Acknowledgements

Completing this thesis, a product of several years’ work, I feel deeply indebted to a great many people who have greatly inspired and supported me during my PH.D study at Erasmus University Rotterdam and the writing of this thesis.

In particular, I would like to thank my promoter, Professor G. J. van der Ziel for his invaluable guidance, encouragement, academic stimulus and generous help. From the inception to its completion, Professor van der Ziel has devoted so much into my study. I will always remember his encouragement “write, write and write” and “go ahead,” when I hesitated to move forward sometimes during the writing because of certain immature ideas. I will not forget those enjoyable and illuminating discussions with him at each stage of my writing, which always turned out to be several hours long, and have led me to the final completion of this thesis. From Professor van der Ziel, I learnt, not only the knowledge of maritime law, but also the rigorous scientific approach and the dedicating spirit for work. In addition, he has infused me with enthusiasms for researching and open mind for different cultures and opinions. Without his supervision, I would not have completed this challenging project.

I would also like to thank Mrs. van der Ziel. Her invitations and warm hosting at their house in Hoek van Holland made me feel at home.

I would like to express my thanks to Professor K. F. Haak and Professor Frank Smeele in EUR (Erasmus University Rotterdam) and Professor Shicheng Yu in SMU (Shanghai Maritime University) for reading my thesis and giving me enlightening comments. Meanwhile, I hope to express my special thanks to Professor Smeele, who arranged me a working place at Van Traa Law Office Rotterdam during the finalizing of my thesis. He provided me not only with the working facilities but also the good opportunity to exchange ideas with Dutch lawyers on maritime law.

I owe a huge debt of gratitude to Professor W. M. Lammerts van Bueren, Chairman of CHERC (China—Holland Education & Research Center) in EUR, who selected me to the Master Class held in July-August 1999 under the auspices of CHERC and made my PH.D research at EUR possible. He always provided me help and support during my studying.

I am so appreciative for the work of Mrs. Weichia Tseng, managing director of CHERC in EUR. Without her help, I couldn’t have finished my study so smoothly. Also, I’d like to say “thanks” to Mr. Charles Zhao, assistant of CHERC, for
everything he has done for me.

My gratitude also goes to Shanghai Maritime University for giving me this opportunity to carry out my research abroad, and especially to Professor Zhengxiong Jiang, dean of Law Faculty of SMU, who offered me convenience for this study.

I wish to thank Van Traa Law Office Rotterdam for providing me with good working facilities, and to AKD Law Office Rotterdam for opening their wonderful library to me during my writing. My thanks also go to the colleagues in these offices.

I am indeed obliged to “Hoogeschool-Fonds 1920”, China Shipping Agency Co. Netherlands BV and its managing director, Mr. Chunlin Xie. Their generous supports are crucial for the completion of this thesis. I am also grateful for the support from the Project of “Constructions of Key Theoretical Course—Maritime Law” sponsored by Shanghai Education Bureau.

Allow me to show my heartfelt thanks to Professor Dongnian Yin in SMU. His guidance on maritime law since my LL.M study also helps the successful completion of my PH.D research.

I’d like to show my great thanks to Jiadi Sun and Haipeng Niu in COSCON, Yulan Zhang in PENAVICO Shanghai, Xuan Yao in Shanghai Haihua Shipping Co. Ltd., Tianlan Guo in Hanghua Shipping Agency Shanghai, Xia Din in China Shipping Container Lines Co., Ltd., Zhiqiang Jia in China Shipping Development Co. Ltd. Tanker Co., Yan Li in China Shipping International Trade Co. Ltd., Zhenxian Xie in Shanghai Maritime Court, Jiaying Li in APL Shanghai, who served me interviews and provided valuable helps for my investigations during my research.

On a personal level, I would like to thank Mrs. Min Lu, founding and senior partner of Rolmax Law Office Shanghai, for her sincere help in these years.

My thanks also go to my Dutch and Chinese colleagues and friends, especially Ingrid Koning, Floor Koot, Nigel H. Margetson, Yan Sun, Yu Wang, Elaine M. Chen, Tao Jiao, Ying Cui, Lian Cheng and Yiwen Fei, for their helps during the writing of this thesis.

I owe hugely to my dear parents, Yanzhi Qi and Feili Zou. Their permanent love and confidence in me have encouraged me to go ahead in my study and career. Specifically I want to appreciate them for taking care of my daughter when I was studying in Rotterdam. My thanks equally go to my parents-in-law, Lingling Zhou and Yuanzheng Ma, for their understanding and taking care of my daughter. I hope I can express my love to them.

