ΠΤΥΧΙΑΚΗ ΕΡΓΑΣΙΑ

BILL OF LADING

ΑΚΑΔΗΜΙΑ ΕΜΠΟΡΙΚΟΥ ΝΑΥΤΙΚΟΥ ΜΑΚΕΔΟΝΙΑΣ
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Ο ΔΙΕΥΘΥΝΤΗΣ ΤΗΣ ΣΧΟΛΗΣ:

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SUMMARY

This dissertation paper deals with the bill of lading. First of all we mention the history of bill of lading. Following that we segregate the types of the existing bill of ladings and we underline the importance of her existence. Particularly we deal with Bill of Lading's basic functions , her ingredients and some factors that are important to take into consideration. We highly mention the Charter Party Bill of Lading. Last but not leastwe mention about the function of bill of lading in charter party and the Hague/visby rules in charter party.

INTRODUCTION

Definition of Bill of Lading: A bill of lading (sometimes abbreviated as B/L or BoL) is a document issued by a carrier (or their agent) to acknowledge receipt of cargo for shipment. Although in England, the term once related only to carriage by sea, a bill of lading may be used for any type of carriage of goods.

A formal confirmation that the specific cargo with specified characteristics had been loaded onto a particular ship.Acted as evidence of a contract of carriage .A document showing who had title in the cargo. Depending on the holder of the document, it can act as:

- Acknowledgement of receipt of goods as well as their quantity and condition and leading marks identifying the goods.
- Evidence of the contract of carriage, and in the hands of an endorsee conclusive evidence of that contract.

GENERAL

Bills of lading are one of three crucial documents used in international trade to ensure that exporters receive payment and importers receive the merchandise. The other two documents are a policy of insurance and an invoice. Whereas a bill of lading is negotiable, both a policy and an invoice are assignable. In international trade outside the United States, bills of lading are distinct from waybills in that the latter are not transferable and do not confer title. Nevertheless, the UK Carriage of Goods by Sea Act 1992 grants "all rights of suit under the contract of carriage" to the lawful holder of a bill of lading, or to the consignee under a sea waybill or a ship's delivery order.

A bill of lading must be transferable, and serves three main functions:

- It is a conclusive receipt, i.e. an acknowledgement that the goods have been loaded.
- It contains or evidences the terms of the contract of carriage.
- It serves as a document of title to the goods.

Typical export transaction use Incoterms terms such as CIF, FOB or FAS, requiring the exporter/shipper to deliver the goods to the ship, whether onboard or alongside. Nevertheless, the loading itself will usually be done by the carrier himself or by a third party stevedore.

A bill of lading is a standard-form document that is transferable by endorsement (or by lawful transfer of possession). Most shipments by sea are covered by the Hague Rules, the Hague-Visby Rules or the Hamburg Rules, which require the carrier to issue the shipper a bill

of lading identifying the nature, quantity, quality and leading marks of the goods.

In the case of Coventry v Gladstone, Lord Justice Blackburn defined a bill of lading as "A writing signed on behalf of the owner of ship in which goods are embarked, acknowledging the receipt of the Goods, and undertaking to deliver them at the end of the voyage, subject to such conditions as may be mentioned in the bill of lading." Therefore, it can be stated that the bill of lading was introduced to provide a receipt to the shipper in the absence of the owners.

Although the term "bill of lading" is well known and well understood, it may become obsolete. Articles 1:15 & 1:16 of the Rotterdam Rules create the new term "transport document"; but (assuming the Rules come into force) it remains to be seen whether shippers, carriers and "maritime performing parties" (another new Rotterdam Rules coinage) will abandon the long-established and familiar term, "bill of lading".

HISTORY OF BILL OF LADING

While there is evidence of the existence of receipts for goods loaded aboard merchant vessels stretching back as far as Roman time and the practice of recording cargo aboard ship in the ship's log is almost as long-lived as shipping itself, the modern bill of lading only came into use with the growth of international trade in the medieval world.

The growth of mercantilism (which produced other financial innovations such as the charter party (once carta partita), the bill of exchange and the insurance policy produced a requirement for a title document that could be traded in much the same way as the goods themselves. It was this new avenue of trade that produced the bill of lading in much the same form as we know today.

MORE SPECIFICALLY:

For the purpose of our consideration, it is safe to say that in the eleventh century the bill of lading was unknown. It was at this time that trade between the ports of the Mediterranean began to grow significantly. Some record of the goods shipped was required, and the most natural way of meeting this need was by means of a ship’s register, compiled by the ship’s mate. Although use of such a register probably began informally, it was soon, in some ports at least, placed upon a statutory footing. Its accuracy was paramount and, around 1350 A.C, a “statute was enacted, which provided that if the register had been in the possession of anyone but the clerk, nothing that it contained should be believed, and that if the clerk stated false matters therein he should lose his right hand, be marked on the forehead with a branding iron, and all his goods be confiscated, whether the entry was made by him or by another”. By the fourteenth century, what was later to be accomplished by the receipt function of the bill of lading was being accomplished by an on-board record.As yet there was no separate record of the goods loaded as it seems that shippers still travelled with their goods and there was accordingly no need for one. This only changed when trading practices altered and merchants sent goods to their correspondents at the port of destination, informing them by

letters of advice of the cargo shipped and how to deal with it. Merchants also began to require from the carrier, and to send to their correspondents, copies of the ship's register.

Bensa located two bills of lading from this period, the earliest of which is by far the more important. It reads, in translation:

1390, the 25th day of June. Know all men that Anthony Ghileta shipped certain wax and certain hides in the name and on behalf of Symon Marabottus which things must be delivered at Pisa to Mr Percival de Guisulfis, and by order of the said Mr Percival

who shall deliver all his things to Marcellino de Nigro his agent, and I Bartholomeus de Octono shall deliver all his goods at Portovenere and for the better caution I affix my mark so.

In this and the second bill, there is nothing to suggest that it was ever envisaged or intended that these documents would at any point be transferred. They provide that delivery is to be made to a particular person, the correspondent of the shipper, and, in the case of the document quoted above where there was a change in the consignee, it is clear from the facsimile that the final consignee was provided for before the bill was issued and was not a later indorsement thereon.

It is impossible now to say when exactly the practice of registering the cargo in the ship's book was superseded by the issuing of bills of lading,but it is likely that practice differed between ports. All that can safely be said is that rudimentary bills of lading were in existence in the late fourteenth century and that it was not contemplated that they would be transferred. They clearly served some sort of receipt function, but it does not, therefore, follow that possession of document entitled the possessor to the delivery of the cargo.

Further assertions have been made as to the nature of bills of lading at this time, but they are not supported by the available evidence. Bennett concluded that:

Some proof would be required that the person demanding delivery of the goods at the port of destination was the person entitled to do so, and a copy of the register signed by the captain would be the most

natural indicium of title, and would clearly bind the shipowner and the consignee to the conditions of shipment.

This goes too far in several ways. First, where the goods were consigned to a correspondent it would be necessary merely that he produce evidence of his identity. As has been mentioned, a letter of advice was sometimes sent without a bill of lading. Secondly, even if the bill were considered as essential to delivery, it need not be an indicium of title, in the sense of ownership. Finally, and most importantly, the last point made by the quotation is wholly without support. There is no evidence that the bill was regarded as in anyway binding the carrier to the terms of shipment. In fact, all the evidence points to the contrary conclusion that it had no contractual effect at all.

Proof of Entitlement

The bill of lading originated purely as a receipt for the goods shipped, a copy of which could be sent to advise the correspondent of the goods sent and the purpose to which they were to be put. There was no need for a document which proved the consignee's entitlement to the goods since the carrier knew from the register or his own copy of the receipt to whom delivery was to be made. The need for a document that indicated entitlement to the goods would only arise when the goods were dispatched before the shipper had finally determined to whom they were to be sent. This might have been because the shipper had not decided whether the goods should be consigned to an agent for sale or should be sold afloat. It is the possibility of the goods being traded whilst at sea that must have given rise to the need for a document that could be transferred, by the shipper at least, and which would evidence entitlement to receive the cargo at the port of destination.

Bennett's conclusion that the bill at this stage did evidence entitlement is questionable, given that there is no evidence that the bills of the fourteenth century were transferable and consequently that there is no evidence that bills of this period were traded. It will be recalled that the bill of lading from 1390 provided for delivery to a named consignee and then provided that the carrier would deliver to the agent of the consignee. There is no indication that the document was intended to be traded. Such a conclusion would only follow either from there being an indorsement on the bill showing that it had been transferred to a new holder after it was made out or from bills being made out to order or to bearer.

Transferability only arises in the second quarter of the sixteenth century when bills of lading made their appearance in the files of libels of the High Court of Admiralty. The majority of the bills contain provisions importing some degree of transferability. They are of two kinds:

(1) those that provide for delivery to the shipper (or his agent) or their assigns; and

(2) those that provide for delivery to a third person (presumably a buyer of the goods) or his assigns.

This change in the form of the bill of lading was probably caused by a change in trading practice. Although cargoes do not seem to have been traded many times during transit, as they are today, they were often dispatched before the shipper knew for whom they were finally destined. The change in form, therefore, reflects a change in the function of the bill. It was at this point that the bill needed to evidence entitlement to the goods as, unlike the bills of the fourteenth century, neither the bill itself, nor the ship's register, indicated to the carrier the person to whom the goods should be delivered.

The presence, in the majority of the bills from this period, of words importing transferability and of the clause, "one accomplished, the others to stand void" or equivalent, suggests that these bills were seen as giving the holder some right against the carrier: such a clause was only necessary to protect the carrier from multiple suits if the bill was, by this time, seen as giving its holder some rights against the carrier. This represents a logical and important step in the document's development. That said, it is much easier to state that the right existed than to explain from where it came. It is likely that merchants, by course of experience, regarded the bill in this way, rather than regarding it as embodying an agreement which bound the carrier. This follows not only from the fact that merchants are unlikely to analyses the foundations of the right, but also from the fact that, contrary to Bennett's assertion above, most bills of this period were not regarded as embodying an agreement for carriage.

The contract of carriage

If the earliest bills of lading did not perform a contractual function at all, there is no reason why, given that their function was to act as a

separate record of the goods shipped, they should usurp the role of the charter party. Whilst the number of cargoes per ship remained small, the bill of lading need not perform a contractual function. The bill did, though, adopt this function and it seems to have done so during the course of the sixteenth century. In the fourteenth-century bills discussed above there are no provisions that imply a contractual function. The sixteenth-century bills are of two distinct types, as might be expected in a transitional period. There are still bills that contain no independent terms. The undertakings in these bills all make reference to an existing charter party. Thus, freight is payable as per charter party between the shipper and carrier. Two interpretations of these bills are possible: first, that they were intended merely to incorporate the terms of the charter party into a bill of lading contract, or, secondly, they might equally suggest that the carriage was to be governed by the charter party alone. The latter is inherently more likely given the origins of the bill, and occasionally the bills of lading refer to the fact that the shipper was a party to the charter party. There is some evidence, then, that there were bills from this period which were not intended to operate as an agreement for carriage, and this is supported by evidence of mercantile usage in the seventeenth century, which did not regard these bills as separate contracts.

It would, however, be an over-simplification to assert that no bills from this period performed a contractual function. There were bills that made no reference to another agreement and contained terms that governed the shipment, implying that they alone contained the agreement between the parties. This implication is strengthened by the evidence of the bill in The White Angel.It provides that freight is to be paid "…according as it is mentioned by another charter party made in the name of another merchant" and later "Paying him the freight although the charterparty be made in the name of another merchant".Further, the bill is also around three times as long as any of the other bills of this period because, unlike the others, it contains a full agreement:

And it is agreed that in case the saved merchandize should be lost or spoiled through the default of the saved master of the ship or the company of the same, the saved master shall be bounded to make it good.

There then follow clauses giving the master a lien over the goods and stating that the parties submit to the law of the place of shipment or elsewhere and that they renounce any customs that conflict with the agreement. All in all, the document is a very different beast from the

others of this period: it was almost certainly intended to act as a contractual document, incorporating by reference the terms of a charter party made with a different shipper.

With the increasing number of cargoes per vessel, entering into a charter party with all the shippers became impracticable, and, in these cases, as today, the carriage contract was embodied in the bill of lading. However, the seventeenth-century works on mercantile law suggest that the number of cases where no charter party was concluded was still small.

