G. [1991] 2 Lloyd's Rep 383 (CA)	1.30, 3.69
Prins Willem II, The. Robert Simpson (Montreal) Ltd v. Canadian Overseas Shipping Ltd [1973] 2 Lloyd's Rep 124 (PC)	3.14
Pringle of Scotland Ltd v. Continental Express Ltd [1962] 2 Lloyd's Rep 80	2.12, 2.18, 2.115, 2.292
Producers Meats Ltd v. Shaw Savill & Albion Co Ltd (The Arawa) [1977] 2 Lloyd's Rep 416; rvsd [1980] 2 Lloyd's Rep 135 (CA)	2.286
Project Hope v. M/V IBN Sina [2000] AMC 1287 (SDNY)	3.23
Promech Sorting Systems BV v. Bronco Rentals & Leasing Ltd (1995) 123 DLR (4th) 111	3.33
Prussman (M.) v. M/V Nathaniel [1988] AMC 297 (SDNY 1987)	2.87, 3.28
Punch v. Savoy's Jewellers Ltd (1986) 26 DLR (4th) 546	2.117
Purcell v. Khayat, <i>The Times</i> , 23 November 1987 (CA)	2.331
Pye Ltd v. B.G. Transport Service Ltd [1966] 2 Lloyd's Rep 300	2.116
Pyrene Co Ltd v. Scindia Steam Navigation Co Ltd [1954] 2 QB 402; [1954] 1 Lloyd's Rep 321	2.48, 3.36, 3.87, 4.125
Pyropower Corp v. M/V Alps Maru [1993] AMC 1562 (ED Pa 1993)	4.138
Quantum Corp Ltd v. Plane Trucking Ltd [2001] 2 Lloyd's Rep 133; rvsd [2002] EWCA Civ 350; [2002] 2 Lloyd's Rep 25; [2002] 1 WLR 2678 (CA)	1.21, 3.72, 3.80, 3.83, 3.84, 3.85, 3.86, 3.90, 3.100
Quebec Liquor Corp v. Owners and Charterers of the Vessel Dart Europe [1979] AMC 2382; (1980) 15 ETL 145 (Fed Ct Can, 1979)	3.7, 3.31, 4.137
R. v. Kay (1857) Dears & B. 231, 169 E.R. 988	2.21
R. v. Sharp (Ronald Edward) [1957] 1 QB 552 (Crim CA)	2.283
R. Badenhop Corp v. N/V Koninklijke [1960] AMC 2114	3.26
R.A. Lister & Co v. E.G. Thomson (Shipping) Ltd and PT Djakarta Lloyd (The Benarty) (No. 2) [1985] QB 325; [1984] 2 Lloyd's Rep 244 (HL)	2.318
R.H. & D. International Ltd v. S.A.S. Animal Air Services Ltd [1984] 1 WLR 573	2.275
R.P.S. Prodotti Siderurgici Srl v. Owners of the Sea Maas (The Sea Maas) [1999] 2 Lloyd's Rep 281	2.359, 2.360, 2.361
RTS Flexible Systems Ltd v. Molkerei Alois Muller GmbH & Co KG [2010] UKSC 14; [2010] 1 WLR 753 (SC)	2.123
Rafaela S, The [2002] 2 Lloyd's Rep 403 (QBD); [2003] EWCA Civ 556; [2004] QB 702; [2003] 2 Lloyd's Rep 113; [2003] All ER (Comm) 219 (CA); [2005] UKHL 11; [2005] 1 Lloyd's Rep 347; [2005] 2 AC 423 (HL)	2.82, 2.84, 2.88, 3.6, 3.37, 3.38, 3.56, 3.57
Rafisani v. Coastal Cargo Co, 20'12 WL 1032908 (ED La)	3.13
Raiffeisen Zentralbank Österreich Aktiengesellschaft v. National Bank of Greece SA [1999] 1 Lloyd's Rep 408	2.354
Raiffeisen Zentralbank Österreich AG v. Royal Bank of Scotland plc [2010] EWHC 1392 (Comm); [2011] 1 Lloyd's Rep 123	2.201

TABLE OF CASES

Rainbow <i>v.</i> Howkins [1904] 1 KB 215	2.34
Ranson <i>v.</i> Platt [1911] 2 KB 291 (CA)	2.111
Raphael <i>v.</i> Pickford (1843) 5 Man & G 551	2.291
Raphael, The. Lamport & Holt Lines <i>v.</i> Coubro & Scrutton (M. & I.) Ltd [1982] 2 Lloyd's Rep 42 (CA)	2.243
Raymond Burke Motors Ltd <i>v.</i> Mersey Docks and Harbour Co [1986] 1 Lloyd's Rep 155	3.13
Reardon Smith Line Ltd <i>v.</i> Ministry of Agriculture, Fisheries and Food [1960] 1 QB 439; [1959] 2 Lloyd's Rep 229	2.287
Recumar Inc <i>v.</i> Dana Arabia [1985] AMC 2284 (SDNY 1985)	4.116
Red Jacket, The. Houlden & Co <i>v.</i> S.S. Red Jacket [1977] AMC 1382 (SDNY 1977); <i>affmd</i> 582 F.2d. 1271 (2d Cir.), <i>cert den</i> 439 U.S. 1128; [1979] AMC 2018; [1978] 1 Lloyd's Rep 300 (US Ct)	4.103, 4.127, 4.153
Reefer Badger, The; Anglo Irish Beef Processors International <i>v.</i> Federated Stevedores Geelong [1997] 1 Lloyd's Rep 207 (CA Sup Ct Va)	2.312
Regazzoni <i>v.</i> K.C. Sethia (1944) Ltd [1958] AC 301; [1957] 2 Lloyd's Rep 289 (HL)	2.317
Renton (G.H.) & Co Ltd <i>v.</i> Palmyra Trading Corp of Panama (The Caspiana) [1955] 2 Lloyd's Rep 301; <i>rvsd</i> [1956] 1 QB 462; [1955] 2 Lloyd's Rep 722 (CA); <i>affmd</i> [1957] AC 149; [1956] 2 Lloyd's Rep 379 (HL)	2.32, 2.138, 2.282, 3.36, 3.88, 3.124
Resolution Bay, The. New Holland Australia Pty Ltd <i>v.</i> TTA Australia Pty Ltd (1995) 397 LMLN 4 (SC NSW)	3.52
Resources Recovery Inc <i>v.</i> China Ocean Shipping (Group) Co [1999] AMC 780 (SDNY)	3.21
Réunion Européenne SA <i>v.</i> Spliethoffs Bevrachtungskantoor BV (Case C-51/97) [1999] IL Pr 205; [1999] 34 ETL 187	2.353, 2.357, 2.362, 3.263
Rewia, The; Owners of Cargo Lately Laden on Board the Rewia <i>v.</i> Caribbean Liners (Carib-tainer) Ltd [1991] 1 Lloyd's Rep 69; <i>rvsd</i> [1991] 2 Lloyd's Rep 325 (CA)	2.339
Rhone Poulenc Rorer Ltd <i>v.</i> Trans Global Group Ltd (CA, 18 February 1998, unreported; QBD, 18 June 1997, unreported)	1.26, 2.1, 2.11, 2.17, 2.294
Richardson <i>v.</i> Buckinghamshire County Council; Sydney Green (Civil Engineering) Ltd; Roads Reconstruction (Contracting) Ltd [1971] 1 Lloyd's Rep 533 (CA)	2.255
Rice <i>v.</i> Baxendale (1861) 7 H & N 96	2.298
Richardson <i>v.</i> North Eastern Ry Co (1872) LR 7 CP 75	2.228
Richmond Metal Co Ltd <i>v.</i> J. Coales & Son Ltd [1970] 1 Lloyd's Rep 423	2.283
Rick Cobby Haulage Pty Ltd <i>v.</i> Simsmetal Pty Ltd (1986) 43 SASR 533	2.116
Rigoletto, The. Lotus Cars Ltd <i>v.</i> Southampton Cargo Handling plc [2000] 2 Lloyd's Rep 532 (CA)	2.146, 3.13
Riley <i>v.</i> Horne (1828) 5 Bing 217	2.203
Rit-Chem Co <i>v.</i> Valiant [1990] AMC 2935 (SDNY)	4.116
River Gurara, The Owners of Cargo Lately Laden on Board the River Gurara <i>v.</i> Nigerian National Shipping Line Ltd [1996] 2 Lloyd's Rep 53; <i>affmd</i> [1998] QB 610; [1997] 4 All ER 498; [1998] 1 Lloyd's Rep 225 (CA)	4.113, 4.134, 4.146, 4.147, 4.149, 4.153
Robert C. Herd & Co <i>v.</i> Krawill Machinery Corp 259 US 297 (1959)	3.17
Robert Simpson (Montreal) Ltd <i>v.</i> Canadian Overseas Shipping Ltd (The Prins Willem III) [1973] 2 Lloyd's Rep 124 (PC)	3.14
Robinson <i>v.</i> Mollett (1875) LR 7 HL 802	2.167
Rockwell Graphic Systems Ltd <i>v.</i> Freemantle Terminals (1991) 106 FLR 294 (Sup Ct WA) ...	3.14
Röhlig (UK) Ltd <i>v.</i> Rock Unique Ltd [2011] EWCA Civ 18; [2011] 2 All ER (Comm) 1161	2.277, 2.309
Romano <i>v.</i> West India Fruit & SS Co, 151 F.2d. 727 (5th Cir. 1945)	4.102
Rosa S, The [1989] QB 419; [1988] 2 Lloyd's Rep 574	2.303, 3.65, 4.132
Rosenbruch <i>v.</i> American Export Istbrandtsen Lines, 543 F.2d 967, [1976] AMC 487 (2d Cir. 1976)	4.101
Ross <i>v.</i> Caunters [1980] Ch 297	2.196
Rothmans of Pall Mall (Overseas) <i>v.</i> Saudi Arabian Airlines Corp [1981] QB 368 (CA)	2.365
Royal & Sun Alliance Insurance plc <i>v.</i> MK Digital FZE (Cyprus) Ltd [2005] 2 Lloyd's Rep 679; <i>rvsd</i> [2005] EWCA Civ 1069; [2006] 2 Lloyd's Rep 110 (CA)	2.359, 2.365, 2.367
Royal & Sun Alliance Insurance plc <i>v.</i> Ocean World Lines [2010] AMC 2784 (2d Cir.)	3.20
Royal Bank of Canada <i>v.</i> Coöperatieve Centrale Raiffeisen-Boerenleenbank BA [2004] EWCA Civ 7; [2004] 1 Lloyd's Rep 471 (CA)	2.333
Royal Embassy <i>v.</i> Ioannis Martinos [1986] AMC 301 (ED NC 1984)	4.101
Royal Exchange Shipping Co Ltd <i>v.</i> Dixon Ltd (1886) 12 App Cas 11	4.100, 4.104
Royal Insurance Co <i>v.</i> Westwood Transpacific Service [1991] AMC 1028 (WD Wash 1990) ...	3.17

