



PRINCIPLES OF AUTONOMY AND STRICT
COMPLIANCE IN LETTER OF CREDIT (LC): A
COMPARATIVE STUDY FROM LEGAL AND
SHARĪAH PERSPECTIVES IN
MALAYSIA

BY

ROSMAWANI BINTI CHE HASHIM

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International Islamic University
Malaysia

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ABSTRACT

Principles of autonomy and strict compliance are two fundamental principles in letter of credit (LC). They indicate that LC is separate from underlying sale contract and payment for the goods only upon compliance of documents. The autonomous nature of LC which embodied in the UCP 600 however comes to an end in the existence of fraud, which is treated as the most controversial exception compared to other exceptions. In practice, it is always perceived that the Conventional concept envisaged by these principles as well as fraud exception can be applied in *pari materia* to Islamic LC transaction. Thus, this study primarily aims to discuss critically the application of these principles in Conventional legal perspective and undertakes to highlight differences and similarities between their application in Conventional and *Sharī'ah* perspectives. In addition, this study evaluates also a level of understanding of Malaysian customers on the application of these principles in Conventional and Islamic LC. This study adopted legal and qualitative method as main research method supplemented by quantitative methods to establish how far these two principles applied in LC transactions in Malaysia. For legal method, relevant local cases are analysed and English and US cases are also mainly referred to. For qualitative method, interviews are conducted with bankers, trainers, academicians, *Sharī'ah* advisors as well as other relevant parties. For quantitative method, samples of 102 LC customers in Klang Valley were selected on random sampling basis. This study identified significant differences and similarities in the application of principles of autonomy, strict compliance and fraud exception between Conventional and *Sharī'ah* perspectives. The differences are however not obvious as far as the practices of Malaysian Conventional and Islamic banks are concerned. Simultaneously, it demonstrated that the level of understanding among LC customers on the application of these principles is significantly low and ignorance of the provisions of the UCP. This study concluded by highlighting the issues that warrant further investigations and proposed practical suggestions to the problems. Other than filling up the gap in local literature on legal and *Sharī'ah* issues of autonomy and strict compliance as well as fraud exception especially with respect to Conventional and Islamic LC, this study enhanced the suggestions to the application of those principles in LC transaction which is in harmony with *Sharī'ah* principles. Having analysed the existence of all peculiar characteristics of LC in every disputable angle, this study serves as a holistic understanding to those dealing actively in international trade involving LC payment mechanism such as traders, bankers as well as judiciary and *Sharī'ah* advisors. In addition, the adoption of mixed research methods in data collection distinguished this study from other research which focuses solely on legal or qualitative methods.

خلاصة البحث

يعتبر مبدأ الاستقلال ومبدأ التنفيذ الحرفي من أهم المبادئ الأساسية في الاعتمادات المستندية حيث يقتضي هذا المبدأ استقلال الاعتماد المستندي عن عقد البيع، بحيث يتم تسديد الثمن بمجرد مطابقة المستندات لمتطلبات الاعتماد المستندي. وبالرغم من استقلالية الاعتماد المستندي حسب ما تقتضيه وثيقة UCP 600 فإنه يعتبر لاغيا في وجود الغش والخداع والتي تعتبر من أهم المتناقضات المستثناة في الاعتماد المستندي مقارنة مع الاستثناءات الأخرى. ويأتي هذا البحث لدراسة تطبيقات هذه المبادئ من الناحية القانونية والشرعية بصورة تحليلية نقدية مقارنة، مع إبراز أهم أوجه الاختلاف والتشابه في تطبيقاتها على الاعتمادات المستندية التقليدية من جانب والإسلامية من جانب آخر. وبالإضافة إلى ذلك يقوم البحث بدراسة مدى استيعاب فهم المتعاملين الماليزيين لبيان حقيقة تطبيقات هذه المبادئ في كل من الاعتمادات المستندية التقليدية والإسلامية. وقد استخدم البحث المنهج القانوني والنوعي كمنهجين أساسيين مدعمين بالمنهج الكمي لمعرفة مدى تطبيق مبدأ الاستقلال والتنفيذ الحرفي في الاعتمادات المستندية في ماليزيا. أما بالنسبة للمنهج القانوني فاستخدم في القضايا القانونية المحلية إلى جانب القضايا الأخرى المسجلة في المحاكم الإنجليزية والأمريكية. وأما بالنسبة للمنهج النوعي فاعتمد في المقابلات الشخصية لموظفي البنوك والمدربين والأكاديميين والمستشارين الشرعيين وغيرهم ممن لهم خبرة وعلاقة بالمعاملات المستندية في البنوك الإسلامية. أما المنهج الكمي فكان عن طريق توزيع الاستبيانات إلى ١٠٢ من زبائن الاعتمادات المستندية الذين تم اختيارهم عشوائيا في منطقة Klang Valley وتظهر هذه الدراسة بأن هناك تشابه في تطبيقات تلك المبادئ بين الاعتمادات التقليدية والإسلامية، كما أنه لا يوجد ثمة خلاف جوهري بينها وبين البنوك الماليزية. كما يلاحظ أيضا أن هناك ضعف للمتعاملين بالاعتمادات المستندية في فهم المبادئ والنصوص المتعلقة بوثيقة UCP 600 ويختم البحث بتحديد أهم النتائج البحثية مدعما ببعض المقترحات العملية في ضوء المسائل التي تم مناقشتها ومعالجتها. كما انتهت الدراسة بمحاولة سد الثغرات التي لوحظت في الدراسات المحلية في جانبها القانوني والإسلامي، حيث إنها قدمت مفاهيم شاملة وعملية للمتعاملين بهذا النوع من المستندات في التجارة المحلية والخارجية، فضلا عن ذلك فإن استخدام هذه الدراسة لمناهج بحث متنوعة في جمع المعلومات جعلها متميزة عن غيرها من الدراسات الأخرى التي اعتمدت على المنهج النوعي فحسب.