The first, and best, of these works was the seminal treatise of Gerard Malynes in 1622. Chapter 21 of that work deals with the freighting of ships, charter parties and bills of lading. Malynes begins by stating that no ship should be freighted without a charter party. It is clear that he anticipates that all shippers will be party to the charter party. He says:

The ordinary Charter-parties of affreightments of Ships, made and indented between the Master of a Ship and a Merchant, or many Merchants in freighting a ship together by the tonnage, where every Merchant taketh upon him to lade so manyTones in certainty: are made as follows, Mutatis, Mutandis, which is done before Notaries .

He proceeds to give a precedent for a charter party which states, inter alia, that the merchant shall:

…deliver all the said goods, well-conditioned, and in such sort as they were delivered unto him, to such a Merchant of Factor, as the Merchant the freighter shall nominate and appoint, according to the Bills of lading made or to be made there of.

He further writes that:

No ship should be fraighted without a Charterparty, meaning a Charter or Covenant between two parties, the Master and the Merchant: and Bills of lading do declare what goods are laden, and bidet the Master to deliver them well conditioned to the place of discharge, according to the contents of the Charter party, binding himself, his ship, tackle, and furniture of it, for the performance thereof.

It is difficult to interpret the phrase “and Bills of lading do declare what goods are laden, and bidet the Master and the Merchant to deliver them well conditioned to the place of discharge”. It might be that, even given the charter party, the bill was intended to bind the carrier

contractually when in the hands of a transferee (the charter party being only the contract between the carrier and shipper). Such a view is made unlikely by the fact that Malynes never refers to the bill being transferred and never states expressly that the holder of the bill has an action upon it against the carrier. It is almost inconceivable that, if the bill did give the holder an action against the carrier based upon contract, Malynes would not mention it at all. It is possible, therefore, that the phrase means that the carrier's obligations are fixed by the charter party and the bill of lading only "binds" him by virtue of its being evidence against him of the quantity and quality of goods loaded. Substantial support for this proposition lies in the other seventeenth- and eighteenth-century works. It is clear from the wording of these that Malines's work was enormously influential upon them, but they clarify his statement about the role of the bill. Four of these works all explain the interaction of the bill of lading and charter party in substantially similar terms to those used by Jacob in 1729 who said:

Charter parties of Affreightment settle the Agreement, and the Bills of Lading the Contents of the Cargo, and bind the Master to deliver the Goods in good Condition at the Place of Discharge according to the Agreement; and the master obliges himself, Ship, Tackle, and Furniture, for performance.

The bill of lading, therefore, was not usually conceived of as fulfilling a contractual function because each shipper would be a party to the charter party made with the carrier.

These works contain no reference to the bill of lading ever being issued without a charter party to which the shipper was a party. Read alone, they suggest that every cargo was shipped under a charter party, and that the practice discussed above, of not entering a charter party and including the contractual terms in the bill of lading had died out. Their silence implies that such a course was uncommon, but there is evidence in the comments of Postlethwaite that it was nevertheless followed occasionally. He wrote:

Bill of Lading, is a memorandum, of acknowledgement, signed by the master of the ship; and given to a merchant, or any other person, containing an account of the goods which the master has received on board from that merchant or other person, with a promise to deliver them at the intended place, for a certain salary.

And later:

It must be observed that a bill of lading is used only when the merchandizes sent on board a ship are but part of the cargo; for, when a merchant loads a whole vessel for his own personal account the deed passed between him and the master or owner of the ship, is called CHARTER-PARTY.

The bill of lading is here conceived of as a contract, when there is no charter party, as it is today.

It is possible to conclude, therefore, that the majority of bills of lading were issued to shippers who were also parties to the charter party. The practice of issuing bills of lading alone was, however, beginning to develop.

If the majority of bills were not regarded as embodying a contract of carriage in the hands of the shipper, and there is no evidence to suggest that they were regarded as contracts in the hands of a transferee, it seems that the entitlement to delivery must have arisen from the custom of merchants.

It was a natural progression that, when bills came to be drawn up before the shipper had determined for whom the cargo was destined, the carrier in practice delivered to the first presenter of a bill and that by continued usage the holder came to be thought of as entitled to delivery such that carriers were regarded as under an obligation to compensate holders for their failure to deliver. The document can, therefore, tentatively be said to have entitled the holder to possession as a result of the custom of merchants. It is impossible to say whether or not this custom was ever legally recognised, but it was later impliedly rejected by the English common law.

An indicium of title

It is tempting to conclude that the reason that the bill was regarded as giving the holder a right to delivery was because it was regarded as giving him title to the goods. Though this may have been the case, there is no evidence to permit such a conclusion. None of the works dealing with bills of lading, discussed above, refer to it is having this capacity, and it would surely be too important to be overlooked by them all. Further, although little can be hung upon it, when bills of lading came to be considered by the common law courts, they did not,

for 80 years at least, consider the bill of lading as possessing a proprietary function.

Conclusions

It can be concluded that the bill of lading of the fourteenth century was purely a receipt. During the sixteenth and seventeenth centuries, when it ceased to be possible to enter a charter party with every shipper, some bills were issued that contained the contract of carriage, although these do not seem to have been prevalent. Further, during this period, bills came to represent the holder's entitlement to delivery of the goods by virtue of the custom of merchants.

The eighteenth century and Lickbarrow v Mason

The modern history of the bill of lading begins at the end of the eighteenth century with the landmark decision in Lickbarrow v Mason.In 1786, Turing & Sons shipped goods from Middelburg in the province of Zealand aboard the Endeavour destined for Liverpool. The goods were shipped by the direction and to the account of Freeman. Holmes, the master of the ship, signed four copies of the bill of lading in the usual form. By these the goods were made deliverable "unto order or assigns". The master retained one of the bills, two were indorsed by Turing & Sons in blank and sent to Freeman, the final one being retained by Turing themselves. Three days after the shipment Turing drew four bills of exchange on Freeman for the price of the goods. These were duly accepted by Freeman. Freeman sent the bills of lading to the plaintiff so that he might sell the goods on Freeman's behalf, but, as was common at the time, although the plaintiff was ostensibly a factor for sale, Freeman drew bills upon the plaintiff for a total sum in excess of the value of the cargo. The plaintiff accepted the bills and paid them. Freeman, however, became bankrupt before the bills drawn by Turing became due. They were accordingly unpaid vendors and sought to stop the goods in transit by sending the bill of lading that they had retained to their agent, the defendant, and instructing him to take possession of the goods on their behalf. This the defendant did, and theplaintiff successfully sued them in trover.At first instance Buller J. held that the bill of lading passed the property in the goods to the transferee. He relied upon Wiseman v Vandeputt, Evans v Martell,Wright v Campbell.

TYPES OF BILLS OF LADING

1. **Straight Bill of Lading**: This is typically used when shipping to a customer. The "Straight Bill of Lading" is for shipping items that have already been paid for.

2. **To Order Bill of Lading**: Used for shipments when payment is not made in advance. This can be shipping to one of your distributors or a customer on terms.

3. **Clean Bill of Lading**: A Clean Bill of Lading is simply a BOL that the shipping carrier has to sign off on saying that when the packages were loaded they were in good condition. If the packages are damaged or the cargo is marred in some way (rusted metal, stained paper, etc.), they will need to issue a "Soiled Bill of Lading" or a "Foul Bill of Lading."

A clean bill of lading is a bill of lading without any restrictive clauses. It will only be delivered if the quantity of the goods is correct and if they are in apparent good order and condition and loaded under deck. If, during the loading of the cargo, the apparent good order and condition or the quantity, is different with the particulars given on the shipping permit, measurement slip, and mate's receipt, remarks will be entered by the head tallyman on the shipping permit and the measurement slip and by officer, responsible for the loading of the goods on board, on the mate's receipt (e.g. 5 bags less in dispute, 7 bars rusty, etc.). Later, these remarks, called restrictive clauses, will be copied on the bill of lading.

Consequently, a clean bill of lading is a bill of lading stating: "Shipped on board in apparent good order and condition" , without handwritten or stamped remarks (called restrictive clauses).

Remarks or clauses which do not refer to the quantity or the state of the goods, do not make the bill of lading "foul". The following clauses: "Carrier's liability ceases on transshipment in paper bags - carrier's rights reserved" or "Second hand drums" , or "Weak strapping" , etc. don't make the bill of lading "foul".

4. **Inland Bill of Lading**: This allows the shipping carrier to ship cargo, by road or rail, across domestic land, but not over seas.

5. **Ocean Bill of Lading**: Ocean Bills of Lading allows the shipper to transport the cargo over seas, nationally or internationally.

6. **Through Bill of Lading**: Through Bills of Lading are a little more complex than most BOLs. It allows for the shipping carrier to pass the cargo through several different modes of transportation and/or several different distribution centers. This Bill of Lading needs to include an Inland Bill of Lading and/or an Ocean Bill of Lading depending on its final destination.

The Through Bill of lading is virtually identical to the Multimodal Transport Bill of lading but with one major difference:

The Multimodal Transport Bill of Lading is issued by the Multimodal Transport Operator (MTO) (generally the sea carrier) and he takes responsibility of the goods (e.g. shortages, losses, damages) during the entire period of transport, thus not only for the sea passage but also for the other transport modes.

The Through Bill of Lading is issued by the sea carrier but he states on it that he is only responsible for the goods for that part of the carriage he takes care of, thus the sea passage.

7. **Multimodal/Combined Transport Bill of Lading**: This is a type of Through Bill of Lading that involves a minimum of two different modes of transport, land or ocean. The modes of transportation can be anything from freight boat to air.

A Multimodal Transport Bill of Lading is a bill of lading involving both sea and other transport modes but, with different carriers involved at each stage, e.g. another shipping company, a road haulier, a railway company, an air transport company, an inland shipping company, etc. The multimodal transport bill of lading is issued by the sea carrier and he states on it that he will be responsible for the goods during the entire period of transport.

The multimodal transport bill of lading can be issued as a negotiable bill of lading or as a non negotiable bill of lading.

8.**Combined Transport Bill of Lading**: The combined transport bill of lading covers transport from door-to-door by several modes of transport. It is usually used by liner companies who want to offer a full service to their customers by carrying their goods from door to door (and mainly in containers).

Combined transport is the combination of at least two types of transport in a uniform transport chain that does not involve the changing of transport units. Most of the

journey is by rail, inland waterways or sea and any initial and/or final legs carried out with road transport are kept as short as possible.

The combined transport operator (CTO) takes responsibility for the goods throughout the entire journey.

The combined transport bill of lading can be issued as a negotiable bill of lading or as a non negotiable bill of lading.

9. **Direct Bill of Lading**: Use a Direct Bill of Lading when you know the same vessel that picked up the cargo will deliver it to its final destination.

10. **Stale Bill of Lading**: Occasionally in cases of short-over-seas cargo transportation, the cargo arrives to port before the Bill of Lading. When that happens, the Bill of Lading is then "stale."

Every credit which calls for a transport document(s) should also stipulate a specified period of time after the date of Shipment, during which presentation must be made in compliance with the terms and conditions of the credit. If no such period of time is stipulated, banks will not accept documents presented to them later than 21 days after the date of Shipment. In any event, documents must be presented not later than the expiry date of the credit.

11. **Shipped On Board Bill of Lading**: A Shipped On Board Bill of Lading is issued when the cargo arrives at the port in good, expected condition from the shipping carrier and is then loaded onto the cargo ship for transport over seas.

12. **Received Bill of Lading**: It is simply a Bill of Lading stating that the cargo has arrived at the port and is cleared to be loaded on the ship, but does not necessary mean it has been loaded. Used as a temporary BOL when a ship is late and will be replaced by a Shipped On Board Bill of Lading when the ship arrives and the cargo is loaded.

13. **Claused Bill of Lading**: If the cargo is damaged or there are missing quantities, a Claused Bill of Lading is issued.

14. **Port to Port Bill of Lading**: A direct bill of lading is issued for the carriage of goods from one port to another port. The goods will normally not be transshipped although a clause may be inserted allowing the carrier to transship the goods. When such a transshipment exists, the goods will lie in the transshipment port at the merchant's risk.

15. **Foul Bill of Lading**: Bill of lading with restrictive clauses are called "foul bills of lading" or "unclean bills of lading" , " claused bills of lading" or "dirty bills of lading".