TABLE OF CASES

Royal Insurance Co of America <i>v.</i> M/V MSC Dymphna [2004] AMC 785 (SDNY)	4.149
Royal Insurance Co of America <i>v.</i> OOCL Ltd [2008] AMC 337 (6th Cir.)	4.148
Royal Typewriter Co <i>v.</i> M.V. Kulmerland, 483 F. 2d. 645 (SDNY 1972); [1973] AMC 1784	4.135
Ruapehu, The (1925) 21 Ll L Rep 310	2.118
Russell Stover Candies Inc <i>v.</i> Double VV Inc (1997) WL 809205 (D Kan)	3.18
S. & W. Berisford plc and NGI International Precious Metals Inc <i>v.</i> New Hampshire Insurance	
Co Ltd [1990] 2 QB 631; [1990] 1 Lloyd's Rep 454	2.331, 2.344, 2.346
S.L. Sethia Liners <i>v.</i> Naviagro Maritime Corp (The Kostas Melas) [1981] 1 Lloyd's Rep 18 ...	2.275
SNC S.L.B. <i>v.</i> M/V Newark Bay [1996] AMC 1764 (SDNY); rvsd [1997] AMC 1952 (2nd Cir.) ..	3.35,
	3.47
SPM Corp <i>v.</i> M/V Ming Moon [1992] AMC 2409 (3d Cir. 1992)	4.147
SSQ Europe SA <i>v.</i> Johann & Backes OHG [2002] 1 Lloyd's Rep 465	2.338
St. Albans City and District Council <i>v.</i> International Computers Ltd [1996] 4 All ER 481	2.27
St. John's N.F. Shipping Corp <i>v.</i> Comp. General Commercial Do Rio De Janiero, 263 US 119	
(1923); [1923] AMC 1131	4.101
St. Johns Shipping Corp <i>v.</i> Joseph Rank Ltd [1957] 1 QB 267; [1956] 2 Lloyd's Rep 413	4.7
St. Paul Fire & Marine Insurance Co <i>v.</i> Sea Land Service Inc (The Vermillion Bay) [1990] AMC	
2239 (SDNY 1990), LMLN 277	4.139, 4.145
St. Paul Travelers Insurance Co Ltd <i>v.</i> Wallenius Wihelmsen Logistics A/S [2011] AMC 2701 (2d	
Cir.)	4.143
St. Simeon Navigation Inc <i>v.</i> A. Courtier (1974) 44 DLR (3d.) 478 (Sup Ct of Can)	4.101
Sabah <i>v.</i> Harbel Tapper [2000] AMC 163 (5th Cir. 1999)	2.87, 3.12
Sabah Shipyard (Pakistan) Ltd <i>v.</i> Islamic Republic of Pakistan [2002] EWCA Civ 1643; [2003]	
2 Lloyd's Rep 571	2.333
Sagona, The; A/S Hansen-Tangens Rederi III <i>v.</i> Total Transport Corp [1984] 1 Lloyd's Rep	
194	2.261
Saint Line Ltd <i>v.</i> Richardsons Westgarth & Co Ltd [1940] 2 KB 99; (1940) 67 Ll L Rep 62	2.292
Saipem SpA <i>v.</i> Dredging VO2 BV (The Volvox Hollandia) (No. 1) [1988] 2 Lloyd's Rep 361	
(CA)	2.331
Salamis Shipping (Panama) SA <i>v.</i> Edm van Meerbeeck & Co SA (The Onisilos) [1971] 2 QB 550;	
[1971] 2 Lloyd's Rep 29 (CA)	2.287
Saldanha <i>v.</i> Fulton Navigation Inc (The Omega King) [2011] EWHC 1118 (Admlty); [2011] 2	
Lloyd's Rep 206	2.351
Salotti di Colzani Aimò e Gianmario Colzani <i>v.</i> RÜWA Polstereimaschinen GmbH (Case	
C-24/76) [1976] ECR 1831; [1977] 1 CMLR 345	2.338
Salsi <i>v.</i> Jetspeed Air Services [1977] 2 Lloyd's Rep 57	2.12, 2.53
Samengo-Turner <i>v.</i> J & H Marsh & McLennan (Services) Ltd [2007] EWCA Civ 723; [2007] IL	
Pr 52	2.348
Sandeman Coprimar SA <i>v.</i> Transitos y Transportes Integrales SI [2003] EWCA Civ 113; [2003]	
1 All ER (Comm) 504 (CA)	2.40, 2.325, 2.340
Sanix Ace, The. Obestain Inc <i>v.</i> National Mineral Development Corp Ltd [1987] 1 Lloyd's Rep	
465	2.298
Santa Carina, The; N. & J. Vlassopoulos Ltd <i>v.</i> Ney Shipping Ltd [1977] 1 Lloyd's Rep 478	
(CA)	2.261
Sarginson Brothers <i>v.</i> Keith Moulton & Co Ltd (1942) 73 Ll L Rep 104	2.193
Saris <i>v.</i> Westminster Transports SA and Kestral Marine [1994] 1 Lloyd's Rep 115	2.313
Sarrio SA <i>v.</i> Kuwait Investment Authority [1997] 1 Lloyd's Rep 113 (CA); rvsd [1999] 1 AC 30;	
[1998] 1 Lloyd's Rep 129 (HL)	2.344
Satya Kailash, The, and The Oceanic Amity. Seven Seas Transportation Ltd <i>v.</i> Pacifico Union	
Marina Corp [1984] 1 Lloyd's Rep 588 (CA)	2.303
Scaife <i>v.</i> Tobin (1897) 3 B & A 523	2.250
Scan Service A/S <i>v.</i> D.F.D.S. A/S (1989) 24 ETL 345	3.86
Schenkers Ltd <i>v.</i> Betancor & Co Ltd (World's Carrier), Mayor's Ct, 15 April 1939	2.148, 2.152
Schenkers Ltd <i>v.</i> Overland Shoes Ltd [1998] 1 Lloyd's Rep 498 (CA)	2.12, 2.28, 2.277
Schramm, Incorporated <i>v.</i> Shipco Transport, Incorporated, In Personam [2004] AMC 961 (4th	
Cir.)	3.15, 3.17, 3.87
Schuler (L.) A.G. <i>v.</i> Wickman Machine Tool Sales Ltd [1974] AC 235; [1973] 2 Lloyd's Rep 53	
(HL)	2.220
Schuyler <i>v.</i> Cunard S.S. Co [1967] AMC 896	4.116
Scruttons Ltd <i>v.</i> Midland Silicones Ltd [1962] AC 446; [1961] 2 Lloyd's Rep 365 (HL)	2.146, 3.16