APPROVAL PAGE

The thesis of Rosmawani Che Hashim has been approved by the following:

Ahmad Azam Othman
Supervisor

Ahktarzaite Abdul Aziz
Co-Supervisor

Rusni Hassan
Internal Examiner

Lahsasna Ahcene
External Examiner

Nasr Eldin Ibrahim Ahmad Hussein
Chairman

DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Rosmawani Binti Che Hashim

Signature Date

INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA

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**PRINCIPLES OF AUTONOMY AND STRICT COMPLIANCE IN
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Affirmed by Rosmawani Binti Che Hashim.

.....

Signature

.....

Date

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ARWAH AYAHANDA CHE HASHIM BIN CHE HASSAN,

and

BONDA ZAHRAH@CHE RAHMAH HAJI YAACOB,

My husband

JAMAL MOHD LOKMAN BIN SULAIMAN

and my son

EILHAM HAKIMIE BIN JAMAL MOHD LOKMAN

I dedicate this work

TABLE OF CONTENTS

Abstract	ii
Abstract in Arabic	iii
Approval Page.....	iv
Declaration Page	v
Copyright Page.....	vi
Acknowledgements.....	vii
Dedication	viii
List of Cases.....	xv
List of Statutes	xx
List of Tables	xxi
List of Figures	xxii
List of Abbreviations	xxiv

CHAPTER ONE: INTRODUCTION	1
1.0 Background of Study	1
1.1 Research Objectives	4
1.2 Problem Statement	5
1.3 Research Questions	9
1.4 Hypothesis	10
1.5 Literature Review	11
1.6 Significance of Research.....	22
1.7 Methodology	24
1.7.1 Legal Method	24
(i) Data Gathering for Legal Method	24
(ii) Data Analysis for Legal Method	27
1.7.2 Qualitative Method.....	28
(i) Overview of Respondents for Qualitative Method.....	29
(ii) Conduct of Interview and Interview Questions For Qualitative Method	39
(iii) Data Gathering for Qualitative Method.....	40
(iv) Data Analysis Procedure for Qualitative Method.....	42
1.7.3 Quantitative Method.....	44
(i) Overview of Respondents for Quantitative Method.....	44
(ii) Data Collection for Quantitative Method	45
1.8 Validity and Reliability	46
1.9 Scope and Limitations of Research.....	49
1.10 Outline of Chapters	50
1.11 Conclusion.....	52