As stated above, we can assume that when the mate's receipt is clean, the bill of lading will also be clean. On the other hand, if the mate's receipt is foul, the bill of lading will also be foul.

Foul bills of lading are non-negotiable and are not accepted by banks. The bank will only pay the seller when he produces a full set of clean on board bills of lading . This means that the seller must receive clean on board bills of lading from the company or the shipping agent. This condition is clearly indicated on the shipping permit, mate's receipt and other similar documents.

It is senseless to be vague when restrictive clauses are entered into the bill of lading. All restrictive clauses must be detailed and limited:

- not "bundles loose" but seven bundles loose" or "all bundles loose";
- not "some bars rusty" but "eight bars rusty";
- not "some barrels damaged" but "three barrels dented and leaking".

For most goods, the P & I Clubs and the insurance companies publish lists with standard clauses which are generally accepted by the courts. It is highly recommended to use these standard formulas rather than give one's own description of the apparent condition of the goods, in order to avoid differences in interpretation and misunderstandings with regard to the used terminology or the descriptions made.

For the description of a shipment of steel, which shows traces of rust, following clauses can be used:

— Partly rust stained;
— Rust stained;
— Rust spots apparent;
— Some rust spots apparent;
— Rust spots apparent on top sheets;

— Rusty edges;
— Some rusty ends;
— Rust and oil spotted;
— Wet before shipment;
— Covered with snow;
— Edges bent and rusty;
— Covers rusty/wet;
— Etc.

16. **Received for Shipment Bill of Lading**: The BL merely acknowledges receipt of goods by the ship owners or their agents for shipment. Such a BL will contain a clause reading "Received in apparent good order and condition (or otherwise) for shipment by m.v……or the next following vessel". It is compulsory to mention the name of the actual vessel in case of change of vessel after the issuance of Received for Shipment BL. This BL can be converted into "On-Board BL" after completion of loading by putting the notation "On-Board" Such notation will be dated and authenticated by the Shipping Company. In such cases, the date on notation shall be deemed as date of shipment.

17. **Shipped Bill of Lading**: B/L which certifies that the specified goods have been received in apparent good order and condition from the named shipper (consignor), and have been taken aboard the named ship (vessel) on the stated date. Banks funding a shipment require this type of B/L and not a received for shipment bill of lading. Also called onboard bill of lading.

18. **Negotiable/ Non Negotiable bill of Lading**: Negotiable bills of lading are bills of lading which can be transferred to a third party by endorsement.

Therefore, the bill of lading must meet the following two conditions:

— it must be drawn up to order or to bearer;
— it has to be clean.

It follows that bills of lading to a named person and bills of lading with restrictive clauses (with regard to the quantity and the condition of the goods) are not negotiable.

In case of a bill of lading to a named person, only the consignee on who's name the bill of lading was made out, has the right to receive the goods.

Non-negotiable bills of ladingare bills of lading that, due to their nature, cannot be transferred to a third party. However, there a number of documents which are used as a replacement of the bill of lading and which, naturally, are never negotiable such as: the Sea Waybill, the Data Freight Receipt and the House Bill of Lading.

These non-negotiable documents came into being out of necessity to create a document that did not have to be presented to the master at destination. The goods are delivered to the named consignee in the document who only has to prove his identity.

19. **Charter Party Bill of Lading**: "Charter Party" is a contract between the ship owners and the hirer who may hire the vessel on a voyage basis or duration basis. The document containing the terms and conditions of this contract are known as the Charter Party. The shipper who has chartered the ship may agree to carry the goods of others in the ship and issue a BL for the purpose. Such BL is called Charter Party BL. This kind of BL is subject to the terms and conditions agreed upon by the hirer of the ships / ship space and ship owners. Generally, banks do not accept Charter Party BL as the ship owner may exercise lien over the goods in case charterers do not pay hire charges.

20. **Switch Bill of Lading**: Often called "the trader's second set" and intended to replace the first set of Bills of Lading issued. Usually used where a seller / trader wishes to keep the name of his supplier i.e. shipper, secret from ultimate buyer of the goods. Under this type of BL, only the name of the shipper and or consignee and or Notify Party can be changed. The normal BL has to be surrendered, but the BL number remains the same.

21. **Master Bill of Lading**: The MBL is issued by the original carrier/steamer agent or shipping line to freight forwarders, who generally consolidate, giving details of the cargo to be carried by the liner.

22. **House Bill of Lading**: The HBL is issued by the freight forwarders to the shipper, giving details of the consignment to be carried to the destination country. The HBL is generally issued by Non Vessel Operating Container Carriers (NVOCCs).

23. **Container Bill of Lading**: This type of BL indicates that goods are carried in a container as one unit of cargo. The container in which the goods are locked-in are generally numbered in a systematic manner indicating ownership, type of container, size of container and identification number. This facilities quicker loading/unloading at the port and thus avoids congestion.

24**. Sea Waybill**: The sea waybill is a document issued to a shipper by a shipping company and which serves as evidence of the a contract of carriage and as a receipt for the goods. The waybill can be compared to a bill of lading but to a lesser degree.

The goods will be delivered to the consignee on production of proof of identity without presentation of the waybill.

The sea waybill is not a document of title, it is not negotiable and it bears the name of the consignee who must only identify himself to take delivery of the goods. Because it is not negotiable, it is not acceptable to banks as a collateral security to obtain, for instance, a documentary credit. The main purpose of the waybill is to avoid delaying the delivery of cargoes when bills of lading arrive late at the port of discharge.

In America, the sea waybill is also called "Straight Bill of Lading".

25.**Long Form Bill of Lading**: The term long form bill of lading is a reference to an ordinary, usually negotiable bill of lading. As mentioned before, the face of the bill of lading (page 1) has boxes or spaces for the necessary details referring to the shipper, vessel, port of loading, freight details and charges, etc. which have to be properly typed; the back of the bill of lading (page 2) has numerous printed clauses giving the conditions of carriage.

26. **Short Form Bill of Lading**: A BL normally evidences as under flying contract of carriage and hence should have the terms and conditions of carriage may not be stated in full and merely stated the name of the shipper, name of ship, date of shipment etc. For full details, another document may be cited for being referred to. The total number of package and description are also to be stated in the document.

Now we are going to give some extra information about the types of Bill of Lading that are most important and common for shipments by sea. So we have :

1. Straight Bill of Lading:

Straight bills are thought to be akin to sea waybills,[3] which are used to avoid the problems arising from late arrival of documentation, in trades involving short sea voyages and where the shipper does not intend to transfer the title to the goods during the carriage.

The status and functions of a straight bill of lading have major implications for two significant issues: delivery and package limitation.

As far as delivery is concerned, the commonly held view is that, whilst delivery under a negotiable bill of lading should only be against production of the original bill, such production may not be necessary under a straight (non-negotiable) bill of lading, i.e., delivery need only be made to the properly identified named consignee. However, that view is over-simplistic and indeed dangerous. If care is not taken, the carrier risks facing claims for misdelivery.

As regards package limitation, the commonly held view is that under a straight bill of lading a carrier may be able to rely on a lower contractual package limit than that stipulated in the Hague/Hague-Visby Rules (the Rules) because they are not normally thought to be compulsorily applicable to straight bills. However, recent case law suggests that this view is also over-simplistic and that carriers face increasing difficulty avoiding compulsory application of a higher package limit under the Rules.

2. Clean Bill of Lading:

A clean bill of lading is one kind of bill of lading, declaring that there was no damage to or loss of goods during shipment. The product carrier will issue a clean bill after thoroughly inspecting the packages for any damage, missing quantities or deviations in quality.

So, a bill of lading is a contract of carriage between a shipper and a carrier, outlining the details of a particular shipment. And a clean bill of lading indicates that the carrier received the goods in good condition, before they actually ship them. Often, a clean bill of lading must be issued to fulfill the requirements set forth in letters of credit. Many purchasers rely on letters of credit to pay for imports and banks may refuse to supply the funds if a claused bill of lading is presented. A claused or foul bill is issued when the received product is damaged or does not meet specifications.

What makes a bill of lading unclean ?

A clean bill of lading can turn into an unclean bill of lading if there is a clause or notation written on the bill of lading which indicates that the goods are of defective condition or the packaging is defective.

Some of the examples are:

- Leakage in the containers during loading
- Visibility of atmosphericruststains
- Material is wet at the time of or before loading
- Packaging is not up to the mark for the sea transit

Difference between clean bill of lading and clause bill of lading

- A clean bill of lading is a sea transport document which is desired by the importers, whereas, a clause bill of lading is not acceptable to the importers and the banks.
- A clean bill of lading is a standard document marked with standard shipped on board notation, whereas, a clause bill of lading contains an additional clause along with the standard shipped on board notation. This additional clause expressly declares that the packaging or the goods are in defective conditions.
- In terms of quality of goods, a clean bill of lading shows that the outer packaging of the goods was in good condition when it was received by the carrier. On the other hand, clause bill of lading clearly shows that the goods are not in the expected condition.

3. Ocean bill of lading:

An ocean bill of lading is a document required for the transportation of goods overseas. An ocean bill of lading serves as both the carrier's receipt to the shipper and as a collection document, or an invoice.

A non-negotiable ocean bill of lading allows the buyer to receive the goods upon showing identification. If the bill is deemed negotiable, then the buyer will be required to pay the shipper for the products and meet any of the seller's other conditions.

An ocean bill of lading allows the shipper to move goods across international waters. If the goods are to be initially shipped over land, an additional document, known as an "inland Bill of Lading" will be required. The inland bill only allows the materials to reach the shore, while the ocean bill allows them to be transported overseas.

4. Stale bill of lading:

A Bill of Lading can be treated as 'Stale' , if it is presented long after sailing of vessel pertaining to a shipment at port of loading. Such presentation of Bill of Lading could be with the Supplier's Bank, Discounting Bank, Negotiating Bank, Buyer's Bank or buyer. The term 'Stale Bill of Lading' is also used when a bill of lading is presented with a bank after expiry date of credit.

According to international commercial practice, Bill of Lading along with other shipping documents must be presented to the bank not later than twenty one days of the date of shipment as given in the Bill of Lading. In some cases, the Importer may indicate the number of days within which the documents are to be presented from the date of shipment. Exporter has to comply with the stipulation period of time indicated.

Otherwise, the Bill of Lading becomes stale and is not accepted by the bank for payment. A stale bill is one which is tendered to the presenting bank so late a date that it is impossible for the bank to dispatch to the consignee's place, in time, before the goods arrive at the destination port. In other words, bank finds it impossible to see the documents reach before the ship reaches the destination. Here, Bill of Lading reaches after goods reaches at destination. If a bill of lading presented to consignee or a bank after the last date specified in the documentary credit becomes stale. So a Stale Bill of Lading can be rejected by the bank where in such Bill of lading is presented for negotiation under documentary credit.

5. Shipped on board Bill of Lading:

Carriers or their agents started to add an "on board notation" to the "received for shipment" bills of lading after the goods had been loaded on board a named vessel, whether it was originally indicated on the bill of lading as an intended vessel or not. On board notation should be created at the port of loading by the carrier, agent of the carrier or the master and should indicate the name of the vessel upon which the goods have been shipped and the date or dates of shipment.
Shipped on board bills of lading give greater security to the importers and importers' banks, this is an important point of consideration if the payment type is letter of credit, as shipped on board bills of lading could only be issued after the goods are loaded on boardto a named vessel.
Today, almost all bills of lading are issued with an on board notation, as a result majority of current bills of lading that are issued for international sea freight transportation, can be classified as "Shipped on Board Bills of Lading".

6. Negotiable/Non Negotiable Bill of Lading:

A negotiable bill of lading can be transferred by one of its consignees to a third-party, when the consignee signs, or endorses the document and delivers it to the new consignee (the third party). To transfer the negotiable bill of lading, the consignor (the person or business shipping the goods) must stamp and sign the bill and the carrier must deliver it. A negotiable bill of lading must be written to the order of the consignee, and it must be clean bill of lading.

A clean bill of lading is a bill of lading issued by a carrier declaring that goods have been received in the appropriate condition, without defects. The product carrier issues a clean bill of lading after inspecting the goods.

A straight or uniform bill of lading, in contrast, may not by transferred and is only deliverable to the named consignee (recipient). Like any bill of lading, the negotiable bill of lading also lists the goods being transported and serves as a contract of the terms of the shipment.