TABLE OF CASES

Sea-Land Service Inc v. Lozen International LLC [2002] AMC 913	3.54
Sea Maas, The. R.P.S. Prodotti Siderurgici Srl v. Owners of the Sea Maas [1999] 2 Lloyd's Rep 281	2.359, 2.360, 2.361
Seas Sapfor Ltd v. Far Eastern Shipping (The Nikolay Malakhov) (1995) 416 LMLN 2 (Sup Ct NSW)	2.314
Seaward Quest, The. Sunderland Marine Mutual Insurance Co Ltd v. Wiseman [2007] EWHC 1460 (Comm); [2007] 2 Lloyd's Rep 308	2.344, 2.363
Sebastian Holdings Inc v. Deutsche Bank AG [2010] EWCA Civ 998; 1 Lloyd's Rep 106 (CA)	2.331
Seeberg v. Russian Wood Agency Ltd (1934) 50 Ll L Rep 146	2.282
Selected Machinery Imports Pty Ltd v. A. Hartrodt Italiana SRL, Sup Ct Victoria, 23 June 1989, unreported	2.91, 4.105
Securitas (NZ) Ltd v. Cadbury Schweppes Hudson Ltd [1988] 1 NZLR 340 (CA NZ)	2.106, 2.116
Seguros "Illimani" SA v. M/V Popi P, 929 F.2d 89 (2nd Cir. 1991)	4.138, 4.139
Seismic Shipping Inc v. Total E&P UK plc (The Western Regent) [2005] EWHC 460 (Admlty); [2005] 2 Lloyd's Rep 54	2.333
Seki Rolette, The. Grimaldi Compagnia di Navigazione SpA v. Sekihyo Lines Ltd [1998] 2 Lloyd's Rep 638	2.311
Selected Machinery Imports Pty Ltd v. A. Hartrodt Italiana SRL, 23 June 1989, Sup Ct Vict, unreported	2.91, 4.105
Sennar, The (No. 2). DSV Silo und Verwaltungsgesellschaft mbH v. Owners of the Sennar (No. 2) [1985] 1 WLR 490; [1985] 1 Lloyd's Rep 521 (HL)	2.331
Sentinel Enterprises v. Simo Matavulj [1991] AMC 177	4.138
Serena Navigation Ltd v. Dera Commercial Establishment (The Limnos) [2008] EWHC 1036 (Comm); [2008] 2 Lloyd's Rep 166	2.292, 3.61, 3.106, 3.132
Servicios-Expoarma Cia v. Industrial Maritime Carriers Inc [1998] AMC 1453 (5th Cir.)	4.138
Seven Seas Transportation Ltd v. Pacifico Union Marina Corp (The Satya Kailash and The Oceanic Amity) [1984] 1 Lloyd's Rep 588 (CA)	2.303
Sevoniam Team, The. K/S A/S Seateam & Co v. Iraqi National Oil Co [1983] 2 Lloyd's Rep 640	2.22
Shaftesbury International Freight & Transport Ltd v. BKR Gesellschaft für Export und Import mbH (CA, 29 October 1992, unreported)	2.111, 2.221, 2.276, 2.277
Sharab v. Al Saud [2009] EWCA Civ 353; [2009] 2 Lloyd's Rep 160 (CA)	2.351
Shashoua v. Sharma [2009] EWHC 957 (Comm); [2009] 2 Lloyd's Rep 376	2.332, 2.348
Shaw v. Neal (1858) 6 HL Cas 581	2.159
Sheerwood v. The Lake Eyre [1970] Ex CR 672	4.104
Sheffield Corp v. Barclay [1905] AC 392 (HL)	2.261
Sheldon (G.W.) & Co (London) Ltd v. Alfred Young & Co (1921) 6 Ll L Rep 466	2.113
Shell Chemicals UK Ltd v. P&O Roadtanks Ltd [1993] 1 Lloyd's Rep 114; affmd [1995] 1 Lloyd's Rep 297 (CA)	2.23, 2.30, 2.250, 2.257, 2.264, 2.265, 2.292, 4.10
Shell International Petroleum Co Ltd v. Coral Oil Co Ltd (No. 1) [1999] 1 Lloyd's Rep 72	2.333
Shell International Petroleum Co Ltd v. Coral Oil Co Ltd (No. 2) [1999] 2 Lloyd's Rep 606	2.333
Shevill v. Presse Alliance SA [1996] AC 959 (HL)	2.363
Shevill v. Presse Alliance SA (Case C-68/93) [1995] ECR I-415; [1995] 2 AC 18 (ECJ)	2.363
Shiells v. Blackburne (1789) 1 Hy Bl 159; 129 ER 94	2.99
Shipwith v. GW Ry (1888) 59 LT 520	2.285
Shonac Corp v. Maersk Inc [2001] AMC 1924 (SD Ohio (East Div))	2.87
Siboti v. BP France SA [2003] 2 Lloyd's Rep 364	2.338, 2.350
Sideridraulic Systems SpA v. BBC Chartering & Logistic GmbH & Co KG (The BBC Greenland) [2011] EWHC 3106 (Comm); [2012] 1 Lloyd's Rep 230	2.315, 2.329, 4.107
Sidney Cooke Ltd v. Hapag Lloyd Aktiengesellschaft [1980] 2 NZWLR 588	3.18, 3.20
Siemens Ltd v. Schenker International (Australia) Pty Ltd	3.72
Silver v. Ocean Steamship Co Ltd [1930] 1 KB 416; (1929) 35 Ll L Rep 49 (CA)	4.25
Sims & Co v. Midland Railway Co [1913] 1 KB 103	2.163
Singer Co (UK) Ltd v. Tees and Hartlepool Port Authority [1988] 2 Lloyd's Rep 164 ...	2.23, 2.28, 2.69, 2.71, 2.72, 2.77, 2.133, 2.140, 2.300, 2.301, 3.21
Sinochem International Oil (London) Co Ltd v. Mobil Sales and Supply Corp (No. 2) [2000] 1 Lloyd's Rep 670	2.331
Skier Star, The. Verity Shipping SA v. NV Norexa [2008] 213 (Comm); [2008] 1 Lloyd's Rep 710	2.333
Skinner v. Upshaw (1702) 2 Ld Raym 752	2.148
Skipskreditforeningen v. Emperor Navigation [1998] 1 Lloyd's Rep 66	2.277
Skipwith v. G.W. Ry (1888) 59 LT 520	2.285