CHAPTER TWO: LETTER OF CREDIT: AN OVERVIEW	55
2.0 Introduction	55
2.1 Definition of LC	56
2.2 Historical Background of LC	60
2.3 Function and Significance of LC	62
2.4 Rules, Standards and Statutes Governing LC	64
2.4.1 Rules Governing LC	64
(i) Uniform Custom and Practice for Documentary Credit (UCP) ..	65
(ii) Electronic Uniform Custom and Practice For Documentary Credit (eUCP).....	67
2.4.2 Standard Governing LC	69
(i) International Standard Banking Practices (ISBP)	69
(ii) International Chamber of Commerce (ICC) Banking Commission Official Opinion	70
(iii) Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) <i>Shari'ah</i> Standard	71
2.4.3 Statutes Governing LC	74
(i) Uniform Commercial Code (UCC)	74
(ii) People's Republic of China Letter of Credit Rules (PRC LC)...	75
2.5 Parties to LC and Their Obligation	76
2.5.1 Applicant	76
2.5.2 Beneficiary	77
2.5.3 Applicant's Bank.....	78
2.5.4 Beneficiary's Bank.....	78
2.6 Types of LC	81
2.6.1 Revocable Credit and Irrevocable Credit.....	81
2.6.2 Confirmed and Unconfirmed Credit	83
2.6.3 Transferable Credit.....	85
2.6.4 Back-to-Back Credit	86
2.6.5 Red Clause Credit	87
2.6.6 Green Clause Credits.....	88
2.6.7 Revolving Credit	89
2.6.8 Standby Credit.....	89
2.6.9 Sight and Deferred Credit	90
2.6.10 Acceptance Credit	90
2.6.11 Negotiation Credit.....	91
2.7 Islamic Concepts Used in Islamic LC	92
2.7.1 LC Issued Under <i>Wakalah</i>	93
2.7.2 LC Issued Under <i>Murabahah</i>	95
2.7.3 LC Issued Under <i>Musharakah</i>	96
2.8 Differences in <i>Murabahah</i> LC and <i>Musharakah</i> LC Operations	96
2.9 Procedure to Issue LC	98
2.9.1 Pre-Issuance of LC	98
(i) Contract of Sale	98
(ii) Application for LC	99
2.9.2 Issuance of LC.....	101
(i) LC Contract	101
(ii) Notification of the Issuance of LC	101
2.9.3 Post-Issuance of LC	102

(i) Shipment of Goods	102
(ii) Presentation of Documents by Seller	102
(iii) Examination of Documents and Payment by the Bank.....	103
2.10 Conclusion.....	105

CHAPTER THREE :PRINCIPLE OF AUTONOMY IN LETTER OF

CREDIT	107
3.0 Introduction	107
3.1 Principle of Autonomy – Nature and Background.....	108
3.2 Significance of Principle of Autonomy in LC	110
3.3 Legal Framework of Principle of Autonomy in LC.....	113
3.4 Principle of Autonomy – <i>Sharī'ah</i> Perspective.....	128
3.5 Application of Principle of Autonomy in LC – Malaysian Practice.....	135
3.5.1 Dispute between Seller and Buyer on Goods – Bank’s Action ..	136
3.5.2 Dispute between Seller and Buyer on Goods – Bank’s Advice...	138
3.5.3 Banks Do Not Establish Correctness of the Goods with the Buyer	139
3.5.4 Buyer Asks Bank to Stop Payment – Reasons for No Experience.....	141
3.5.5 Injunction to Stop Payment – Bank’s Action.....	144
3.6 Application of the Principle of Autonomy in Conventional and Islamic LC - Comparative Perspective	147
3.7 Conclusion	149

CHAPTER FOUR:FRAUD EXCEPTION IN LETTER OF CREDIT151

4.0 Introduction	151
4.1 LC Fraud - Nature and Background.....	152
4.2 Legal Framework of Fraud Exception in LC	159
4.3 Application of Fraud Exception in LC - Approach By Selected Court’s Jurisdiction	168
4.4 Fraud Issue in LC – <i>Sharī'ah</i> Perspective.....	181
4.5 Application of Fraud Exception in LC – Malaysian Practice	191
4.5.1 Fraud – Direct Implications to Bank.....	192
4.5.2 Fraud in Document – Modus Operandi.....	195
4.5.3 Suspicious Fraud - Bank's Action	200
4.5.4 Fraud on Goods – Bank’s Action.....	203
4.6 Application of Fraud Exception in Conventional and Islamic LC– Comparative Perspective.....	206
4.7 Conclusion	208