Also known as an order bill of lading, the negotiable bill of lading transfers control (title) of the goods to the order of the entity named on the document.

A transport document showing that shipment has been made with a designated carrier. For vessel shipments, the consignee field will not contain the word "order", but will include the name of the party entitle to claim the cargo. Since a non-negotiable B/L is not a bearer instrument of title, the carrier will release the shipped goods to the named party only upon identification, often without insisting upon surrender of the original B/L. Goods shipped against a straight B/L cannot be sold in transit, and only the party named in the consignee field is entitled to receive the shipped goods. Also called straight B/L.

7. Sea waybill:

A Sea Waybill is used in lieu of a Bill of Lading for straight consignments whenever a letter of credit or similar banking arrangement is not involved in the sale of goods. The Sea Waybill is suitable for regular shipments between related companies which do not require settlements through banks or third parties.

You can use a Sea Waybill when:

- The recipient of the cargo is known, for example with shipments between related companies.
- Cargo will not be traded/sold during transport.
- Payment of goods is made under an open account or there is a high degree of trust between the importer and exporter and where a negotiable transport document is not required under a letter of credit.

You are required to use the Bill of Lading when:

- The goods are being traded/sold in transit.
- The letter of credit terms require that a negotiable document to be used.
- The laws and regulations of a country demand the production of a paper Bill of Lading.

8. Short form of Bill of lading:

A **Short Form Bill of Lading** (also known as Blank Back Bill of Lading) is one where the Terms and Conditions of carriage is **NOT** printed on the reverse..

The bill of lading however, could make reference to a separate document (either printed or on a website) that contains these Terms and Conditions of the Carrier and this document may or may not be presented together with the Short Form Bill of Lading.

Such Bills of Lading are not seen very commonly and there seems to be a level of comfort in people looking to receive the more common Long Form version (the one with the Terms and Conditions) for their transactions.

Where a documentary credit (Letter of Credit) is involved, UCP600 states that for shipments made under a Multimodal or Intermodal Transport Document, Bill of Lading, or Non-Negotiable Sea Waybill, such documents should :

"contain terms and conditions of carriage or make reference to another source containing the terms and conditions of carriage (short form or blank back transport document). Contents of terms and conditions of carriage will not be examined."

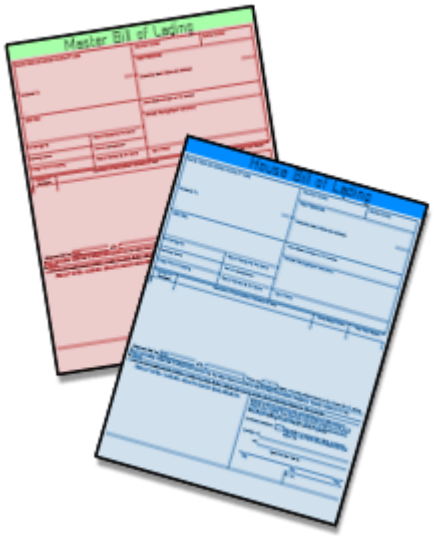
This above statement reflects the fact that a Short Form or Blank Back bill of lading is allowed for negotiations (if issued as a negotiable document), even if the terms and conditions do not require to be examined by the bank..

To answer the second question as to "**why the client is insisting that a Short Form or Blank Back bill of lading is not permitted**", one would have to look at the Letter of Credit (LC) that has been agreed upon to see if there are any over-riding clauses that prohibits usage of these documents. Even if a Forwarders Bill of Lading (House Bill of Lading) is issued, goods are ultimately under the control of the actual carrier (who issues the Master Bill of Lading) until they release it and the party that issues the House Bill of Lading (Forwarder or NVOCC) cannot have possession of the goods in order to release to the consignee. There have been cases where the actual carrier is owed monies and they have held back the release of the cargo till the monies have been paid.. There have been also cases whereby the NVOCC Operator or agent have been known to charge exorbitant amounts as release fee at destination.

9. Master Bill of Lading and House Bill of Lading:

Bill of Lading maybe issued as a House Bill of Lading or a Master Bill of Lading..

1. A House Bill of Lading (HBL) is issued by an NVOCC operator, or a Freight Forwarder to their customers..
2. A Master Bill of Lading (MBL) is issued by the Shipping Line (Carrier) to the NVOCC Operator, or Freight Forwarder..



When issued for a FCL shipment (non-groupage), a HBL should always be issued on a back to back basis with a MBL which means that the HBL should be an EXACT replica of the MBL issued by the actual Shipping line in respect of all details except the shipper, consignee and notify party details which will be different in the HBL and MBL..

In the HBL

- the Shipper will usually be the actual shipper/exporter of the cargo (or as dictated by the L/C)
- the Consignee will usually be the actual receiver/importer of the cargo (or as dictated by the L/C)
- the Notify could be the same as Consignee (or any other party as dictated by the L/C)

In the MBL

- the Shipper will usually be the NVOCC operator, or their agent or the Freight Forwarder..
- the Consignee will usually be the destination agent or counterpart or office of the NVOCC operator, or the Freight Forwarder
- the Notify could be the same as Consignee or any other party..

In the interest of the NVOCC operator and their insurance coverage/exposure, it is recommended that all the details on the HBL and MBL like vessel/voyage information, cargo description, number of containers, seal numbers, weight, measurements should remain the same.. The only difference should be in the shipper, consignee and notify details..

Unless disallowed by the L/C, the HBL is also used/treated as a negotiable document and can be considered to fulfill the roles of a bill of lading.. But due care must be taken when using HBL as a negotiable document as I have come across a counter-productive and dangerous practice of consigning the HBL and MBL exactly the same which means that there are two sets of bills of lading issued by two different entities for the same cargo.

10. Charter Party Bill of Lading is for us the most common and useful Bill of Lading so we pay more attention to that type of Bill of Lading :

A Charter Party or Charter is defined as a specific contract by which the owner of a ship lets the whole or principal part to another person for the conveyance of goods on a particular voyage to one or more places or until the expiration of a specified time. 'In short the charter party is the mere hiring of a ship. When a ship owner agrees to carry goods by water and receives freight the contract is called a contract of affreightment2 rather than a charter-party. While it is possible to have a charter party of less than the entire ship, as a general rule a charter party deals with the full reach of a ship while a contract of affreightment deals with carriage of goods forming only part of the cargo and coming under a bill of lading. The basic rules of law as applied to contracts are also used in determining the validity of a charter. Generally, the law of the lo-quality wherein the contract was made determines what law governs the interpretations of the charter unless strong circumstances to the contrary are shown.

Charter Parties are highly standardized and are grouped into three main classifications:

A. Voyage,
B. Tie,
C. Demise or Bare Boat.

A. Voyage Charter Here, the ship is hired to carry a full cargo on a single voyage. The ship remains under the control of the owner as to manning and navigation.

B. Time Charter. Here again, the ship is manned and navigated by the owner, but her capacity is let to the charterer for a specified time. The time charter permits the charterer to have tonnage under his control for a fixed period of time without undertaking long term financial commitments of a ship owner or the responsibilities of ship management and navigation .Sometimes the voyage and time form is combined as "one roundtrip to South America of about eight weeks." Under such a form, it has been held that the provision as to time controls.

C.The Demise or Bare Boat Charter. Here, the charterer becomes in effect the owner proact vice by taking over the ship completely -mans, victuals and provisions her -assumes the responsibility of her navigation and her upkeep. Having complete control, the bare boat charterer also has the rather heavy responsibilities of an owner.

The most important distinction between the bare boat and the time and voyage charters is that the demise charterer is regarded as the owner proact vice and as such qualifies as an owner for the benefit of the limitation of liability statutes whereas the time and voyage charterers do not. The test to distinguish a demise charter from a voyage or time charter is control. If the owner retains control over the ship, merely carrying goods designated by the charterer, the charter is not a demise. If the charterer controls the vessel and the master and crew are his, the charter is a demise.6In short, demise is for the vessel, the other charter parties are for the use of the vessel. But the problem of distinction is not particularly acute, since in actual practice the charter party usually specifies which type it is by express stipulation. Because of the highly specialized field of charter party law -most of the charter parties provide for arbitration. Thus, construction of a charter does not come before a court too frequently. But if suit is necessary, generally a breach of a charter is within admiralty juris-diction. ‘For most breaches, the remedy is in personal and a suit in ordinary law courts may also be brought under the "saving to suitors" clause. Some breaches (damage to cargo) create maritime liens with a remedy in rem in admiralty only. «There are no statutes in this country or in most of the maritime nations which regulate the terms of charter parties as, for example, the terms of bills of lading are regulated by the Carriage of Goods by Sea Act, since the bargaining power of the owner and the potential charterer is about equal. Over the years, however, particular forms of charter parties have evolved to meet special trades and special

areas and are generally the result of negotiations between interests involved in that particular trade. On the Great Lakes, the owners and the potential charterer generally draft special forms to meet their particular needs and desires. A charter party contains many words of art and phrases with special construction so that an accurate interpretation of a charter party must depend upon extensive knowledge of the subject and experience in the field.

For example, assume a time charter calls for the hire of a ship for three months from the time of delivery. There is no "about" three months, merely the unqualified "three months." A clause further down in the charter reads "Hire to continue unless ship lost until the time of her redelivery." In a style case, the ship was delivered and proceeded on her voyage but due to delays for which the charterer was not responsible, the flat period of three months expired prior to loading the return cargo. The ship was loaded under charterer's orders and the redelivery was made almost three months after the expiration of the three months called for in the time charter. In other words, charterer had the use of the ship for a six month period when the charter called for a three month period. The owner claimed the difference between the market rate which had risen and the charter rate for this seemingly extra three months. The court held, however, that whether the word "about" is used in qualifying the time period or not, the ship need not be redelivered on the precise day on which the charter by its terms expires and that since CHARTER PARTIES the voyage on which the ship was sent was reasonable and could have been completed within the charter period except for delays not caused by charterer, there was no breach.A clause calling for the carriage of "lawful cargo" only has been held not to prevent the loading of contraband. «Charters commonly call for a safe port or safe berth "always afloat." A port to be safe must be without danger from physical and political causes, not only when the ship is ordered to it but also when the ship arrives. Thus, the charterer has to have access to information concerning the political situation as well as the navigational aspects of a potential port or become liable to the owner for any damage in case the ship goes to an unsafe port-provided the master had no prior knowledge that the port was unsafe. Similarly, the ordering of a ship to a foul berth renders the charterer liable for any ensuing damage to the ship.In these troubled times it is common for extra clauses designating particular areas of the world as being "unsafe" or unsafe in the event war is declared. A recent case of interest held that the hostilities be-tween Egypt and England and France over the Suez constituted a «war," if not in the international law sense, at least as understood by the maritime industry and thus gave the owner a valid excuse for cancelling a time

charter party. A clause calling for the owner to pay for insurance on the ship protects the owner only and not the charterer. Thus, the underwriters of the owner can successfully sue a demise charterer for collision damage to the chartered ship. ‘The charter often contains a breakdown clause, or what is known as "censer of hire" or "off charter hire" clause. Commonly, the clauses relieve the charterer from paying hire in the event of loss of time exceeding 24 hours resulting from a deficiency of men or stores, breakdown of machinery, stranding, fire or damage preventing the working of the ship. Extreme care must be used in drafting such a clause since if a loss of time occurs from some cause not specifically mentioned, the hire will not cease. Thus, when a ship is delayed by quarantine regulations or a 'restraint of prices" not mentioned in this clause, the hire runs on against the charter even though the charterer has for the period lost the use of the ship. Statements made as to the ship, her characteristics, speed, cargo capacity, classification, etc., or her position and situation such as "now in London, about to sail to New York," are generally regarded as warranties and charterer is entitled to avoid the charter or sue for its breach if such warranties are broken by the owner. Thus, if the charter states the ship is to proceed to the port of loading with "all possible dispatch" and all possible dispatch is not used by the ship, the warranty is breached and the charterer can avoid the contract. Charters other than demise generally contain a deviation clause which is an outgrowth of the former harsh doctrine of marine insurance law that insurance coverage was lost when the ship deviated or departed from the voyage which is the normal route of sailing between the loading and discharging ports as defined by geography and by trade customs. Without a deviation clause-which also appears in the bill of lading in some form or other-the ship, if deviating, breaches the charter. Thus, a typical deviation clause contains the rather confusing language that the ship is free "to proceed to, and/or stay at, any ports or places whatsoever, although in a contrary direction to or out of, or beyond the route of said port of discharge, once or oftener, in any order, backwards or forwards***".While the charter may not mention "seaworthiness" of the chartered ship, the general maritime law reads into every charter a warranty of seaworthiness roughly equivalent to that pertaining to the carriage of goods by public carrier. «This implied warranty of seaworthiness can of course be by ex-press stipulation waived by the parties to the charter. Many charters in meeting this problem of liability of the owner to charterer incorporate by reference either the Carriage of Goods by Sea Act or the Harter Act, or both, as a measure of the liability of the owner to the charterer. These statutes will be discussed below. Before coming to the topic of Bills of Lading which pertains to Carriage of Goods by Sea Act and the Harter Act, the

important legal elements of a charter party are briefly reviewed.There are three classes of charter parties -the Voyage, the Time, and the Demise or Bare Boat. The test to distinguish a demise Charteris control. If the charterer has full control so the ship is his and he is owner proact vice, the charter is a demise. Otherwise, it is a voyage time or combination thereof. The charter party is generally highly specialized by area and by trade.