As to my sweet little girl, Rongruo Ma, my love and longing for her are beyond words. She is the softest point of my heart. I am sorry for not being able to
accompany or witness every step of her growing up in the first two years of her life.

Finally, but definitely not the least, I express my gratitude to my dear husband, Lei Ma. I am so appreciative for his constant love, understanding and encouraging, for his taking up the whole responsibilities to our family and bearing the pressure both from working and living during my studying abroad. I dedicate this book to him.

Yingying Zou

Rotterdam, 15th August 2005
## Contents

Abbreviations and acronyms  
Introduction

### Chapter 1 Legal systems on Delivery

1. International regimes
   - 1.1 International conventions
   - 1.2 National legislations
2. Chinese legislations
   - 2.1 General Principles of Civil Law
   - 2.2 Maritime Code of P. R. China
     - 2.2.1 General introduction
     - 2.2.2 Chapter IV and Provisions on delivery
     - 2.2.3 Evaluation
   - 2.3 Contract Law of P. R. China
     - 2.3.1 Evolutions
     - 2.3.2 Influences on contract of carriage by sea
     - 2.3.3 Provisions on delivery
     - 2.3.4 Evaluation
   - 2.4 Regulations on Carriage of Goods by Domestic Waterway
     - 2.4.1 Evolutions
     - 2.4.2 Waterway Regulations and CLC
     - 2.4.3 Provisions on delivery
     - 2.4.4 Evaluation
3. Tendency -- UNCITRAL Draft Instrument of Transport Law
   - 3.1 General introduction
   - 3.2 Main contents
4. Conclusions

### Chapter 2 Legal meanings of delivery

1. Contractual meanings
   - 1.1 The vagueness under China laws
   - 1.2 Delivery: carrier’s essential contractual obligation
Chapter 3 Identification of delivery

1. The ambiguity of the definition of delivery
   1.1 Traditional definition: handing over
   1.2 Placing the goods at disposal of consignee
   1.3 Delivery: a matter both of fact and law

2. Points of delivery in practice

3. Criteria for identifying delivery
   3.1 Agreement by parties
      3.1.1 Priority of an agreement
      3.1.2 Constraints on the agreement
   3.2 Customs, practices and usages in trade
   3.3 Discharging from the vessel
   3.4 Delivery granted by law

4. FIO clauses and the agreement on delivery

5. General procedure of delivery in China and related problems
   5.1 General procedure of releasing of goods
   5.2 Point of delivery: issuance of D/O or taking over of goods
   5.3 Delivery occurs before a D/O is issued