CHAPTER FIVE: PRINCIPLE OF STRICT COMPLIANCE IN LETTER OF CREDIT

211	211
5.0 Introduction	211
5.1 Principle of Strict Compliance – Nature and Background.....	212
5.2 Legal Framework of Principle of Strict Compliance	219
5.3 Principle of Strict Compliance – <i>Sharī'ah</i> Perspective.....	232

5.4 Application of Principle of Strict Compliance in LC – Malaysian Practice	247
5.4.1 Reasons for Literal Approach	248
5.4.2 Reasons for Substantial Approach	251
5.4.3 Reasons for Reasonable Approach.....	254
5.4.4 Standard Approach – Comparison According to Type of Bank ..	255
5.4.5 Discrepancy Fee Issues – Perception	257
5.4.6 Discrepancy Fee Effect – Reduce Discrepancy	261
5.4.7 Discrepancy Fee - Discourage LC Usage?	263
5.5 Application of Principle of Strict Compliance in Conventional and Islamic LC– Comparative Perspective	265
5.6 Conclusion	268

CHAPTER SIX: SURVEY ON MALAYSIAN LC CUSTOMER271

6.0 Introduction	271
6.1 Questionnaire Item for Survey in Quantitative Method.....	272
6.2 Pilot Test for Survey in Quantitative Method.....	274
6.3 Reliability Test for Questionnaire.....	274
6.4 Sample Selection for Actual Survey in Quantitative Method.....	275
6.5 Analysis and Result if Questionnaire Survey.....	276
6.5.1 Demographic Profile	276
(i) Ethnicity.....	277
(ii) Organisation Type	277
(iii) Industry Class	278
(iv) Experience in Handling LC	279
(v) Role.....	279
(vi) Attending Workshop.....	280
6.5.2 Analysing the Distribution of the Data	280
6.5.3 General Understanding on Conventional LC.....	283
6.5.4 General Understanding on Islamic LC.....	285
6.5.5 Comparison of General Understanding on Conventional LC and Islamic LC	286
6.5.6 Level of Understanding on Principle of Autonomy and Fraud Exception	287
6.5.7 Level of Understanding on Principle of Strict Compliance on LC.....	289
6.5.8 Factors Related to General Understanding on LC	290
(i) Relationship between Experiences in Handling LC Level Level of Understanding Conventional LC.....	290
(ii) Relationship Between Category of Companies on Level of Understanding on LC	291
6.6 Additional Finding	293
6.6.1 Discrepancies in Documents	293
6.6.2 Fraud on Documents	294
6.6.3 Substandard Goods	295
6.7 Discussion	296
6.8 Conclusion.....	297

CHAPTER SEVEN: CONCLUSION AND SUGGESTION	298
7.0 Conclusion - Application of Principle of Autonomy, Fraud Exception and Strict Compliance in LC	298
7.1 Suggestions	305
7.1.1 From Practical Perspective.....	305
(i) Upgrade Bankers' Capability	305
(ii) Training for Trainers	307
(iii) Training for LC Customers/Users	307
7.1.2 From Legal and <i>Sharī'ah</i> Perspective	310
(i) Robust Legal Framework	310
(ii) Enhancing the Function of <i>Sharī'ah</i> Muamalat Court in Dealing with Islamic Banking and Finance Cases	311
(iii) Training for <i>Sharī'ah</i> Judges and <i>Sharī'ah</i> Lawyers.....	314
(iv) Educational Level – Islamic Banking and International Trade Law as a Compulsory Subject.....	314
(v) Upgrade <i>Sharī'ah</i> Advisors' Knowledge.....	315
(vi) Islamic Rules and the UCP – A Proposed Provisions	316
7.2 Concluding Remark	338
BIBLIOGRAPHY	340
APPENDICES	359
APPENDIX A: ICC Uniform Customs and Practice for Documentary Credit (UCP) 2007 Revision.....	359
APPENDIX B: LC Breakdown by Percentage of International Product.....	389
APPENDIX C: LC Usage by Region	390
APPENDIX D: 2007-2008 Statistical Comparison of Cases: By Jurisdiction	391
APPENDIX E: Course Attended	392
APPENDIX F: List of Malaysian Commercial Banks	393
APPENDIX G: List of Malaysian Islamic Banks.....	394
APPENDIX H: LC Volume of Issuance.....	395
APPENDIX I(i) : Interview Questions for Bankers/Trainers	396
APPENDIX I(ii): Interview Questions for Interview Questions for Professor James Byrne, George Mason University School of Law, 21 July2009	403
APPENDIX I(iii): Interview with Mr Mukundan, Director of International Maritime Bureau (IMB) – 20May, 2009	404
APPENDIX J: Distribution of LC Customers – By Location	405
APPENDIX K(i): Procedure to Issue Conventional LC.....	406
APPENDIX K(ii): Procedure to Issue <i>Wakālah</i> LC	407
APPENDIX K(iii): Procedure to Issue <i>Murābahah</i> LC	408
APPENDIX K(iv): Procedure to Issue <i>Mushārahah</i> LC	409
APPENDIX L(i): Irrevocable Documentary Credit Application Form	410
APPENDIX L(ii:) <i>Wakālah</i> LC Application Form	411
APPENDIX M: Crimes Investigated By Commercial Crimes Investigation Department (ROYAL MALAYSIAN POLICE)	412
APPENDIX N: Questionnaire for Malaysian LC Customers.....	415