On the Great Lakes, one may find a charter party -bare boat -for a 10 year period -on a single sheet of legal sized paper -con-training, however, many terms of art peculiar to the admiralty and maritime profession, or another charter for some number of years on half a hundred sheets with every detail spelled out, each charter involving millions of dollars worth of ships. The same principles apply, regardless of the size or value of the ship -be it a rowboat or modem bulk freighter. Extreme care must be exercised in covering all features of the charter party -whether one is called upon to render an opinion as to the merit of a proposed charter or to draft one to cover his client's interests. Each word must be evaluated and considered. In addition, the following general categories must be reviewed:

(1) The relative advantages and disadvantages of time, voyage and bare boat charter;

(2) The statements concerning the ship, her characteristics, position and situation -which may be implied if not express warranties;

(3) The time and place of delivery and redelivery whether measured by time or voyage;

(4) Provisions concerning safe ports and berths;

(5) Liability as between owner and charterer for damage to goods or to the ship;

(6) Warranty of seaworthiness of the ship, express or implied;

(7) Deviation;

(8) Payment of hire and censer of hire;

(9) Responsibilities of owner and charterer as to loading, un-loading and demurrage;

(10) The creation of liens both by the owner for freight and on the ship by the action of the charterer;

(11) The type of bill of lading to be issued and by whom-the owner or charterer;

(12) The so-called censer clause by which the non-bare boat charterer attempts to be relieved of liability to cargo upon the cargo being shipped and freight paid;

(13) The effect of the incorporation of the terms of the charter into the bill of lading from the viewpoint of the owner, charterer and the shipper;
(14) The provisions for general average, or the so-called Jason clause, usually making York-Antwerp Rules applicable.
(15) Strikes, war, ice, frustration and related problems which threaten the venture embodied in the charter.

As mentioned previously, a charter party concerns the hiring of a ship and its entire cargo capacity to carry goods by water. The carriage of goods of less than full cargo capacity is accomplished generally by a contract of affreightment, thus calling into play the role of bills of lading. Some confusion arises because a bill of lading commonly serves three purposes:

1. An acknowledgment by the carrier that it has received the goods.

2. A contract of carriage.

3. A negotiable instrument.

Emphasis is placed primarily on the bill of lading's second purpose-a contract of carriage. On the Great Lakes, the vast majority of bulk shipments are handled under standard bills of lading which differ radically from the so called ocean bill of lading. On the Great Lakes the bulk carriers do not hold themselves out as transporting cargo for the general public and regard themselves as private carriers. The package freighters, now a familiar sight and with the approaching seaway to be a more frequent force on the Lakes, are common carriers transporting cargo for the general public. Thus, the American bulk cargo carriers use a short bill of lading with some seven or eight clauses. The package cargo carriers, usually of foreign flag on the Lakes, employ a much larger form-with voluminous clauses covering an entire legal size sheet in fine print. Two forms used for the bulk cargoes on the Great Lakes are the American Form 1942 "Lake Bill of Lading for Bulk Cargoes Other than Grain and Seed" used primarily for the shipment of iron ore, stone and coal, and the American Form 1936 "Lake Grain Bill of Lading" which also has a special contract for the private storage of grain and/or seed printed on its back. Both forms make reference to the Carriage of Goods by Sea Act but provide for certain additional exemptions over and above those contained in the Act for the benefit of the carrier. Bulk liquid cargo such as oil and gasoline are frequently trans-ported on the Great Lakes under charter parties which also refer to the Harter Act and Carriage of Goods by Sea

Act and can be regarded as a special form of bill of lading. Bills of lading, if issued for such cargoes, are expressly made subject to the terms of the charter party .The bills of lading for so-called package freight-carried on foreign flag vessels exclusively on the Great Lakes-likewise make reference to the U. S. Carriage of Goods by Sea Act.

Accordingly, to understand bills of lading used on the Great Lakes-and for that matter bills of lading used in the carriage of goods in United States commerce generally-the Harter Act and the Carriage of Goods by Sea Act must be considered. The main problem in studying a bill of lading is simple-who bears the loss when goods are damaged or lost-the carrier or the shipper? The general maritime law made the public water carrier an ab-solute insurer of the safe arrival of goods unless loss or damage was caused by act of God, public enemy or authority, inherent vice of the goods or fault of the shipper. To prove his case, the shipper merely had to show receipt of goods in good order and non-delivery or delivery in bad order. The carrier had to pay unless it could prove one of the exceptions-act of God, public enemy or authority, inherent vice or shipper's fault -was the exclusive cause of the loss or damage. Thus, the carrier's liability was a specie of liability without fault.19When bills of lading came into general use, the carrier, to escape the harsh rule of the admiralty law, started to exempt itself from liability through many exception clauses in the bills of lading, so that over the years the carrier's position was reversed. Instead of liability without fault, the carrier enjoyed so many exceptions that it became virtually exempt from liability even for its own negligence. Foreign courts generally upheld clauses releasing the carrier from its own negligence. American courts however held such clauses in-valid as against public policy.20Since at the turn of the century, foreign carriers dominated the carriage of goods, such extreme exception clauses in foreign bills of lading adversely affected American commerce. This situation led to the enactment of the Harter Act of 1893.21The only prior act of interest in this field is the Fire Statute of185122 by which a carrier is not liable for damage to cargo caused by fire aboard the ship unless caused by its design or neglect. The Harter Act, a compromise between the interests of the carrier and of the shipper, was later embodied in principle in the Hague Rules which dealt with the uniform worldwide treatment of the carrier-shipper relation under ocean bills of lading. In 1936, after United States adhered to the convention on Hague Rules, Congress passed the Carriage of Goods by Sea Act22 which in the main follows the Hague Rules.

Accordingly, we come to the role of the Harter Act and the Carriage of Goods by Sea Act which in important part has supplanted the Harter Act. First considered are the respective coverages of both Acts.

(A) Cosga applies only in foreign commerce and from the time when the goods are loaded on to the time when they are discharged from the ship, i.e., 'Tackle to tackle .' Harter applies both to foreign and to domestic water carriage under bills of lading- to all "coastwise" trade- and to the period, even in foreign trade, during which the carrier has custody, before the goods are loaded and after they are unloaded.

(B) Under Cogsa, by "coastwise option" clause, the bill of lading may stipulate for coverage by it rather than Harter in domestic voyages but there is no provision for stipulating out of Harter and into Cogsa for the period prior to loading and between discharge and delivery.

(C) Cogsa permits variation out of its terms but only to increase the carrier's liabilities.

(D) The acts proceed on different theories. Cogsa sets forth a limited code of rules governing the responsibilities and liabilities as between the issuer and holder of a bill of lading with respect to damage or loss of the covered goods.

(E) Harter lays down no positive rules of law but forbids certain exemption stipulations to apply to the bill of lading. It does grant certain immunities from liabilities as a matter of law. Harter does not eliminate the warranty of seaworthiness but merely permits the carrier to contract out of the general maritime law’s absolute warranty into the warranty to exercise due diligence. Failure to so contract in the bill of lading renders the carrier liable for damage caused by unseaworthiness even though due diligence had been exercised.

Cogsa, however, uses the direct approach and eliminates the ab-solute warranty and substitutes the warranty of due diligence. The Harter Act's general effect is to make the carrier liable for fault or failure in the proper loading, stowage, custody, care or proper delivery of goods and to make unlawful any agreement whereby the carrier’s obligations to make the ship seaworthy or to carefully handle, stow, care for and deliver the goods are weakened or avoided. The Act also provides for a bill of lading to be issued describing the goods and for penalties for its violation. In turn, the carrier is exempted from liability for losses or dam-age due to faults or errors in management or navigation provided due diligence has been used to make the ship seaworthy .

Seaworthiness is a term of art which one will frequently encounter in any admiralty work but perhaps the best and shortest test of sea-worthiness is ". ..whether the vessel is reasonably fit to carry the cargo which she has undertaken to transport .... -25The benefits of the Harter Act were largely dissipated as far as the carrier was concerned with the decision of the United States Supreme Court in The Isis,26 holding that the clause requiring the carrier to exercise due diligence to make the ship seaworthy means seaworthy in all respects and that the carrier is liable regardless of any causal connection between the unseaworthy element on the ship and the accident. Moreover, the burden of proving due diligence rests on the carrier. This situation led to the passage of the Carriage of Goods by Sea Act of 1936 which is the United States' attempt to insure uniformity and standardization of bills of lading among the maritime nations of the world. Like the Harter Act the Act requires the carrier to use due diligence to make the ship seaworthy, to properly load, care for and dis-charge cargo and to issue appropriate bills of lading. The carrier, however, receives more liberal benefits than given by Harter since his exemptions such as perils of the sea, and errors in management or navigation are not conditioned on his having used due diligence to make the ship seaworthy. The carrier's first duty is that :28The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to -(a) Make the ship seaworthy;(b) Properly man, equip, and supply the ship;(c) Make the holds, refrigerating and cooling chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage, and preservation. Note that this section cuts down the warranty of seaworthiness to an obligation to use due diligence to make the ship seaworthy. Thus, where lack of due diligence to render the ship seaworthy causes a loss, the cargo interests can recover. The Harter Act attains the same result but in a different way, by prohibiting the contracting away of the obligation to use due diligence to make the ship sea-worthy.29 Under this section, however, the carrier can contract out the warrant of seaworthiness and reduce it to the obligation to use due diligence, thereby getting the same result as under Cogsa. You must remember, as stated before, under Harter, as construed in The Isis, «there need not be a causal connection between the unseaworthiness and the accident whereas under Cogsa, such a causal relationship must exist before cargo can recover of Cogsa provides: The carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried sets forth the so-called "uncontrollable causes of loss «for which the carrier shall not be held liable. These include:

(a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the man-agreement of the ship;

(b) Fire, unless caused by the actual fault or privity of the carrier;

(c) Perils, dangers, and accidents of the sea or other navigable waters;

(d) Act of God;

(e) Act of war;

(f) Act of public enemies;

(g) Arrest or restraint of princes, rulers, or people, or seizure under legal process;

(h) Quarantine restrictions;

(i) Act or omission of the shipper or owner of the goods, his agent or representative;

(j) Strikes or lockouts or stoppage or restraint of labor from whatever cause, whether partial or general: Provided, That nothing herein contained shall be construed to re-lieve a carrier from responsibility for the carrier's own acts ;

(k) Riots and civil commotions;

(1) Saving or attempting to save life or property at sea;

(m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;(n) Insufficiency of packing;

(o) Insufficiency or inadequacy of marks;

(p) Latent defects not discoverable by due diligence;

The most important is the navigation and management of the ship exemption. Cogsa also provides for reasonable deviation, limitation of liability on cargo value unless specially declared, general average, and prohibits benefit of insurance in favor of the carrier clauses, clauses exempting the carrier from liability otherwise than in the Act and discrimination between competing shippers. Now, some of the terms

used in bills of lading will be examined. One must keep in mind the excepted causes of damage to cargo enumerated in Cogsa.