TABLE OF CASES

<i>Slim v. G.N. Ry</i> (1854) 14 CB 647	2.14, 2.191, 2.203
<i>Smith v. Canadian Pacific Airlines Inc</i> (1972) 452 F.2d 798 (2d Cir. 1971)	2.367
<i>Smith v. Compton</i> (1832) 3 B.& Ad 407	2.256
<i>Smith v. Eric S. Bush</i> [1990] 1 AC 831 (HL)	2.195, 2.197, 2.201, 2.202
<i>Smith v. South Wales Switchgear Co Ltd</i> [1978] 1 WLR 165 (HL)	2.240, 2.243, 2.295
<i>Smith (H.C.) Ltd v. Great Western Railway Co Ltd</i> [1922] 1 AC 178 (HL)	2.284, 2.297
<i>Smith (H.C.) v. Midland Ry</i> (1919) 88 LJKB 868	2.284, 2.297
<i>Smith (Rufis L. Jr.) v. Spanish Line</i> [1998] AMC 1791 (D SC)	4.127
<i>Smythgreyhound v. M/V Eurygenes</i> [1982] AMC 320 (2d Cir. 1981)	4.139
<i>Snelling v. John G. Snelling Ltd</i> [1973] QB 87	2.248
<i>Soc. Jakob Handte & Co GmbH v. Societe Traitements Mecano-Chimiques des Surfaces (TMCS)</i> (Case C-26/91) [1992] ECR I-3967	2.357
<i>Societa Anonima Angelo Castelletti v. Transmaritime Ltd (H. Woodward & Sons (Watford) Ltd, Third Parties)</i> [1953] 2 Lloyd's Rep 440	2.148, 2.152, 2.153, 2.163, 2.262
<i>Societe Group Josi Reinsurance Co SA v. Universal General Insurance Co (UGIC)</i> (Case C-412/98) [2000] All ER (EC) 653	2.353
<i>Societe Metallurgica Italiana v. Grace Line Inc</i> [1957] AMC 1371 (NY Sup Ct 1957)	3.26
<i>Societe Nationale Industrielle Aerospatiale (SNIA) v. Lee Kui Jak</i> [1987] AC 871 (PC)	2.333
<i>Socol 3, The. Onego Shipping & Chartering BV v. JSC Arcadia Shipping</i> [2010] EWHC 777 (Comm); [2010] 2 Lloyd's Rep 221	2.242
<i>Somes v. British Empire Shipping</i> (1860) 8 HL Cas 338	2.161
<i>Sompo Japan Insurance of America v. Union Pacific Railroad Co</i> [2004] AMC 247 (SDNY 2003)	3.17, 3.19, 3.20, 3.75
<i>Sompo Japan Insurance of America v. Union Pacific Railroad Co</i> [2011] AMC 301 (2d Cir. 2010)	3.20
<i>Sonia, The; Trafigura Beheer NV v. Golden Stavraetos Maritime Inc</i> [2003] EWCA Civ 664; [2003] 1 WLR 2340 (CA)	3.92
<i>Sonicare International Ltd v. East Anglia Freight Terminal Ltd</i> [1997] 2 Lloyd's Rep 48	1.18, 2.28, 2.34, 2.89, 2.264, 2.300, 3.14
<i>Sony Chemicals Europe BV v. M/V Ingrita</i> [1997] AMC 755 (D Md 1996)	3.14, 3.17, 3.70
<i>Sony Computer Entertainment Inc v. Nippon Express U.S.A. (Illinois) Inc</i> [2004] AMC 1126 (SDNY)	3.20, 3.70, 3.75
<i>Sony Computer Entertainment Ltd v. RH Freight Services Ltd</i> [2007] EWHC 302 (Comm); [2007] 2 Lloyd's Rep 463	2.365
<i>Sophia Supply Co v. Gatoil (U. A) Inc</i> [1989] 1 Lloyd's Rep 588 (CA)	2.331
<i>Sotrade Denizcilik Sanayi Ve Ticaret SA v. Amadou Lo (The Duden)</i> [2008] EWHC 2762 (Comm); [2009] 1 Lloyd's Rep 145	2.333
<i>Source Ltd v. T.U.V. Rheinland Holding AG</i> [1997] 3 WLR 365; [1998] QB 54 (CA)	2.356
<i>Southern Water Authority v. Carey</i> [1985] 2 All ER 1077	2.146
<i>Spaner Bros. v. Central Canadian Express Co</i> (1918) 43 DLR 400 Can DC, Ed	2.292
<i>Spectra International plc v. Hayessoak Ltd</i> [1997] 1 Lloyd's Rep 153; revsd [1998] 1 Lloyd's Rep 162 (CA)	2.23, 2.103, 2.133, 2.140, 2.264, 4.15, 4.87
<i>Spiliada Maritime Corp v. Consulex Ltd (The Spiliada)</i> [1987] AC 460; [1987] 1 Lloyd's Rep 1 (HL)	2.331
<i>Spinney's (1948) Ltd v. Royal Insurance Co Ltd</i> [1980] 1 Lloyd's Rep 406	2.283
<i>Springer v. Great Western Railway Co</i> [1921] 1 KB 257; (1920) 4 Ll L Rep 211 (CA)	2.163
<i>Stafford Allen & Sons v. Pacific Steam Navigation Co</i> [1956] 1 Lloyd's Rep 104	3.37
<i>Stag Line Ltd v. Foscolo Mango & Co Ltd</i> [1932] AC 328; (1931) 41 Ll L Rep 165 (HL)	2.137, 3.96
<i>Stag Line Ltd v. Tyne Ship Repair Group Ltd (The Zinnia)</i> [1984] 2 Lloyd's Rep 211 ...	2.28, 2.292, 2.301
<i>Standard Bank plc v. Agrinvest International Inc</i> [2007] EWHC 2595 (Comm); [2008] 1 Lloyd's Rep 532	2.333
<i>Standard Chartered Bank v. Pakistan National Shipping Corp</i> (1995) 415 LMLN 1	2.331
<i>Standard Commercial Tobacco Co v. The M/V Recife</i> [1994] AMC 1208 (SDNY 1993)	4.105
<i>Standard Electrica, SA v. Hamburg Supamerikanische Dampfschiff-fahrts-Gesellschaft</i> , 375 F.2d. 943 (2d Cir. 1967)	4.135, 4.149
<i>Standard Multiwall Bag Manufacturing Co v. Marine Terminals Corporation</i> [1997] AMC 891 (D Ore 1996)	3.15, 3.17
<i>Star Reefers Pool INC v. JFC Group Ltd</i> [2011] EWHC 339 (Comm); [2011] 2 Lloyd's Rep 215	2.320

TABLE OF CASES

Starlight Shipping Co v. Allianz Marine & Aviation Versicherungs AG (The Alexandros T) [2011] EWHC 3381 (Comm); [2012] 1 Lloyd's Rep 162	2.337
Starrag-Heckeret Inc v. Maersk Inc [2007] AMC 1217 (9th Cir. 2006)	3.20
Starsin, The. Homburg Houtimport BV v. Agrosin Private Ltd [2003] UKHL 12; [2003] 2 WLR 711; [2004] 1 AC 715 (HL)	2.245, 2.247, 2.252, 3.20, 3.37, 3.84
Steamship Mutual Underwriting Association (Bermuda) Ltd v. Sulpicio Lines Inc [2008] EWHC 914 (Comm); [2008] 2 Lloyd's Rep 269	2.333
Stewart Gill Ltd v. Horatio Myer & Co Ltd [1992] QB 600 (CA)	2.31, 2.277, 2.292
Sterling Hydraulics Ltd v. Dichotomatik Ltd [2006] EWHC 2004 (QB); [2007] 1 Lloyd's Rep 8 ...	2.10, 2.14
Stolt Tank v. Evergreen Marine [1991] AMC 1761 (SDNY 1990)	4.94
Stoomvaart Maatschappij (The Zeeland) v. Horlock (No. 2) (1929) 33 Ll L Rep 319	2.254
Strathallan, The. Ailsa Craig Fishing Co Ltd v. Malvern Fishing Co Ltd [1983] 1 WLR 964; [1983] 1 Lloyd's Rep 183 (Note) (HL)	2.187, 2.295
Strathlorne Steamship Co Ltd v. Andrew Weir & Co (1934) 50 Ll L Rep 185 (CA)	2.261
Studebaker Distributors Ltd v. Charlton Steam Shipping Co Ltd [1938] 1 KB 459; (1937) 59 Ll L Rep 23	4.134
Sun-Bar Materials International v. American President Lines [1993] AMC 2639 (ND Cal 17 May 1993)	3.18
Sun Happiness, The. Etablissement Biret et Cie SA v. Yukeiteru Kaiun K.K. & Nissui Shipping Corp [1984] 1 Lloyd's Rep 381	2.80
Sunderland Marine Mutual Insurance Co Ltd v. Wiseman (The Seaward Quest) [2007] EWHC 1460 (Comm); [2007] 2 Lloyd's Rep 308	2.344, 2.363
Sunripe (Cape) (Pty) Ltd v. Mediterranean Shipping Co SA [2004] AMC 1 (SDNY 2003)	4.98
Suprema Court de Justicia, Uruguay, 28 March 2001, [2002] 4 ULR 1234	4.113
Surzur Overseas Ltd v. Ocean Reliance Shipping Co Ltd [1997] CLY No. 906	2.277
Sutcliffe v. G.W. Ry [1910] 1 KB 478 (CA)	2.122, 2.205, 2.288
Svenska Traktor AB v. Maritime Agencies (Southampton) Ltd [1953] 2 QB 295; [1953] 2 Lloyd's Rep 124	2.32, 4.101, 4.107
Swan v. Salisbury Construction Co Ltd [1966] 1 WLR 204 (PC Ber)	2.118
Swiss Bank Corp v. Brink's-MAT Ltd [1986] 2 Lloyd's Rep 79	2.12, 259, 2.116, 2.133, 2.213, 2.284
Swiss Bank Corp v. Brink's-MAT Ltd (Interest) [1986] QB 853; [1986] 2 Lloyd's Rep 99 (Note) ...	2.12, 2.59
Syska v. Vivendi Universal SA [2008] EWHC 2155 (Comm); [2008] 2 Lloyd's Rep 636	2.316, 2.335
Sze Hai Tong Bank Ltd v. Rambler Cycle Co Ltd [1959] AC 576; [1959] 2 Lloyd's Rep 114 (PC Sing)	4.124
T Comedy (UK) Ltd v. Easy Managed Transport Ltd [2007] EWHC 611 (Comm); [2007] 2 Lloyd's Rep 397	2.16, 2.149, 2.157, 2.164
TICC Ltd v. COSCO (UK) Ltd [2001] EWCA Civ 1862; [2002] CLC 346; 2001 WL 1476256 (CA)	2.57, 2.93, 2.111, 4.96
TNT Express, The. Marbig Rexel Pty. v. A.B.C. Container Line NV [1992] 2 Lloyd's Rep 636 (Sup Ct NSW)	2.231, 4.46, 4.116, 4.117, 4.130
TNT Express Nederland BV v. AXA Versicherung AG (Case C-533/08) [2010] IL Pr 35	2.364
T.S. Havprins, The. Chevron International Oil Co Ltd v A/S Sea Team [1983] 2 Lloyd's Rep 356	2.331
Taisho Marine v. Sea-Land Endurance, 815 F.2d 1270 (9th Cir. 1987), [1987] AMC 1730	4.103
Taisho Marine and Fire Insurance Co v. Maersk Line Inc [1993] AMC 705 (ND Ill 1992)	3.14, 3.17, 3.18
Taisho Marine and Fire Insurance Co v. The vessel "Gladiolus" [1987] AMC (9th Cir. 1985) ...	3.14, 3.17, 3.18
Tamrock USA Inc v. M.V. Maren Mrsk [1996] AMC 676 (SDNY)	3.18, 3.21
Tappenden (t/a English & American Autos) v. Artus [1964] 2 QB 185 (CA)	2.149
Tarago, The. Chapman Marine Pty v. Wilhelmsen Lines [1999] AMC 1221 (Fed Ct NSW)	4.100, 4.101, 4.142
Tasman Discoverer, The [2001] 2 Lloyd's Rep 528 (CA NZ); affmd [2004] UKPC 22; [2004] 2 Lloyd's Rep 647 (PC)	4.132
Tasman Express Line Ltd v. J.I. Case (Australia) Pty Ltd (1992) 342 LMLN (CA NSW)	4.107
Tasman Orient Line CV v. New Zealand China Clays (The Tasman Pioneer) [2009] NZCA 135; [2009] 2 Lloyd's Rep 308 (CA NZ); [2010] NZSC 37; [2010] 2 Lloyd's Rep 1 (SC NZ)	3.61, 4.107