LIST OF TABLES

<u>Table No</u>		<u>Page No.</u>
1.1	Respondents Profile for Qualitative Method	29
3.1	Dispute between Seller and Buyer on Goods – Bank’s Action	136
3.2	Dispute between Seller and Buyer on Goods – Bank’s Advice	138
3.3	Banks Do Not Establish Correctness of the Goods with the Buyer	139
3.4	Buyer Asks Bank to Stop Payment – Reasons for No Experience By Bank	141
3.5	Injunction to Stop Payment – Bank’s Action	144
4.1	Fraud – Direct Implications to Bank	192
4.2	Fraud in Document – Modus Operandi	196
4.3	Suspicious Fraud - Bank's Action	200
4.4	Fraud on Goods – Bank’s Action	203
5.1	Reasons for Literal Approach	248
5.2	Reasons for Substantial Approach	251
5.3	Reasons for Reasonable Approach	254
5.4	Standard Approach – Comparison According to Type of Bank	255
5.5	Discrepancy Fee – Perception	258
5.6	Discrepancy Fee Effect – Reduce Discrepancy?	261
5.7	Discrepancy Fee - Discourage LC Usage?	263
6.1	Skewness and Kurtosis	282
6.2	Level of Experience	291

LIST OF FIGURES

<u>Figure No</u>		<u>Page No.</u>
1.1	Profession of Respondents	32
1.2	Place of Origin of the Respondents	34
1.3	Type of Banks	35
1.4	Certified Documentary Specialist	37
1.5	Experience in Handling LC	38
3.1	Dispute between Seller and Buyer on Goods – Bank’s Action	136
3.2	Dispute between Seller and Buyer on Goods – Bank’s advice	138
3.3	Banks Do Not Establish Correctness of the Goods with the Buyer	140
3.4	Buyer Asks Bank to Stop Payment – Reasons for No Experience By Bank	142
3.5	Injunction to Stop Payment – Bank’s Action	145
4.1	Fraud – Direct Implications to Bank	192
4.2	Fraud in Document – Modus Operandi	196
4.3	Suspicious Fraud - Bank's Action	200
4.4	Fraud on Goods – Bank’s Action	204
5.1	Reasons for Literal Approach	249
5.2	Reasons for Substantial Approach	251
5.3	Reasons for Reasonable Approach	254
5.4	Standard Approach – Comparison According to Type of Bank	256
5.5	Discrepancy Fee – Perception	258
5.6	Discrepancy Fee Effect – Reduce Discrepancy?	261
5.7	Discrepancy Fee - Discourage LC Usage?	263
6.1(i)	Ethnicity	277

6.1(ii)	Organisation Types	277
6.1(iii)	Industry Class	278
6.1(iv)	Experience in Handling LC	279
6.1 (v)	Role	279
6.1 (vi)	Attending Workshop	280
6.2	Mean Score for General Understanding of Conventional LC	284
6.3	Mean Score for General Understanding on Islamic LC	285
6.4	Comparison between General Understandings on Conventional LC and Islamic LC	286
6.5	Mean Score for General Understanding on Principle of Autonomy and Fraud Exception	288
6.6	Mean Score for General Understanding on Principle of Strict Compliance in LC	289
6.7(i)	Relationship between Experience in Handling LC and Level of Understanding on Conventional LC	290
6.7(ii)	Mean Score for General Understanding of LC – Category of Company	292
6.8	Discrepancies in Documents	293
6.9	Fraud on Documents	294
6.10	Substandard Goods	295