6. Conclusions
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Delivery of goods at an agreed/proper place</td>
<td>79</td>
</tr>
<tr>
<td>1.1</td>
<td>Place of delivery as agreed</td>
<td>79</td>
</tr>
<tr>
<td>1.1.1</td>
<td>Normal situation under CMC: discharging port</td>
<td>79</td>
</tr>
<tr>
<td>1.1.2</td>
<td>Point as agreed</td>
<td>79</td>
</tr>
<tr>
<td>1.2</td>
<td>Liabilities for breaching under Chinese system</td>
<td>80</td>
</tr>
<tr>
<td>1.3</td>
<td>Delivery at the place other than the agreed one</td>
<td>81</td>
</tr>
<tr>
<td>1.3.1</td>
<td>Statutory authorizations</td>
<td>82</td>
</tr>
<tr>
<td>1.3.2</td>
<td>Contractual authorizations</td>
<td>84</td>
</tr>
<tr>
<td>1.4</td>
<td>Redirection of place of delivery by the shipper</td>
<td>86</td>
</tr>
<tr>
<td>1.4.1</td>
<td>Redirection by the shipper</td>
<td>86</td>
</tr>
<tr>
<td>1.4.2</td>
<td>Awkward position of the carrier</td>
<td>87</td>
</tr>
<tr>
<td>1.4.3</td>
<td>Conditions for the right of instruction</td>
<td>89</td>
</tr>
<tr>
<td>2.</td>
<td>Delivery on time</td>
<td>94</td>
</tr>
<tr>
<td>2.1</td>
<td>Regimes of the time for delivery</td>
<td>95</td>
</tr>
<tr>
<td>2.2</td>
<td>Controversy of “delay in delivery” in China</td>
<td>96</td>
</tr>
<tr>
<td>2.3</td>
<td>Obligation of timely delivery</td>
<td>97</td>
</tr>
<tr>
<td>2.4</td>
<td>Liabilities for delay in delivery</td>
<td>99</td>
</tr>
<tr>
<td>3.</td>
<td>Delivery to the right person</td>
<td>101</td>
</tr>
<tr>
<td>3.1</td>
<td>General principle</td>
<td>101</td>
</tr>
<tr>
<td>3.2</td>
<td>When a bill of lading is issued</td>
<td>103</td>
</tr>
<tr>
<td>3.2.1</td>
<td>History and functions of bills of lading</td>
<td>103</td>
</tr>
<tr>
<td>3.2.2</td>
<td>Classification of bills of lading</td>
<td>106</td>
</tr>
<tr>
<td>3.2.3</td>
<td>Delivery under negotiable bill of lading</td>
<td>108</td>
</tr>
<tr>
<td>3.2.4</td>
<td>Delivery under straight bill of lading</td>
<td>112</td>
</tr>
<tr>
<td>3.3</td>
<td>When no bill of lading is issued</td>
<td>113</td>
</tr>
<tr>
<td>3.3.1</td>
<td>When a sea waybill is issued</td>
<td>114</td>
</tr>
<tr>
<td>3.3.2</td>
<td>When a delivery order is issued</td>
<td>127</td>
</tr>
<tr>
<td>3.4</td>
<td>When electronic document is issued</td>
<td>134</td>
</tr>
<tr>
<td>3.5</td>
<td>Competing claims for delivery</td>
<td>137</td>
</tr>
<tr>
<td>3.5.1</td>
<td>Situations of competing claims</td>
<td>137</td>
</tr>
<tr>
<td>3.5.2</td>
<td>General rules may not apply</td>
<td>138</td>
</tr>
<tr>
<td>3.5.3</td>
<td>Interpleading: the solution</td>
<td>138</td>
</tr>
<tr>
<td>4.</td>
<td>Conclusions</td>
<td>140</td>
</tr>
<tr>
<td>4.1</td>
<td>Delivery of goods at an agreed/proper place</td>
<td>140</td>
</tr>
<tr>
<td>4.2</td>
<td>Delivery on time</td>
<td>141</td>
</tr>
<tr>
<td>4.3</td>
<td>Delivery to right person</td>
<td>142</td>
</tr>
<tr>
<td>4.4</td>
<td>Right of disposal or controlling</td>
<td>142</td>
</tr>
</tbody>
</table>
4.5 Suggestions for Chinese law

Chapter 5 Liabilities on the carrier for delivery without production of B/L (1)

1. Presentation rule of bill of lading
   1.1 Historical background
   1.2 Undertaking by the carrier in bill of lading
   1.3 Statutory provisions

2. Document of title and presentation rule
   2.1 Bill of lading: document of title
   2.2 Document of title: result of merchant custom

3. Transferability of B/L and presentation rule
   3.1 Legal nature of transfer of B/L
      3.1.1 Theories and comments
   3.2 Effects of the transfer of bill of lading
   3.3 Transferability of B/L and presentation rule

4. Practices of delivery without production of B/L
   4.1 Reasons for delivery without production of B/L
   4.2 Solutions for practices of delivery without B/L
      4.2.1 General suggestions
   4.2.2 Solutions in practice
   4.2.3 Telex-release in China
   4.2.4 Innovation by UNCITRAL Draft Instrument
   4.3 Conclusion: no perfect solution until now

5. Causes of the action for delivery without B/L
   5.1 Legal nature of delivery without B/L
   5.2 Causes of action

6. Liabilities of the carrier for delivery without B/L
   6.1 Specific performance
   6.2 Compensation for damages
      6.2.1 Foreseeable damages
   6.2.2 Damages to the goods
6.2.3 Consequential/economic losses 196
6.2.4 Limitation of liability 198

7. Conclusions 199
7.1 Presentation rule 199
7.2 The future of presentation rule 200
7.3 Liabilities on the carrier for delivery without B/L 201

Chapter 6 Liabilities on the carrier for delivery without production of B/L (2) 202

1. Chinese cases and comments 203
   1.1 *The Kota Maju* and carrier’s defenses 203
      1.1.1 Facts and decisions 203
      1.1.2 Comments 204
   1.2 *The He Tian* and consignor’s right to delivery 212
      1.2.1 Facts and decisions 212
      1.2.2 Consignor’s right of suit for delivery without B/L 213