TABLE OF CASES

Tatem Steam Navigation Co Ltd v. Great Western Railway Co & South Wales Siemens Steel Association (Third Parties) (1942) 73 Ll L Rep 89	2.256
Tatry, The. Owners of Cargo Lately Laden on Board the Tatry v. Owners of the Tatry (Case C-406/92) [1994] ECR I-5439; [1995] 1 Lloyd's Rep 302	2.365
Taylor v. Lewis Ltd (1927) 28 Ll L Rep 329 (IH)	2.287
Taylor (E.W.) & Co (Forwarding) v. Bell [1968] 2 Lloyd's Rep 63	2.21, 2.116, 2.126, 2.270, 2.276, 2.281
Tekdata Interconnections Ltd v. Amphenol Ltd [2009] EWCA Civ 1209; [2010] 1 Lloyd's Rep 357 (CA)	2.14, 2.15
Tele2 International Card Co SA v. Post Office Ltd [2009] EWCA Civ 9; 2009 WL 6118 (CA)	2.282
Telfair Shipping Corp v. Inersea Carriers SA (The Caroline P) [1984] 2 Lloyd's Rep 466	2.238
Teno, The. Compania Sud Americano de Vapores v. Shipmair BV [1977] 2 Lloyd's Rep 289	2.275
Termagent, The (1914) 19 Com Cas 239	3.21
Tetroc Ltd v. Cross-Con (International) Ltd [1981] 1 Lloyd's Rep 192	2.55, 2.67, 2.69, 2.70, 2.71, 2.72, 2.73
Texaco Melbourne, The. Attorney General of Ghana v. Texaco Overseas Tankships Ltd [1993] 1 Lloyd's Rep 471 (CA); affmd [1994] 1 Lloyd's Rep 473 (HL)	2.298
Texas Instruments Ltd v. Nason (Europe) Ltd [1991] 1 Lloyd's Rep 146	1.21, 2.70, 2.72, 2.77
Thermo Engineers Ltd and Anhydro A/S v. Ferrymasters Ltd [1981] 1 Lloyd's Rep 200; [1981] 1 WLR 1420	3.90, 4.83
Thiess Bros (Queensland) Proprietary Ltd v. Australian Steamships Proprietary Ltd [1955] 1 Lloyd's Rep 459 (Sup Ct NSW)	2.137
Thiti Lert Watana Co Ltd v. Minagratex Corp [2001] AMC 80 (ND Cal 2000)	3.17, 3.18
Thomas National Transport (Melbourne) Pty Ltd v. May & Baker (Australia) Pty Ltd (1966) 115 CLR 353	2.116
Thomas Young v. Hobson and Partner (1949) 65 TLR 365	2.133
Thompson v. T. Lohan (Plant Hire) and Hurdiss (J.W.) [1987] 1 WLR 649 (CA)	2.191
Thornton v. Shoe Lane Parking [1971] 2 QB 163; [1971] 1 Lloyd's Rep 289 (CA)	2.10
Through Transport Mutual Assurance Association (Eurasia) Ltd v. New India Assurance Co Ltd [2004] EWCA Civ 1598; [2005] 1 Lloyd's Rep 67 (CA)	2.333, 2.348, 2.349, 2.352
Through Transport Mutual Assurance Association (Eurasia) Ltd v. New India Assurance Co Ltd (No. 2) [2005] EWHC 455 (Comm); [2005] 2 Lloyd's Rep 378	2.348, 2.349, 2.352
Thyssen Inc v. Calypso Shipping Corp SA [2000] 2 Lloyd's Rep 243	2.311, 2.312
Tichburne v. White (1719) 1 Strange 145	2.205
Tilia Gorthon, The [1985] 1 Lloyd's Rep 552	4.107
Toepfer International GmbH v. Societe Cargill France [1997] 2 Lloyd's Rep 98; affmd [1998] 1 Lloyd's Rep 379 (CA)	2.333
Tokio Marine and Fire Insurance Co Ltd v. Hyundai Merchant Marine Co Ltd (The Packing) [1989] AMC 2672 (ND Ill 1989), LMLN 263	3.14, 3.17, 3.18
Tokio Marine and Fire Insurance Co Ltd v. Mitsui O.S.K. Lines Ltd [2003] AMC 2543 (CD Cal)	3.17, 3.18
Tokio Marine and Fire Insurance Co Ltd v. Nippon Express USA (Illinois) Inc [2001] AMC 1239 (CD Ca (West Div) 2000)	4.140, 4.149
Tokio Marine Management Inc v. M/V Zim Tokyo [1995] AMC 2263 (SDNY)	3.23
Toll (FGCT) Pty Ltd v. Alphapharm Pty Ltd [2004] HCA 52; 219 CLR 165 (HCA)	2.10
Tor Mercia, The, 1977, Sup Ct Sweden (1980) 15 ETL 23	4.127
Toshiba International Corp v. M/V Sea-Land Express [1994] AMC 995 (SDNY, 1994)	3.7, 3.19
Total Transport Corp v. Arcadia Petroleum Ltd (The Eurys) [1996] 2 Lloyd's Rep 408; affmd [1998] 1 Lloyd's Rep 351 (CA)	2.237, 2.240, 2.261
Tracomina SA v. Sudan Oil Seeds (No. 1) [1983] 1 WLR 1026; [1983] 2 Lloyd's Rep 384 (CA)	2.329
Trade Indemnity plc v. Forsakringsaktiebolaget Njord [1995] 1 All ER 796	2.357
Trafigura Beheer BV v. Golden Stavraetos Maritime Inc (The Sonia) [2003] EWCA Civ 664; [2003] 1 WLR 2340 (CA)	3.92
Trafigura Beheer BV v. Kookmin Bank Co [2006] EWHC 1450 (Comm); [2006] 2 Lloyd's Rep 455	2.325, 2.328
Trafigura Beheer BV v. Kookmin Bank Co (No. 2) [2006] EWHC 1921 (Comm); [2007] 1 Lloyd's Rep 699	2.333
Trafigura PTE Ltd v. Emirates General Petroleum Ltd [2009] EWHC 1613 (Comm); WL 1894655	2.351
Tramp Shipping Corp v. Greenwich Marine Inc (The New Horizon) [1975] 1 WLR 1042; [1975] 2 Lloyd's Rep 314 (CA)	2.282