LIST OF CASES

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LIST OF ABBREVIATION

Common abbreviation

cf – compare
e. g – (*exempligratia*)for example
et al – (*et alia*): and others
etc –and so fourth
i.e – that is
id – (idem) the same below
ibid – (ibidem) in the same place
n.d – no date
PBUH – Peace Be Upon Him
Vol. – volume

Notes on abbreviations

AAOIFI –Accounting and Auditing Organisation for Islamic Financial Institution
AC – Appeal Case
AIR – All Indian Report
AJICL – Arizona Journal of International Commercial Law
ALL ER – All England Report
A. L.R – American Law Report
Am Jur – American Jurisprudence
AMLA – Anti-Money Laundering Act 2001 (Act 613)
Banking L.J – Banking Law Journal
Bank LR – Banking Law Review
B.C.L.R – Boston College Law Review
B.F.L.R – Banking and Finance Law Review
BLR – Business Law Report
Brook L.Rev – Brooklyn Law Review
Burr – Burrow, English King's Bench Reports
Cap. U.L. Rev – Capital University Law Review
C.B.R – Canadian Bankruptcy Report
Chi. J. Int'L – Chicago Journal of International Law
CLJ – Current Law Journal
Currents Int'l Trade L.J – Current International Trade Law Journal
Duke J. of Comp. & Int'l L – Duke Journal of Comparative and International Law
ECR – European Court Report
Eng Rep –English Report
eUCP – Electronic Uniform Custom Practice
F&CL – Finance and Credit Law
GW J. Int'l L. & Econ. – George Washington Journal of International Law and
Economics
Harv. L. Rev – Harvard Law Review
HKC – Hong Kong case
IBBM – Institut Bank-Bank Malaysia
ICC – International Chamber of Commerce

INCOTERMS – International Commercial Terms
 IIBLP - Institute of International Banking Law and Practice Publication
 Int'l L. – International Law
 Int'l Legal Persp. – International Legal Perspective
 Int'l. Trade & Bus. L. Ann – international Trade and Business Law Annually
 ISBP – International Standard Banking Practice
 Islamic Econ Stud – Islamic Economic Student
 J.B.L – Journal of Business Law
 J.I.B.L.R – Journal of International Banking Law and Regulation
 J. Int'l L. & Econ – Journal of International Law and Economics
 J.I.M.L – Journal of International Maritime Law
 K.B – King's Bench
 LIL Rep – Lloyd's Law Report
 LC – Letter of Credit
 L.J – Lord Justice
 L.M.C.L.Q - Lloyd's Maritime and Commercial Law Quarterly
 Mich. L. Rev – Michigan Law Review
 MLJ – Malayan law Journal
 MLJA – Malayan Law Journal Article
 MLJU – Malayan Law Journal Unreported
 Monash U. L. Rev. – Monash University Law Review
 Mqjbl – Macquarie Journal of Business Law
 NW. INT'L.L & BUS – Northwestern Journal of International Law and Business
 Q.B - Queen's Bench
 RMA – Risk Management Association
 SCJJ – Supreme Court Judges
 SLR – Singapore Law Report
 San Diego Int'l Law – San Diego International Law
 S.C.R – Supreme Court Review
 SLR – Singapore Law Report
 Tex, Wesleyan L. Rev – Texas, Wesleyan Law Review
 Tex. Int'L.J, - Texas International Law Journal
 TLR – Tulane Law Review
 Tul. Mar. L.J – Tulane Maritime Law Journal
 UKHL – United Kingdom House of Lords
 UCC – Uniform Commercial Code
 U.C.C.L.J – Uniform Commercial Code Law Journal
 UCP – Uniform Customs and Practice
 UK – United Kingdom
 URR – Uniform Rules of Reimbursement
 UNSWLJ – University of New South Wales Law Journal
 US – United States
 U.Pa J.Int'l Econ. L – University of Pennsylvania Journal of International Economic Law
 U. Pitt. L. Rev. - University of Pittsburgh Law Review
 U.III.L.F – University of Illinois Law Forum
 VJ – Vindobona Journal
 W.L.R – Weekly Law Report
 W. N – World News