A Comparative Study of Liability arising from the Carriage of Dangerous Goods between Chinese and English Law

Submitted by Chang Lu, to the University of Exeter as a thesis for the degree of Doctor of Philosophy in Law, August 2009.

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I certify that all material in this thesis which is not my own work has been identified and that no material has previously been submitted and approved for the award of a degree by this or any other University.
Abstract

This thesis is about the rights and liabilities arising under English and Chinese law in respect of the carriage of dangerous cargo. It is noted that the danger in dangerous cargoes was not necessarily something in the goods themselves, but might well lie in the way they were packaged, looked after or transported. Accordingly, the responsibilities and liabilities of the various parties with regards to the carriage of dangerous cargoes are usually intertwined and complex.

The purpose of this thesis is to analyse and evaluate the dangerous cargoes liabilities in English and Chinese law, by providing suggestions for existing problems in each country based on three sources: contract, tort and statute. Moreover, the chain of causation and concept of remoteness has particular importance in order to establish liability and decide which type and what amount of damage is recoverable.

This thesis compares both countries’ liability regimes and how to secure compensation for its victims, and the restoration of the environment, with reference to the EU Environmental Liability Directive and relevant international conventions. The author draws her final conclusions from four important issues: (1) the meaning of dangerous cargo, the packing and handling; (2) the scheme of liability; (3) the channelling of liability; and (4) the type of recoverable damage.
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## Abbreviations

### Legislation and legal terms:

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<td>ARPMPV</td>
<td>Administrative Rules of the PRC for Preventing Marine Pollution caused by Vessels</td>
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<tr>
<td>ARSSDCV</td>
<td>Administrative Regulations of the PRC on the Safety Supervision of Dangerous Cargo on Vessels</td>
</tr>
<tr>
<td>BCH Code</td>
<td>Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk</td>
</tr>
<tr>
<td>CLC</td>
<td>International Convention on Civil Liability for Oil Pollution Damage</td>
</tr>
<tr>
<td>COGSA</td>
<td>Carriage of Goods by Sea Act</td>
</tr>
<tr>
<td>FUND</td>
<td>International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage</td>
</tr>
<tr>
<td>HNS Convention</td>
<td>International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea</td>
</tr>
<tr>
<td>HR</td>
<td>International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1924 (The Hague Rules)</td>
</tr>
<tr>
<td>IBC Code</td>
<td>International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk</td>
</tr>
<tr>
<td>IGC Code</td>
<td>International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk</td>
</tr>
<tr>
<td>IMDG Code</td>
<td>International Maritime Dangerous Goods Code</td>
</tr>
<tr>
<td>IOPC Fund</td>
<td>International Oil Pollution Compensation Fund</td>
</tr>
<tr>
<td>LOT</td>
<td>Load on Top</td>
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<tr>
<td>MARPOL</td>
<td>The International Convention for the Prevention of Pollution from Ships</td>
</tr>
<tr>
<td>MEPL</td>
<td>Marine Environmental Protection Law of the PRC</td>
</tr>
<tr>
<td>MSA</td>
<td>Merchant Shipping Act</td>
</tr>
<tr>
<td>MSR</td>
<td>Merchant Shipping Regulations</td>
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<tr>
<td>MTSLS</td>
<td>Maritime Traffic Safety Law of the PRC</td>
</tr>
<tr>
<td>NYPE</td>
<td>New York Product Exchange Time Charter</td>
</tr>
<tr>
<td>ORPC</td>
<td>International Convention on Oil Pollution Preparedness, Response and Co-operation</td>
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<tr>
<td>RADCP</td>
<td>Regulations of the PRC on Administration of Dangerous Cargo at Port</td>
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<tr>
<td>Ro-Ro</td>
<td>Roll on, Roll off</td>
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<tr>
<td>SDR</td>
<td>Special Drawing Right</td>
</tr>
<tr>
<td>SMPEP</td>
<td>Shipboard Marine Pollution plan for Noxious Liquid Substances</td>
</tr>
<tr>
<td>SOLAS</td>
<td>Convention for the Safety of Life at Sea</td>
</tr>
<tr>
<td>SOPEP</td>
<td>Ship or Oil Pollution Emergency Plan</td>
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### Organizations:

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<td>CMI</td>
<td>Comité Maritime International</td>
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<tr>
<td>IMO</td>
<td>International Maritime Organization</td>
</tr>
<tr>
<td>ITOPF</td>
<td>The International Tanker Owners Pollution Federation Limited</td>
</tr>
<tr>
<td>MOC</td>
<td>The Ministry of Communications of PRC</td>
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MSC
UN/ECE
UNCITRAL

Courts

C.A.
C.A. (9th Cir.)
H.C
H.L.
P.C.
Sup. Ct

Journals

All E.R.Rev.
C.L.J.
E.L.M.
Env.L.Rev.
Env. Liability
I.B.L.
IJMCL
IJSL
J.B.L.
JEEPL
J.Mar.L.&Com
J.I.M.L.
L.L.R.
Lloyd’s Rep.
L.M.C.L.Q.
Mar. Pol’y & Mgmt.
MLAANZ Journal
Tul. Mar. L.J.
U. Pa. J. Int’l Econ. L.
U.S.F. Mar. L.J.

Maritime Safety Committee of IMO
UN Economic Commission for Europe
United Nations Commission on International Trade Law

Court of Appeal
US Court of Appeals (9th Circuit)
High Court
House of Lords
Privy Council
Supreme Court

All England Law Reports Annual Review
Cambridge Law Journal
Environmental Law and Management
Environmental Law Review
Environmental Liability
International Business Lawyer
International Journal of Marine and Coastal Law
The International Journal of Shipping Law
Journal of Business Law
Journal for European Environmental & Planning Law
Journal of Maritime Law and Commerce
Journal of International Maritime Law
Lloyd’s List Law Reports
Lloyd’s Law Reports
Lloyd’s Maritime and Commercial Law Quarterly
Maritime Policy & Management
Maritime Law Association of Australia and New Zealand Journal
Tulane Maritime Law Journal
University of Pennsylvania Journal of International Economic Law
University of San Francisco Maritime Law Journal