TABLE OF CASES

Trane Co v. Hanjin Shipping Co Ltd (The Hanjin Marseilles) [2001] 2 Lloyd's Rep 735 (HK HC)	3.70
Transatlantic Marine Claims Agency Inc v. M/V IBN Zuhr [1994] AMC 2086 (SD Ga 1994)	4.116, 4.120
Transatlantic Marine Claims Agency Inc v. M/V Mason Lykes [1993] AMC 2448 (SDNY 1993)	4.141
Transatlantic Marine Claims Agency Inc v. M/V OOCL Inspiration [1998] AMC 1327 (2d Cir.)	3.7, 3.26, 3.31, 4.120
Transmotors Ltd v. Robertson, Buckley & Co [1970] 1 Lloyd's Rep 224	2.15
Transocean Machine Co v. Orange Line and the Prins Willem IV [1958] Ex CR 227	3.35
Transocean Liners Reederei GmbH v. Euxine Shipping Co Ltd (The Imvros) [1999] 1 Lloyd's Rep 848	2.295
Transoceanica Societa Italiana di Navigazione v. H.S. Shipton & Sons [1923] 1 KB 31; (1922) 10 Ll L Rep 153	2.225
Trasporti Castelletti Spedizioni Internazionali SpA v. Hugo Trumpy SpA (Case C-159/97) (1999) 34 ETL 617; [1999] 7 Euro CL 14; [1999] ECR I-1597	2.338, 2.339, 2.343
Travelers Casualty and Surety Co of Europe Ltd v. Sun Life Assurance Co of Canada (UK) Ltd [2004] EWHC 1704 (Comm); [2004] IL Pr 50	2.331
Travellers Indemnity Co v. The Vessel "Sam Houston" and Waterman Steamship Corp [1994] AMC 2162 (9th Cir. 1994)	4.142
Travers (Joseph) & Sons Ltd v. Cooper [1915] 1 KB 73 (CA)	2.122, 4.23
Trendtex Trading Corp v. Credit Suisse [1980] QB 629 (CA) affmd [1982] AC 679 (HL)	2.331
Tri Mg Intra Asia Airlines v. Norse Air Charter Ltd [2009] SGHC 13; [2009] 1 Lloyd's Rep 258 (HCt Sing)	2.16
Triad Shipping Co v. Stellar Chartering and Brokerage Inc Ltd (The Island Archon) [1994] 2 Lloyd's Rep 227 (CA)	2.261
Trident Turboprop (Dublin) Ltd v. First Flight Couriers Ltd [2009] EWCA Civ 290; [2009] 1 Lloyd's Rep 702 (CA)	2.26
Trotter & Co v. Delta S.S. Lines [1985] AMC 2783 (ED Pa 1982)	4.138
Troy v. Eastern Company of Warehouses Insurance & Transport of Goods with Advances (1921) 8 Ll L Rep 17 (CA)	2.61, 2.86, 3.12, 3.13
Tubacex Inc v. M/V Rison [1995] AMC 1305 (5th Cir. 1995)	4.125
Tudor Marine Ltd v. Tradax Export SA (The Virgo) [1976] 2 Lloyd's Rep 135 (CA)	2.80
Turnbull v. Garden (1869) 38 LJ Ch 331	2.167
Turner v. Grovit [2001] UKHL 65; [2002] 1 WLR 107 (HL); (Case C-159/02) [2005] 1 AC 101 (ECJ)	2.348
Tychy (No. 1), The. M.S.C. Mediterranean Shipping Co SA v. Polish Ocean Lines [1999] 2 Lloyd's Rep 11 (CA)	1.17, 4.89
Tyly v. Morrice (1699) Carth. 485	2.205
UB Tiger, The. P & O Nedlloyd BV v. Arab Metals Co [2006] EWCA Civ 1300; [2007] 2 Lloyd's Rep 148 (CA)	2.216, 2.314, 3.14
UBS AG v. HSH Nordbank [2009] EWCA Civ 585; [2009] 2 Lloyd's Rep 272 (HL)	2.15, 2.344, 2.345
US v. Farrell Lines [1982] AMC 1904 (D Md 1980)	3.35
Ulster Swift Ltd v. Taunton Meat Haulage Ltd [1977] 1 WLR 625; [1977] 1 Lloyd's Rep 346 (CA)	2.54
Ultimo Cabinet Corp v. Mason Lykes [1991] AMC 1343 (SDNY 1991)	3.23
Ultisol Transport Contractors Ltd v. Bouygues Offshore SA [1997] 2 Lloyd's Rep 533	2.344
Unicoopjapan and Marubeni-Iida Co v. Ion Shipping Co (The Ion) [1971] 1 Lloyd's Rep 541	2.32
Union Bank of Australia Ltd v. Rudder (1911) 13 CLR 152 (HC Aus)	2.188
Union Transport v. Continental Lines SA [1992] 1 WLR 15; [1992] 1 Lloyd's Rep 229 (HL)	2.358
United Fresh Meat Co Ltd v. Charterhouse Cold Storage Ltd [1974] 2 Lloyd's Rep 286	2.297
United Mills Agencies Ltd v. Harvey Bray & Co [1951] 2 Lloyd's Rep 631	2.181, 2.186
United States Steel Products Co v. Great Western Railway Co [1916] 1 AC 189 (HL)	2.156
Universal Leaf Tobacco Co Inc v. Netumar [1993] AMC 2439 (4th Cir. 1993)	4.139, 4.145
Universal Shipping & Forwarding Co Ltd v. Commercial & Industrial Co Ltd (The Anglo Russ) (1919) 1 Ll L Rep 635	2.21, 2.281
Unterweser Reederei GmbH v. Zapata Offshore Co (The Chaparral) [1968] 2 Lloyd's Rep 158 (CA)	2.331