Fire -This exception is derived from the Fire Statute of 1851.31To hold the carrier liable for fire damage the design or neglect must be personal to the carrier; he must have "actual fault or privity." The negligence of the master or crew is not sufficient or imputed to thecarrier.32Perils of the sea-This is defined as a fortuitous action of the elements at sea of such force as to overcome the usual precautions of good seamanship or a staunch ship.33 In order to establish a peril of the sea it has been held that the ship must establish its freedom from negligence.34Act of God -This is occurrence wholly without human intervention; again human negligence as a contributing force defeats any claim for exemption by Act of God.3 5Overwhelming human force-These include acts of war, public enemies and authority, restraint of princes, quarantines, riots and civil commotion, strikes and lockouts, etc. Fault of Shipper or Defect in Cargo-These include wastage, breakage or other loss or damage arising from inherent vice, quality or defect in the goods, insufficiency of marking and packing and latent defects . Omnibus exception -This clause means that the carrier is not responsible for any loss or damage to cargo resulting from any cause arising without his actual fault or privity or without the fault of his agents and servants. The burden of proof is, however, on the carrier to show neither his fault or privity nor that of his servants contributed to the lOss.35aDeviation -This is commonly understood as a departure from the intended voyage. Despite the complex deviation clause in most standard bills of lading permitting the ship to proceed backwards or forwards, in any ordered. -courts have construed an unreasonable departure from the normal course of the voyage as a deviation and improper carriage ofgoods.36 Cogsa permits a "reasonable deviation."37The Clause Paramount- Cogsa requires that an outboard bill of lading contain the so-called clause paramount that the bill is controlled by the Act. This is to prevent the shipment to a non-Cogsa country which might apply its own law if Cogsa is not mentioned in the bill of lading. The scheme to avoid Cogsa is of course defeated if the carrier can be sued in the United States for the law is settled that United States law and statutes apply notwithstanding any stipulations in a bill of lading that the contract shall be governed by the law of the ship's flag. Valuation and Claims -Cogsa sets a maximum of $500 recovery on any package or customary freight unit unless value is declared. What is a package or customary freight unit is at times a difficult problem. A tractor, for example, was treated by the court as separate units of 40 cubic feet valued at $500 each.39Suit for cargo damage under Cogsa must be brought within one year from date of

actual or intended delivery of goods. The giving of notice or presentation of claim is by the Act unnecessary to the filing of suit. General average -Cogsa does not prohibit any lawful provisions regarding general average. Thus the bills of lading generally provide for general average according to some set of rules, commonly the York-Antwerp. Benefit of insurance-The clauses giving the carrier the benefit of cargo's insurance are now prohibited where Cogsa applies but may appear in bills of lading of private carriers or in carriage not covered by Cogsa. The conflict between carrier and shipped as to who bears the loss when goods are damaged or lost has not been solved by the Harter Act or the Carriage of Goods by Sea Act. Both acts contain two sets of polarities which are highly productive of litigation. The first set is between the concept of care and custody and negligent navigation and management. The second set is between due diligence to make sea-worthy and the negligent navigation and management. The importance of the polarities is apparent since the carrier escapes liability for errors of navigation and management but pays for failure to perform his obligations of care and custody and to use due diligence to make the ship seaworthy. There are no set rules to cover all situations to determine whether the cargo loss was caused by one or the other of the polarities. As the United States Supreme Court stated in the leading case of The Germanic" when a case falls under two different sections of the Act, here, section one, care and custody and section three, error in navigation and management of the Harter Act, which section is to govern must be determined by the primary nature and object of the acts which cause the loss. The Germanic involved a foreign ship which arrived at New York heavily iced due to unusual gales. While being unloaded at the dock, she suddenly rolled over and sank, damaging the cargo remaining in her. Cargo claimed negligence in unloading under the Harter Act. The carrier claimed the exemption from liability for errors in navigation and management. The court, through justice Holmes, held for cargo on the ground that hurried and unwise unloading brought the center of gravity of the ship five inches above its metacenter, thereby causing the ship to be unstable and roll over. Thousands of cases can be cited to illustrate the conceptual conflict of care and custody vs. navigation and management and due diligence to render seaworthy vs. navigation and management. The most that can be said with safety is that close questions will be re-solved in favor of cargo. In International Navigation Co. v. Farr & Bailey Mfg. Co., a port whole was left uncovered when the ship sailed, permitting water to enter and damage cargo en route. The carrier was held liable on the basis of failure to use due diligence to make the ship seaworthy. This case should be compared with The Silvia.42 The crew left the port hole open for ventilation and later carelessly forgot to

close it when the weather became rough. Water came in through the port hole and damaged cargo. This was held to be an error of navigation or management and the carrier was not liable. The results obtained in these two cases show the difficulties of separation of the concepts of care and custody, due diligence and navigation and management. The difference appears to be in the crew's intentions regarding the port holes. In the International case the crew intended to close the port hole but failed to do so properly. In The Silvia, the crew intended to leave the port hole open and then carelessly forgot to close them. On the Great Lakes the famous Sargent3 case illustrates the polarity under the Carriage of Goods by Sea Act of due diligence versus errors of navigation and management. The Sargent left Duluth in December with a cargo of storage grain shipped under a bill of lading referring to Cogsa. The mate had failed to close an uninsulated water line which then froze and broke, damaging the cargo. judge Tuttle, a famous admiralty judge, held carrier liable for lack of due diligence to make the ship seaworthy, finding the line had been frozen prior to the ship's departure and the water line should have been insulated as far as cargo -wheat -was concerned. The court also considered the polarities of care and custody vs. navigation and management and applied the test of intent. Since, if the line had been closed, the purpose would have been to prevent its freezing and bursting water into the cargo known to be highly susceptible to water damage, the failure to so close the line was negligent care and custody. In fact, the captain of the ship testified that had the line been closed, the purpose would have been to prevent damage to the cargo, rather than to the ship. Thus, the carrier was liable under due diligence and care and custody. The Sargent also points out that seaworthiness is a relative term. What is seaworthy for a ship carrying non-perishable cargoes such as ore or coal may not be seaworthy for the same ship carrying a perishable cargo. Knott v. Botany Mlills,4 4 also contrasts care and custody with navigation and management under the Harter Act. The shipper con-tended that drainage from wet sugar damaging wool when the ship was trimmed down by the head constituted negligent care and custody. The carrier just as strongly contended it was an error in navigation or management in so trimming the ship. The court favored the shipper and found negligent care and custody. Another area of conflict is the concept of deviation, which, in general, avoids the contract-the bill of lading-and remits the parties to their rights and duties under the maritime law-i.e., the carrier is an insurer. The doctrine of deviation proceeds on the theory that a deviation creates a different voyage not intended by the contract of carriage. Since there is no bill of lading for the new voyage, Harter and Cogsa do not apply. There are two general classes of deviation -geographical and contractual. If the ship deviates in its

voyage beyond the "reasonable «deviation permitted in Cogsa or a reasonable deviation clause in the bill of lading, the carrier becomes an absolute insurer of cargo.45In the well-known Streamer Briton case the carrier successfully contended it was not a deviation to stop at Lime Island enroute to take on additional fuel. However, other cases have held that in-sufficient fuel for the intended voyage constitutes unseaworthiness rendering the carrier liable. Contractual deviation may consist of unreasonable delay, or stow-age of cargo on deck in absence of an agreement permitting it.

Cases can be multiplied endlessly but it is well to keep in mind the general proposition that the carrier has the burden of proving the damage was not caused or contributed to by his fault; that he used due diligence, and that the damage was caused by some exempted event such as peril of sea, act of God or error in navigation or man-agement.47If cargo damage is due to two causes, one covered by an exemption and the other not, the carrier has the burden of proving how much was caused by the exempted peril. Otherwise, he is held liable for the whole damage.

Only a bare outline of the fundamentals of charter parties and bills of lading49 has been presented. The writer hopes that some of the terms and clauses used in these documents are somewhat clarified through his efforts. Sooner or later the admiralty lawyer will probably be called upon to deal with the problems of charter parties and bills of lading-whether it be the use of a small yacht for the summer or a shipment of thousands of dollars worth of goods. The fundamentals are the same-the application and interpretation depend upon the mood of courts in the last analysis.

The Importance of Bills of Lading

The carrier need not require all originals to be submitted before delivery. It is therefore essential that the exporter retains control over the full set of the originals until payment is effected or a bill of exchange is accepted or some other assurance for payment has been made to him.

A bill of lading, therefore, is a very important issue when making shipments. On one hand it is a contract between a carrier and shipper for the transportation of goods and on the other hand it serves as a receipt issued by a carrier to the shipper.

BoLs are vital to the successful transportation of goods. Primarily, the document serves as a legally binding agreement which helps the carrier process the cargo according to the original contract terms set up by the carrier and shipper or freight owner. This means the BoL can be used in litigation concerns, and inaccurate BoLs can expose carriers to anything from claims to criminal prosecution.

Additionally, since most BoLs are considered a title of goods, these documents (much like the cargo they list) can be used in negotiations. Because of this, some types of BoLs can be endorsed and transferred to third parties while the cargo is in transit, ultimately giving control of the cargo to different parties along the route. This also means that if a carrier hasn't been paid in full for the transportation of the cargo, the carrier can keep the bill of lading and goods until terms of the sale are finalized.

Depending on the type of BoL, various information should be listed on the document, including:

- Carrier name and a signature from the carrier, the ship's master, or a legal representative of either of these parties
- Date and indication of goods being loaded onto a vessel
- Notation of the port of loading and the port of destination
- Terms and conditions of carriage or a reference to these conditions listed in another document

- Detailed description of the goods being shipped (value, count, weight, size, markings/numbers, etc.)
- Name of the consignee
- Any special instructions for shipping.This information is just some of the items which may be required on a BoL. A marine/ocean shipping BoL, for example, will also need the name of the ship written on the document.

A Bill of Lading (B/L) has 3 basic functions or roles as below (in no particular order):

1) Evidence of Contract of Carriage

The B/L is the EVIDENCE of the contract of carriage entered into between the “Carrier” and the “Shipper or Cargo Owner” in order to carry out the transportation of the cargo (not to be confused with the sales contract between the buyer and the seller).

2) Receipt of Goods

A B/L is issued by the carrier or their agent to the shipper or their agent as proof of RECEIPT of the cargo.

The issuance of the B/L is proof that the carrier has received the goods from the shipper or their agent in apparent good order and condition, as handed over by the shipper.

3) Document of Title to the goods

This role of the bill of lading decides who is the owner of the title to the goods based on which cargo is released.

In terms of container business, below are the most types/common methods of issuing a bill of lading:

1. StraightBill of Lading
2. OrderBill of Lading
3. Sea Waybill of Lading

All above types of bills of lading satisfy functions 1 & 2 – Evidence of Contract of Carriage and Receipt of Goods but only an Order Bill of Lading satisfies function 3 – Document of Title.

Why don’t the other two types satisfy function 3? Let us explain.

1) When a B/L is issued in Original(s) to a “named” consignee it is referred to as a “Straight B/L” and a straight B/L is a NON-NEGOTIABLE & NON-TRANSFERABLE DOCUMENT. The bill of lading stationery will not have the wordings Straight Bill of Lading but may have Ocean Bill of Lading or Port to Port Bill of Lading written on the top.

Release of cargo at destination may be issued ONLY to the named consignee and ONLY upon surrender of at least 1 of the original bills issued.This release condition is subject to the COGSA (Carriage of Goods by Sea Act) of relevant countries and jurisdiction.

A Straight B/L does not satisfy function 3 (Document of Title) as the document is neither negotiable nor transferable.

2) When a B/L is issued to a “named” consignee but without any originals and using a Sea Waybill or Waybill stationery, it maybe considered as a “Sea Waybill“. This B/L is also a NON-NEGOTIABLE & NON-TRANSFERABLE DOCUMENT.

Since no originals are issued in the case of a Sea Waybill no surrender is required.