2. Letter of Indemnity at delivery 217
   2.1 Effects of an LOI 218
      2.1.1 Effecting the delivery of goods under the contract of carriage 218
      2.1.2 No affection of right of *bona fide* holder of B/L 218
      2.1.3 Providing security for the carrier 219
      2.1.4 The “privity” of an LOI 220
   2.2 Suggestions for carrier 221
      2.2.1 Reputation of consignee and guarantor 221
      2.2.2 Wordings of an LOI 222
      2.2.3 Genuine authority of the guarantor 222
      2.2.4 Period of guarantee 223
   2.3 Trader’s LOI 224

3. Presentation rule and straight bill of lading 225
   3.1 Conflicts of legislations and theories 225
      3.1.1 National legislations and theories 225
      3.1.2 International legislations 227
      3.1.3 Chinese controversies 227
   3.2 New development of case law 231
      3.2.1 Voss Peer v. APL Co. Ltd 231
      3.2.2 *The Rafaela S* 232
   3.3 Presentation rule applies 233
   3.4 Limitation of straight bill of lading 235
3.4.1 Holder of Straight bill of lading
3.4.2 Redirection of consignee
3.5 Calling for uniformity
4. When a bill of lading is lost
4.1 Usual requirements by merchant party
4.2 The carrier’s remedies for claims of delivery
5. Conclusions
5.1 Carrier’s defenses for delivery without B/L
5.2 Right of suit
5.3 LOI
5.4 Presentation rule and straight bill of lading
5.5 Solutions when bill of lading is lost

Chapter 7 Remedies for the carrier
when the consignee fails to take delivery

1. Taking delivery: right or obligation
   1.1 Both a right and an obligation
   1.2 Rejection of goods
   1.3 Obligor of taking delivery
2. Notice of arrival of goods
3. Traditional remedies: warehousing the goods
   3.1 Effect of warehousing
      3.1.1 Constructive delivery under contract of carriage
      3.1.2 Duty to the safety of the goods
      3.1.3 Concluding storage and related contracts
      3.1.4 Reimbursement for the carrier
   3.2 Insufficient protection by warehousing
4. Supplements of remedies
   4.1 Acquiring instruction
   4.2 Retaining the goods as a lien
   4.3 Selling the goods by auction
   4.4 Applying for an injunction
   4.5 Opening, unpacking of goods
   4.6 Depositing of goods
5. Conclusions

Bibliographies
# Abbreviations and acronyms

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>B/L</td>
<td>Bill of lading</td>
</tr>
<tr>
<td>CFS</td>
<td>Container freight station</td>
</tr>
<tr>
<td>CLC</td>
<td>Contract Law of People’s Republic of China</td>
</tr>
<tr>
<td>CMI</td>
<td>Maritime Code of People’s Republic of China</td>
</tr>
<tr>
<td>CMLA</td>
<td>China Maritime Law Association</td>
</tr>
<tr>
<td>CMR</td>
<td>Convention on the Contract for the International Carriage of Goods by Road, 1956</td>
</tr>
<tr>
<td>COGSA</td>
<td>Carriage of Goods by Sea Act</td>
</tr>
<tr>
<td>COSCO</td>
<td>China Ocean Shipping Company</td>
</tr>
<tr>
<td>COSCON</td>
<td>China Ocean Shipping Container Company</td>
</tr>
<tr>
<td>CPL</td>
<td>Civil Procedure Law of PRC</td>
</tr>
<tr>
<td>CY</td>
<td>Container yard</td>
</tr>
<tr>
<td>EDI</td>
<td>Electronic data interchange (system)</td>
</tr>
<tr>
<td>ICC</td>
<td>International Chamber of Commerce</td>
</tr>
<tr>
<td>JMLA</td>
<td>Journal of International Maritime Law</td>
</tr>
<tr>
<td>L/C</td>
<td>Letter of credit</td>
</tr>
<tr>
<td>LMCLQ</td>
<td>Lloyd’s Maritime and Commercial Law Quarterly</td>
</tr>
<tr>
<td>MPL</td>
<td>Maritime Procedure Law of PRC</td>
</tr>
<tr>
<td>PRC</td>
<td>People’s Republic of China</td>
</tr>
<tr>
<td>TRAT</td>
<td>German Transport Law Reform Act</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>UNCITRAL</td>
<td>Conference of International Trade and Law of United Nations</td>
</tr>
<tr>
<td>UNCTAD</td>
<td>Conference of Trade and Development of United Nations</td>
</tr>
<tr>
<td>USA</td>
<td>United States of America</td>
</tr>
</tbody>
</table>