TABLE OF CASES

Vastframe Camera Ltd <i>v.</i> Birkart Globistics Ltd, High Ct of Hong Kong SAR (Stone J), 5 October 2005	2.47
Vechscroon, The. McCarren & Co <i>v.</i> Humber International Transport and Truckline Ferries (Poole) [1982] 1 Lloyd's Rep 301	4.92
Vegas <i>v.</i> Compania Anonima Venezolana, 720 F.2d 629 (11th Cir. 1983); [1984] AMC 1600	4.141
Vermillion Bay, The. St. Paul Fire & Marine Insurance Co <i>v.</i> Sea Land Service Inc [1990] AMC 2239 (SDNY 1990), LMLN 277	4.139, 4.145
Verity Shipping SA <i>v.</i> NV Norexa (The Skier Star) [2008] 213 (Comm); [2008] 1 Lloyd's Rep 710	2.333
Vertex Data Science Ltd <i>v.</i> Powergen Retail Ltd [2006] EWHC 1340 (Comm); [2006] 2 Lloyd's Rep 591	2.95, 2.96, 2.315
Victoria Fur Traders Ltd <i>v.</i> Roadline (UK) Ltd [1981] 1 Lloyd's Rep 570	2.68, 2.116, 3.12, 4.87
Vikfrost, The. W. & R. Fletcher (New Zealand) <i>v.</i> Sigurd Haavik A/S [1980] 1 Lloyd's Rep 560 (CA)	2.331
Virgo, The. Tudor Marine Ltd <i>v.</i> Tradax Export SA [1976] 2 Lloyd's Rep 135 (CA)	2.80
Vision Air Flight Services Inc <i>v.</i> M/V National Pride [1999] AMC 1168 (9th Cir. 1998)	4.145
Vistar SA <i>v.</i> M/V Sea-Land Express, 774 F.2d (5th Cir. 1985)	3.7
Vistar SA <i>v.</i> M/V Sea-Land Express, 792 F.2d 469 (5th Cir. 1986)	3.54
Vita Food Products Inc <i>v.</i> Unus Shipping Co Ltd (In Liquidation) [1939] AC 277; (1939) 63 Ll L Rep 21 (PC)	2.317
Volvox Hollandia, The (No. 1). Saipem SpA <i>v.</i> Dredging VO2 BV (No. 1) [1988] 2 Lloyd's Rep 361 (CA)	2.331
Von Trautenberg <i>v.</i> Davies, Turner & Co Ltd [1951] 2 Lloyd's Rep 462 (CA)	2.11, 2.12, 2.117, 2.133, 2.181, 2.182, 2.186, 2.213, 2.262
Voss <i>v.</i> APL Co Pte Ltd [2002] 2 Lloyd's Rep 707 (Sing CA)	3.56
W. & R. Fletcher (New Zealand) <i>v.</i> Sigurd Haavik A/S (The Vikfrost) [1980] 1 Lloyd's Rep 560 (CA)	2.331
WLR Traders (London) Ltd <i>v.</i> British & Northern Shipping Agency Ltd and I. Leftley [1955] 1 Lloyd's Rep 554	2.105, 2.117, 2.122, 2.181
WPP Holdings Italy SRL <i>v.</i> Benatti [2006] EWHC 1641 (Comm); [2006] 1 Lloyd's Rep 610	2.347
WRM Group Ltd <i>v.</i> Wood [1998] CLC 189 (CA)	2.277
Wadsworth <i>v.</i> Lydall [1981] 1 WLR 598 (CA)	2.278
Walek & Co (International) Ltd <i>v.</i> Chapman & Ball [1980] 2 Lloyd's Rep 279	2.235
Walford <i>v.</i> Galindez (1897) 2 Com Cas 137	2.250
Walford <i>v.</i> Miles [1992] 2 AC 128 (HL)	2.123
Walker <i>v.</i> Jackson (1842) 10 M & W 161	2.105
Watermill Export Inc <i>v.</i> M.V. Ponce, 506 F.Supp 612 (SDNY 1981); [1981] AMC 320	4.144
Watkins (M. C.) <i>v.</i> M/V London Senator [2000] AMC 2740 (ED Virg)	3.13, 3.15, 3.1, 3.52
Watson <i>v.</i> First Choice Holidays & Flights Ltd [2001] EWCA Civ 972; [2001] 2 Lloyd's Rep 339 (CA)	2.353
Weintraub <i>v.</i> ETA Transportation, SDNY 28 August 2003	2.87
Weis (Charles) & Co Ltd <i>v.</i> Northern Traffic Ltd (1919) 1 Ll L Rep 241	2.71, 2.127, 2.136
Welex AG <i>v.</i> Rosa Maritime Ltd (The Epsilon Rosa) [2003] EWCA Civ 938; [2003] 2 Lloyd's Rep 509	2.333
Werner Enterprises Inc <i>v.</i> Westwind Maritime International Inc 554 F.3d 1319 (11th Cir. 2009)	3.22
Wessely <i>v.</i> Rosenberg Loewe & Co Successors Ltd (1940) 67 Ll L Rep 16	2.108, 2.122
West Tankers Inc <i>v.</i> Allianz SpA (The Front Comor) [2012] EWHC 854 (Comm); [2012] 2 Lloyd's Rep 103	2.348
West Tankers Inc <i>v.</i> RAS Riunione Adriatica di Sicula SpA (The Front Comor) [2007] UKHL 4; [2007] 1 Lloyd's Rep 391 (HL)	2.352
Western Credit Ltd <i>v.</i> Alberry [1964] 1 WLR 945 (CA)	2.253
Western Digital Corp <i>v.</i> British Airways plc [2000] 2 Lloyd's Rep 142 (CA)	2.44
Western Regent, The. Seismic Shipping Inc <i>v.</i> Total E&P UK plc [2005] EWHC 460 (Admlty); [2005] 2 Lloyd's Rep 54	2.333
Westway Coffee Corp <i>v.</i> M.V. Netuno [1982] AMC 1640 (2d Cir. 1982)	4.119
Whaite <i>v.</i> Lancashire & Yorkshire Ry Co (1874) LR 9 Ex 67	4.134
White Cross Equipment Ltd <i>v.</i> Farrell, 22 March 1983, unreported, Lexis	2.300, 2.309
White Rose, The. A/B Helsingfors Steamship Co Ltd <i>v.</i> Rederiaktiebolaget Rex [1969] 1 WLR 1098; [1969] 2 Lloyd's Rep 52	2.255

TABLE OF CASES

White (Arthur) (Contractors) Ltd v. Tarmac Civil Engineering Ltd [1967] 1 WLR 1508 (HL)	2.239
Whitsea Shipping and Trading Corp v. El Paso Rio Clara Ltda (The Marielle Bolten) [2009] EWHC 2552 (Comm); [2010] 1 Lloyd's Rep 648	2.247, 2.248, 2.342, 3.16
Wibau Maschinenfabrik Hartman SA v. Mackinnon Mackenzie & Co (The Chanda) [1989] 2 Lloyd's Rep 494	2.296, 2.298, 2.307, 4.104
Wight v. British Railways Board [1983] CLY 424	2.300
Williams Brothers (Hall) v. Naamlooze Vennootschap W.H. Berghuys Kolenhandel (1915) 21 Com Cas 253	2.278
Williams v. Natural Life Health Foods Ltd [1998] 1 WLR 830 (HL)	2.196, 2.246
Willoughby v. Horridge (1852) 12 CB 742	2.105
Wilson v. Brett (1843) 11 M & W 113; 152 ER 737	2.99
Wilson v. New Zealand Express Co Ltd [1923] NZLR 201	2.105, 2.106
Wiltshire Iron Co v. Great Western Railway Co (1871) LR 6 QB 776	2.154
Winkfield, The [1902] P 42 (CA)	2.224
Winson, The. China-Pacific SA v. Food Corp of India [1982] AC 939; [1982] 1 Lloyd's Rep 117 (HL)	2.100, 2.161, 2.173
Witt ex parte Shubbrook, Re (1875–76) 2 Ch D 489 (CA)	2.155
Wood Floor Solutions Andreas Domberger GmbH v. Silva Trade SA (Case C–19/09) [2010] 2 Lloyd's Rep 114	2.361
Woodar Investment Development Ltd v. Wimpey Construction UK Ltd [1980] 1 WLR 277 (HL)	2.224
Woodhouse, Drake and Carey v. M.V. Righteous [1984] AMC 479 (11th Cir.)	3.26
Woodman v. Photo Trade Processing Ltd, Exeter County Court, 3 April 1981, unreported	2.300
World Transport Agency Ltd v. Royte (England) Ltd [1957] 1 Lloyd's Rep 381	2.102, 2.127, 2.132, 2.257
Wright v. Tyne Improvement Commissioners [1968] 1 WLR 336; [1968] 1 Lloyd's Rep 113 (CA)	2.240
XL Insurance Ltd v. Owens Corning [2000] 2 Lloyd's Rep 500	2.332
Xingcheng, The. China Ocean Shipping Co (The Xingcheng) v. Andros (The Andros) [1987] 2 Lloyd's Rep 210 (PC)	3.38
Yani Haryanto v. E.D. & F. Man (Sugar) Ltd [1986] 2 Lloyd's Rep 188 (CA)	2.127
Yasuda Fire & Marine Insurance Co Ltd v. Japan Intermodal Transport Co Ltd [1995] AMC 2737 (ND Ill)	3.17
Yeramex International v. S.S. Tendo [1977] AMC 1807 (ED Va 1977)	4.116, 4.145
Yeung Kai Yung v. Hong Kong and Shanghai Banking Corp [1981] AC 787 (PC)	2.261
Ymnos, The (No. 2). Compagnie Generale Maritime v. Diakan Spirit SA (No. 2) [1982] 2 Lloyd's Rep 574	4.88
Youell v. Kara Mara Shipping Co Ltd [2000] 2 Lloyd's Rep 102	2.333
Youell v. La Reunion Aeriennne [2009] EWCA Civ 175; [2009] 1 Lloyd's Rep 586 (CA)	2.348, 2.357
Young (W.) & Son (Wholesale Fish Merchants) Ltd v. British Transport Commission [1955] 2 QB 177	2.147, 2.282, 2.284, 2.286
Z.I. Pompey Industrie <i>et al.</i> v. ECU-Line NV, M/V Conmar Fortune (2000) 35 ETL 516, [2000] AMC (145 Can Fed Ct Trial Div), affmd [2000] AMC 851	3.35, 3.54
Zenith Electronics Corp v. Panalpina Inc [1996] AMC 622	2.16
Zhi Jiang Kou, The. P.S. Chellaram & Co Ltd v. China Ocean Shipping Co [1989] 1 Lloyd's Rep 413 (Sup Ct NSW); <i>rvsd</i> [1991] 1 Lloyd's Rep 493 (CA NSW) ...	2.248, 2.249, 3.36, 3.90, 4.124, 4.137
Zim Israel Navigation Ltd v. The Israeli Phoenix Assurance Co (1998) 8 Int ML 266; (1999) ETL 535 (Sup Ct Israel, 1 September 1998)	4.113, 4.126
Zima Corporation v. Roman Pazinsky [1980] AMC 901 (SDNY)	2.87
Zimmerman (S.) & Son (Merchants) Ltd v. Baxter, Hoare & Co Ltd [1965] 1 Lloyd's Rep 88	2.223, 2.270
Zinnia, The. Stag Line Ltd v. Tyne Ship Repair Group Ltd [1984] 2 Lloyd's Rep 211 ...	2.28, 2.292, 2.301
Zuid-Chemie BV v. Philipppo's Mineralenfabriek NV/SA (C–189/08) [2009] ECR I–6917	2.335