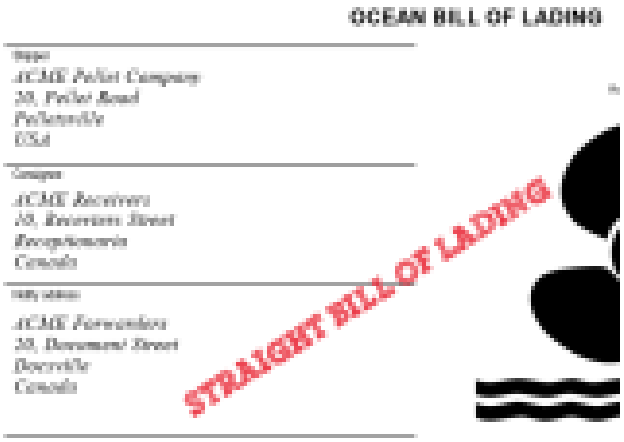
A Sea Waybill does not satisfy function 3 (Document of Title) as the document is neither negotiable nor transferable.

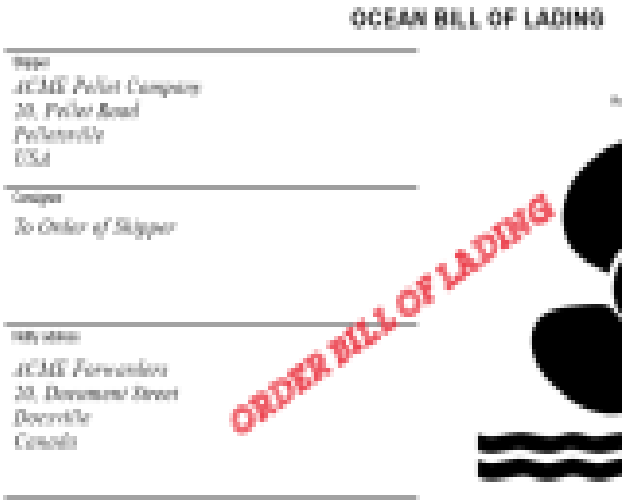
A ready reckoner on which type of bill of lading satisfies which role (in a container shipping environment) is given below.

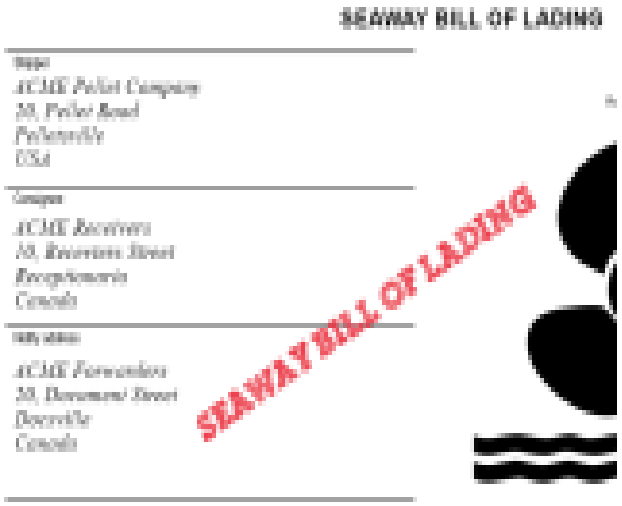
Ready reckoner on bill of lading types and the functions they fulfill	Evidence of contract of carriage	Receipt of goods	Document of Title
Straight Bill of Lading	✔	✔	
Order or Negotiable Bill of Lading	✔	✔	✔
Seaway Bill of Lading	✔	✔	

Source : Shipping and Freight Resource (http://shippingandfreightresource.com)

An example of how each of the above bills of lading will be consigned and how it relates to the above functions is shown below.







Why is the Receipt of Goods an important function of bill of lading?

Receipt of Goods

1) To prove that the cargo described in the bill of lading was handed over to the Carrier by the Cargo Owner

2) To prove the condition in which the container and cargo was handed over by the Cargo Owner to the Carrier. In an FCL situation since the cargo owner packs the container without the involvement of the shipping line, this may not apply, but in the case of cargo such as Out of Gauge cargo on Flatracks, Platforms or Open Tops, the Carrier can see the condition of the cargo when accepting same

3) To prove the hand over, in case the container goes AWOL after loading (yes it has happened) and is not discharged at destination.

Document of Title to Goods

1) Document of title entitles the legal owner of the goods to claim their goods from the shipping line.

2) Who this title maybe transferred to depends on how the shipment is consigned – example Order Bill showing consignee as To Order, To Order of Shipper, To Order of XYZ Bank.

Furthermore, some additional information about Evidence of Contract of Carriage, Receipt of Goods and Document of Title are the below:

Evidence of Contract of Carriage

Many people think that a bill of lading is a contract between the Seller and the Buyer and many also think that a bill of lading is a contract of carriage between the Carrier and Shipper. However, this is not entirely correct.The contract between a buyer and seller was already established when the buyer placed the order with the seller and they both discussed and agreed (verbally or in writing) the what, where, when, how and how much of the transaction in detail. The contract between a shipper and the carrier was already established when the shipper or theirthird-party logistics provided made a booking with the carrier to carry the freight from A to B.The bill of lading is the EVIDENCE of the contract of carriage entered into between the “Carrier” and the “Shipper or Freight Owner” in order to carry out the transportation of the freight as per the contract between the buyer and the seller.

Receipt of Goods

A bill of lading is issued by the carrier or their third-party logistics provider to the shipper or 3PL in exchange for the receipt of the freight. The issuance of the bill of lading is proof that the carrier has received the goods from the shipper or their 3PL in apparent good order and condition, as handed over by the shipper.

Document of Title

Technically it means that whoever is the holder of the bill of lading has the title to the goods (rights to claim the goods). However, this title varies according to the way in which the bill of lading has been consigned.

What information must be listed on the bill of lading?

- Shipper and receiver (or consignee) names and complete address.
- The date of the shipment.
- The number of shipping units.
- The freightclassification.
- The exact weight of the shipment. If there are multiple freight units, then each item's weight must be listed.
- Type of packaging, including cartons, pallets, skids, and drums.
- A description of the item being shipped, include the material of manufacture and common name.
- PO or special account numbers used between businesses for order tracking.
- Special instructions for the carrier.
- Note if the freight is a Department of Transportation hazardous material. (Special rules and requirements apply when shipping hazardous material.)
- The declared value of the freight being shipped.

What happens if the Bill of lading is Inaccurate?

If the goods and condition are inaccurately listed it could leave the carrier exposed to claims.

For instance:

If the Bill of Lading indicates that the goods were loaded in good order and condition, but the consignee receives the goods at the point of discharge and the shipment is incomplete or in damaged condition, the consignee is then entitled to make a claim for the missing and/or damaged goods against the carrier.

This is not a good spot for the carrier to be in, which is why it is important that the load and the information listed on the Bill of Lading match.

The Bill of Lading is one of the most vital documents associated with trade, yet due to its abiding presence it is often the document that is the most over looked.

As a contributing member in the supply chain, whether you are a carrier or the consignee, protect yourself and make sure that the Bill of Lading issued is accurately completed.

As the carrier this important step will help to safeguard you against unjust claims, and as the importer or consignee it will help to ensure your get what you paid for.

Consequences of an inaccurate Bill of Lading

- The product doesn’t make it to the destination.
- Claims.
- Loss of the right to limit liability.
- Loss of P&I cover.
- Loss of the right to indemnity from the charterer.

Mistakes Shippers can avoid on BOL:

- Not describing the freight correctly.
  Be thorough in your description of the freight.

- Not being specific enough on freight and product count.
  You must specify the number of containers, and sometimes you have to specify the number of goods in each container. Be sure to clarify items versus pallets, and so on.

- Not identifying hazardous materials.
  If you deal with hazardous materials, be sure to take responsibility for shipping the product safely. Do research to learn if you have hazardous materials, and properly label the BOL.

- Not communicating the carrier requirements for the shipment.
  Make sure you are providing the information required. Ask, if you have to, and plan ahead so that you can avoid expensive errors.

- Not referencing the correct contact numbers or service numbers.
  Include the service contract number in the paperwork. BOLs are evidence of carriage, so if terms differ, it can cost you money. Make sure your contact information is correct in case questions arise during the transport.

- Not completing the BOL.
  Double check that all required fields have been filled out properly.
- Not understanding the terms on the BOL.
  Read through the document and make sure you understand what you are responsible for.

How to keep a consistent and accurate Bill of Lading?

The information within the BOL must be clearly written or typed in the space provided. Given the importance of this shipping document, the information must be filled out accurately every time. Use the same bill of lading form consistently, then you will become familiar with the information you need. It's helpful to refer to a transportation management system (TMS). Eliminate risks by quickly and easily filling out your BOL online. Using a TMS, you are required to fill in all fields which decreases the chance of error. And of course, always double check the information before sending the BOL.

What happens if Bill of Lading Lost?

BL lost in courier transit, how to get a new bill of lading. How to reconstruct a missed bill of lading? What are the Procedures to get new Bill of Lading? BL mutilated how to get a duplicate bill of lading in lieu of original bill of lading?

As you know, Biill of lading is a negotiable instrument and document of title. Shipping carriers issue bill of lading on receipt of goods at load port after necessary export legal customs clearance procedures completed. Without original bill of lading the cargo can not be taken delivery of goods at destination port. What happens if BL lost in transit or mutilated. BL could have lost at Bank, courier transit, or in any other transit. Bill of lading could be stolen or destroyed. We have discussed about the Importance of bill of lading in international trade under separate article in this web blog.

If a bill of lading is lost, the shipper needs to approach the shipping carrier and request for a duplicate set of originals in lieu lost original bill of lading. The shipper needs to execute a letter of indemnity bond stating that the said carrier is not to be held responsible if the first set of lost Bills of lading is found and surrendered. The letter of indemnity must be signed by the shipper or his legal authorized representative. Such indemnity bond should be against certain amount fixed by the respective carrier. In an indemnity bond, shipper also undertake the responsibility return the original lost bill of lading to the carrier, if found. The shipper undertake to indemnify all consequences on lost of bill of lading against any claims, liability, losses charges, costs, fine, damages and other expenses inclusive of legal expenses in connection with anybody claiming delivery of goods as owner or assignee or as the holder of BL originally issued at the time of receipt of goods. Some of the shipping liners in US or Canada insist a counter signature on such indemnity bond by the reputed bank doing business in the said country to obtain duplicate sets of BL in lieu of lost original bill of lading.

Each shipping carrier may have different specimen format of indemnity bond with separate legal bindings to obtain a duplicate set of bill of lading in lieu of lost original bill of lading. However, I have mentioned some of the major points above, generally mentioned by all carriers in bond for issue of duplicate bill of lading against lost BL.

Telex Release

In the first case above, when an OBL is surrendered either at the load port or elsewhere (for example, say a container is loaded out of Kenya, but the shipper is based in London), the carrier or their agent will send a release authorization to the port of discharge so that the consignee can secure the release of the cargo without presentation of an OBL.

This release authorization is called a “Telex Release”. What does “Telex Release” mean? In the olden days of Vintage Shipping, such messages were transmitted using a Telex machine. TELEX being an acronym for TELegraphEXchangeservice.

Telex Machine was a teleprinter used to send and receive text-based messages using the telegraph service.

In trade practice, a Telex Release is sought by the shipper or consignee only in the case of a Straight Bill of Lading and not an Order Bill of Lading.

Reason Being

- the original(s) of an Order Bill of Lading (Negotiable Bill of Lading) is usually required to be submitted to the bank for negotiation purposes;
- after the negotiation process and payments are done, the bank will send the original(s) to the consignee to secure release;
- the consignee will then surrender that endorsed OBL to the carrier to obtain the delivery order.

So, what are the pros and cons of using an original Bill of Lading or getting a Telex Release?

Release Type	Pros	Cons
Original Bill of Lading	Security of release only to the named consignee.	Release at destination could be delayed due to time taken to courier the original documents. Especially if it is a short sea voyage and the cargo reaches before the bill of lading.
	Payment security for the seller/shipper who can withhold the original bill till such time the payment for the cargo is made.	Possible loss of original bill of lading during transit to the consignee.
		Delays caused due to the dispatch in original bill could also delay the release of the cargo which could incur demurrage or detention
Telex Release	No possibility of loss of documents or the telex release itself as it is transmitted electronically.	Possibility of fraud as all it takes is an email message for the delivery to be effected at destination.
	Especially useful when a quick release process is required at the destination	If sent in error, there may not be a chance to recall a telex release
	Useful when dealing with shipments that have a short sea voyage and there is no time for the documents to be couriered.	A bill of lading must be issued and handed over to the client in Original before a telex release is actioned.
Sea Waybill	No possibility of loss of the bill as there is no original issued and the document may be transmitted electronically.	Possibility of fraud as released can be secured basis an email document.
	Especially useful when a quick release process is required at the destination.	Sea Waybill is not a document of title so proving ownership would be a problem.
	Useful when dealing with shipments that have a short sea voyage and there is no time for the documents to be couriered.	