TABLE OF LEGISLATION

*All references are to paragraph numbers.
Paragraph numbers in italic indicate where the material is set out in full*

BELGIUM

Maritime Law

Art. 91	3.84
---------------	------

CANADA

Carriage of Goods by Water Act 1970	2.81
---	------

EUROPEAN UNION

Council Directive—

75/130 EEC on the establishment of common rules for certain types of combined road/rail carriage of goods between Member States	1.7
---	-----

93/13/EEC on unfair terms in consumer contracts	2.29
---	------

Preamble	2.29
----------------	------

Art. 2(c)	2.29
-----------------	------

3(1)	2.29
------------	------

Annex 1(1)	2.29
------------------	------

2008/68/EEC The Dangerous Goods Directive	4.19
---	------

Council Regulations—

1346/2000 (EC) on insolvency proceedings	2.316
--	-------

44/2001 (EC) on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Brussels I Regulation)	2.329, 2.335
---	--------------

Recital 12	2.355, 2.364
------------------	--------------

11, 15	2.364
--------------	-------

Art. 1(1)	2.352
-----------------	-------

(2)(d)	2.352
--------------	-------

2	2.345, 2.353, 2.361
---------	---------------------

5(1)(a)	2.354, 2.360
---------------	--------------

(b)	2.354, 2.355, 2.360, 2.361
-----------	----------------------------

(3)	2.355, 2.362, 2.363
-----------	---------------------

23	2.338–2.347, 2.365
----------	--------------------

(1)	2.338, 2.340
-----------	--------------

(2)	2.338
-----------	-------

24	2.353
----------	-------

26	2.364
----------	-------

27	2.347, 2.350, 2.365
----------	---------------------

29	2.347
----------	-------

28	2.347, 2.365
----------	--------------

31	2.347, 2.353
----------	--------------

35(3)	2.350
-------------	-------

59	2.337, 2.353
----------	--------------

44/2001 (EC) on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Brussels I Regulation)— <i>cont.</i>	
---	--

Art. 60	2.337, 2.353
---------------	--------------

71	2.364
----------	-------

864/2007 (EC) (Rome II Regulation)	2.324
--	-------

Ch. II	2.324, 2.325
--------------	--------------

III	2.324, 2.325
-----------	--------------

Art. 1(2)(a)–(g)	2.324
------------------------	-------

2(1)	2.324
------------	-------

4(1)	2.324, 2.326
------------	--------------

(2)	2.326
-----------	-------

(3)	2.326
-----------	-------

5	2.324
---------	-------

6	2.324
---------	-------

7	2.324
---------	-------

8	2.324
---------	-------

9	2.324
---------	-------

10(1)	2.324
-------------	-------

11(1)	2.324
-------------	-------

12(1)	2.324
-------------	-------

14(1)(b)	2.326
----------------	-------

593/2008 (EC) (Rome I Regulation)	
-----------------------------------	--

Recital	2.321, 2.323
---------------	--------------

Art. 1(2)(d)	2.316
--------------------	-------

(e)	2.316
-----------	-------

(f)	2.316
-----------	-------

(g)	2.316
-----------	-------

(i)	2.316
-----------	-------

(3)	2.316
-----------	-------

3	2.316
---------	-------

(4)	2.317
-----------	-------

4(1)	2.320, 2.321, 2.327
------------	---------------------

(b)	2.321
-----------	-------

(f)	2.321
-----------	-------

(2)	2.320, 2.321, 2.322, 2.327
-----------	----------------------------

(3)	2.321, 2.327
-----------	--------------

(4)	2.321, 2.322
-----------	--------------

(5)	2.320, 2.323
-----------	--------------

5(3)	2.323
------------	-------

9(1)	2.318
------------	-------

(2)	2.318
-----------	-------

(3)	2.317
-----------	-------

10(1)	2.317
-------------	-------

(2)	2.317
-----------	-------

TABLE OF LEGISLATION

593/2008 (EC) (Rome I Regulation)

—*cont.*

Art. 12(2)	2.317
18	2.316
19	2.321
(2)	2.321
(3)	2.321
26	2.327

GERMANY

Commercial Code	1.40
Railway Act (EVO)	4.82
Art. 83(1)	4.82

INDIA

Multimodal Transportation of Goods Act 1993	1.39, 3.45, 3.77, 3.123
--	-------------------------

INTERNATIONAL

CMI Uniform Rules for Sea Waybills	4.92
Art.6	1.44
ICC Uniform Customs and Practice for Documentary Credits 1983 (UCP 400)	3.44
Art. 25	3.44
(d)	3.43
26	3.44
ICC Uniform Customs and Practice for Documentary Credits 1993 (UCP 500)	3.44, 3.123
Art. 23	3.44
26	3.44
30	3.44, 3.124
ICC Uniform Customs and Practice for Documentary Credits 2007 (UCP 600)	2.5, 3.44
Art. 19	3.44
20	3.44
Arts 21–24	3.44
ICC Uniform Rules for a Combined Trans- port Document 1973, amended 1975 (No 298)	1.35, 3.43, 3.46, 3.49
r. 1	3.48
(a)	3.49, 3.125
(c)	3.48
2	3.48
(a)	3.49
(c)	3.48, 3.49
3	3.48, 3.55
4	3.48, 3.55
5	3.59, 3.63
6	3.46
7	3.55, 3.91
8	3.91
9	3.55
10	3.55, 3.92, 3.138
11	3.63
(a)	3.132
rr. 11–18	3.61
11–19	3.50
r. 12	3.63, 3.131
13	3.64, 3.67

ICC Uniform Rules for a Combined Trans- port Document 1973, amended 1975 (No 298)—*cont.*

r. 13(a)	3.65, 3.68, 3.112
(b)(ii)	3.64
(c)	3.66
(d)	3.4
14	3.59
15	3.130
16	3.139
17	3.63
18	3.140
19	3.92

UNCITRAL/CIM Draft Instrument on the Carriage of Goods [wholly or partly] [by sea]

UNCTAD/ICC Rules for Multimodal Transport Documents

r. 1	3.124
1.1	3.125
1.2	3.131
2	3.124
2.1	3.125
2.2	3.124, 3.127
2.7	3.124
2.8	3.124
2.9	3,132
3	1.34, 3.126, 3.127
4	3.126, 3.127, 3.128
4.1	3.128
4.2	3.127
4.3	3.127
5	3.133
rr. 5.1–5.4	1.39, 3.128
r. 5.1	3.129, 3.131
5.2	3.130
5.3	3.138
5.4	3.130, 3.131
5.5	3.132
6	3.128, 3.132, 3.133, 3.139
6.1	1.39, 3.135
6.2	3.133
6.3	1.39, 3.129, 3.133
6.4	1.39, 3.134, 3.171
6.5	3.61, 3.132, 3.135
6.6	3.61, 3.132
7	3.132, 3.137
8	3.136, 3.138
9	3.138
10	3.138
11	3.139
12	3.127, 3.139, 3.140
13	3.125, 3.129, 3.131
(b)	3.134

NETHERLANDS

Dutch Civil Code	1.39
New Civil Code	2.65
s. 8.2.3.3–2	2.65
Book 8, ss. 42, 43	3.89