FREIGHT HUB

For the purpose of import release, either an endorsed original Bill of Lading or a Telex Release or a Seaway Bill may be used.
Whether an original Bill of Lading, Seaway Bill or a Telex Release is used for the release of cargo at the destination, both the shipper and consignee side must ensure that proper documentary procedures are followed, and suitable safeguards are taken to avoid any fraud.

Exist any restriction on the number of B/Ls?

There is no restriction on the number of bills of lading that can be issued, but the number issued must be stated on the bill. Three bills are standard – one for the shipper, one for the consignee, and one for the banker, broker or third party. For security purposes, it's advisable to only request as many bills of lading as you actually need. If more bills of lading are issued, there is an increased risk of fraud, theft, an unauthorized release or release to the wrong person.

There are two types of bills of lading: the ocean bill of lading and the airway bill. The determining factor as to which is most applicable comes down to time. Air travel is reserved for shipments that are time-sensitive or on a tight deadline, and it is usually a bit more expensive. Travel by ocean is more economical, which is why it is more frequently utilized.

There are many different types of ocean bills of lading, but the most common are a straight, shipper's order, clean and onboard bills of lading. The straight bill of lading is non-negotiable and must be marked as such. It can only be released to the person named on the bill.

A shipper's order bill of lading outlines any conditions that have been imposed by the shipper. A common example is when payment has been secured by a letter of credit, and the terms must met before the delivery is accepted.

The clean bill of lading is when everything in the shipment is in perfect order. Should any shortages of product or damages occur, a clean bill is not issued.

An onboard bill of lading is issued when the goods are loaded onto the ship and is signed by the ship's master. This type of ocean bill of lading is rendered when payment is contingent on a letter of credit.

In addition,each of these three originals would be marked as "First original", "Second original" and "Third original". All these three bills of lading would also be marked as "Negotiable".

A negotiable bill of lading means that these bills of ladings can be negotiated and transferred to any other person who will become the owner of the cargo.

Apart from the negotiable bill of lading, master also issues some copies of "non-negotiable" bill of ladings.

As the name suggest, non-negotiable bill of lading cannot be negotiated, and these are not the document of title.

That means the holder of a non-negotiable bill of lading cannot be the owner of the cargo.

The non-negotiable bills of lading are issued for documentation purposes such as for customs purpose.

Before releasing the cargo at the discharge port, the master must check that original of the negotiable bill of lading is presented to him.

BILL OF LADING FUNCTION IN CHARTER PARTY

It must be remembered that the prime function of a bill of lading as a document of title is in relation to the contract of carriage and that the two functions already outlined are merely parasitic, at least so far as the carrier is concerned. In the context of the contract of carriage, however, the fact that the bill is a symbol representing the goods during transit has the following consequences:

(a) The holder of the bill controls the goods during transit.

(b) A lawful holder of the bill, by of the Carriage of Goods by Sea Act 1992, has title to sue under the contract of carriage as if he had been an original party to it. He becomes subject to liabilities under the contract only when he takes or demands delivery of the goods from the carrier or initiates a claim for loss or damage.

(c) The holder is entitled to delivery of the cargo at the port of discharge on presentation of the bill of lading.

The second proposition requires further consideration. While indorsement and delivery of a bill of lading will normally transfer ownership of the goods covered by it, such indorsement has always been ineffective at common law in transferring to the endorsee the rights and obligations arising under the contract of carriage. The reason is to be found in the traditional doctrine of privity of contract, which prescribes that only the original parties to the contract can sue or be sued on it. Over the years English law has sought to bridge this gap by a variety of statutory and judicial devices which have enabled receivers of cargo, in the majority of cargo disputes, to acquire title to sue the carrier. Initially the legislature sought to solve the problem by the introduction of a statutory form of assignment by of the Bills of Lading Act 1855. Under this statute, title to sue was linked to the property in the goods and a consignee or endorsee of the bill of lading acquired title to sue provided that property in the goods passed to him ‘upon or by reason of such consignment or endorsement’. To reinforce this statutory provision, the common law subsequently developed two complementary remedies. First, the courts were prepared to imply a contract between consignee or endorsee and the carrier – a contract separate and distinct from the original contract of carriage between

shipper and carrier – from delivery of the goods at the port of discharge against presentation of the bill of lading. Secondly, in appropriate cases, a remedy in tort was available where the damage or loss had resulted from the negligence of the carrier or his servants. Court decisions over the years, however, highlighted the inherent limitations of these stratagems and indicated the necessity for more fundamental reform. The Law Commission responded by proposing a radical solution to the problem which was given statutory force in the Carriage of Goods by Sea Act 1992. Title to sue on a carriage contract is now governed by the provisions of this statute,103 although the implied contract approach is still available should the need arise for an alternative remedy.

(a) The Carriage of Goods by Sea Act 1992

This Act, drafted by the Law Commission, came into force on 16 September 1992 and governs all contracts of carriage concluded on or after that date. Unlike its predecessor, the Bills of Lading Act 1855 which applied only to bills of lading, the provisions of the 1992 Act also cover sea waybills and ships' delivery orders. In the case of bills of lading, it is immaterial whether the document is a shipped or received for shipment bill. The Secretary of State is also empowered to draft regulations extending the provisions of the Act to cover any electronic transmission of information which might in the future replace written documentation.
The legislation envisages two significant departures from existing law:

(a) title to sue is no longer linked to property in the goods;

(b) the transfer of rights under a contract of carriage is affected independently of any transfer of liabilities.

The new law can be stated as follows:

1. Title to sue is now vested in the lawful holder of a bill of lading, the consignee identified in a sea waybill or the person entitled to delivery under a ship's delivery order, irrespective of whether or not they are owners of the goods covered by the document.

2. The ‘lawful holder’ of a bill of lading is defined as a person in possession of the bill in good faith who is either:
(a) identified in the bill as consignee, or
(b) an endorsee of the bill, or
(c) a person who would have fallen within categories (a) or (b) if he had come into possession of the bill before it ceased to be a document of title.

The final provision will cover a situation such as that where goods are delivered against a bank guarantee before the bill comes into the possession of a consignee or an endorsee.
By the time such a bill eventually comes into their possession, it is no longer a transfer- able document of title in the sense of entitling its holder to possession of the goods. The provision will also cover the case where goods are lost in transit before the bill comes into the hands of a consignee or ultimate endorsee. In both cases, however, the ultimate holder of the bill will obtain title to sue only provided that he became holder of the bill in pursuance of contractual or other arrangements made before the bill ceased to be a transferable document of title.

3. The transfer of the right to sue under s 2(1) of the Act, from one lawful holder of a bill to another, will extinguish the contractual rights of the shipper or of any intermediate holder of the bill. This result will follow even if the shipper retains the property in the goods after such indorsement and he will not regain title to sue even though he regains possession of the relevant documents unless they have been reinforced back to him. Thus in East West Corp v DKBS bills of lading had been indorsed to bankers in connection with documentary credits and, on the buyer failing to pay the price for the goods, the bills were returned to the shipper without further indorsement. In these circumstances the shipper had no title to sue. The operation of this provision also raises a practical problem which is specifically dealt with by the Act. The problem relates to the situation where, under a contract of sale, goods are shipped by a seller and eventually delivered to an overseas buyer on presentation of the relevant bill of lading. On transfer of the bill to the buyer, the seller will lose his right to sue on the contract of carriage while, on delivery of the goods to the buyer, the bill of lading

will cease to be a document of title. What, then, is the position if the goods have been damaged in transit and are subsequently rejected by the buyer? The seller is the only person with an interest in suing the carrier but has apparently lost his right of suit on transfer of the bill. In these circumstances the Act specifically confers on him title to sue when he regains lawful possession of the bill.

4. Since title to sue is divorced from property in the goods, a person with rights of suit under s 2(1) may not have suffered personal loss or damage resulting from the carrier's breach of contract. In such an event he is entitled to exercise rights of suit for the benefit of the party who has actually suffered the loss and will then hold any damages recovered from the carrier for the account of such person. Unfortunately, while the Act empowers the holder of the bill to sue on another's behalf, it apparently does not place him under any obligation to do so. Parties such as banks or other financial institutions, who are looking to the bill for purposes of security, may therefore prefer to be named as consignees, with a consequent right to sue, rather than to rely on the goodwill of future holders of the bill.

5. As mentioned earlier, liabilities under the contract of carriage are no longer transferred simultaneously with title to sue. Under s 3 of the new Act they will only attach to persons in whom rights of suit are vested whenthey either:

(a) take or demand delivery of the goods, or

(b) make a claim under the contract of carriage, or

(c) took or demanded delivery of the goods before rights of suit vested in them under s 2(1) of the Act.

The final provision covers the situation where the receivers took delivery of the goods against a bank indemnity before they became 'lawful holders' of the relevant bills within the meaning of the Act.

The clear division of rights from liabilities will effectively protect a bank which is holding the bill as security for a credit from incurring liabilities under the contract of carriage until it seeks to enforce its security by claiming delivery of the goods or instituting proceedings against the carrier.
Lastly, the Act provides that such transfer of liabilities is without prejudice to the existing liabilities of the original party to the contract. Intermediate holders of the bill will presumably no longer incur liability under the contract of carriage once they have transferred title to sue to a subsequent holder of the bill.

6. The provisions outlined above apply equally, so far as appropriate, to the consignee identified in a sea waybill or the person entitled to delivery under a ship's delivery order. The former is entitled to sue on the contract evidenced by the sea waybill, and the latter to enforce the terms of the undertaking contained in the delivery order, but only in relation to the goods covered by that order. Both will incur liability only when they seek to enforce the respective contractual undertakings.

Sea waybills are by definition non-negotiable, but they often contain provision for an alternative consignee to be nominated by the shipper. In such a case, title to sue will be transferred on the shipper instructing the carrier to deliver to a person other than the consignee named in the sea waybill.

(b) The implied contract approaches

While most of the problems associated with title to sue have been resolved by the Carriage of Goods by Sea Act 1992, the well-established common law device of the implied contract remains available should the remedies provided by the Act prove deficient or inappropriate in any particular case. In adopting this approach the courts have been prepared, in appropriate- ate circumstances, to imply a contract between a consignee or indorse of a bill of lading and the carrier, which is separate and independent of the original contract of carriage between shipper and carrier. This new contract was implied

from delivery of the goods against presentation of the bill of lading, the consideration being provided by the payment by the receiver of the goods of any outstanding freight or other charges due under the original contract of carriage. It was then a short step for the courts to presume that the terms of the implied contract were those of the bill against which delivery had been obtained. An example of the application of this principle is provided by Cremer v General Carriers where a cargo of tapioca chips had been shipped in bulk under two bills of lading which were issued to the consignee. Both bills were clean despite the fact that the mate's receipts recorded that the tapioca was damp on shipment. The consignee then indorsed one of the bills to the claimant and handed it over together with a ship's delivery order for part of the remainder of the cargo. After the claimant had taken delivery of his share of the cargo against production of these documents, he subsequently sued the carrier for cargo damage caused by moisture, seeking to rely on the estoppel created by the clean bills. Even though he had no rights under the original contract of carriage, since property in the goods had not been transferred by indorsement of the bill, the trial judge held that he could recover. In his view, 'A contract incorporating the terms of the bill of lading was to be implied between the plaintiffs [claimants] and the defendants by reason of the payment of the freight by the plaintiffs [claimants] and the delivery of the goods by the defendants against the bill of lading.' Furthermore, it was held that where the claimant had taken delivery against a ship's delivery order (as opposed to a delivery order issued by the seller), he was entitled to the same rights as if he had taken delivery under a bill of lading. In both cases, however, it was essential that delivery was taken against payment of freight or other outstanding charges, since the latter provided the consideration necessary to make the implied contract enforceable. Presumably in cases where the freight was prepaid and there were no other charges outstanding, the endorsee would be unable to invoke this principle. The limits of this doctrine have not been clearly defined, although it has been established that the decision as to whether or not a contract is to be implied in any particular case is one of fact and not of law. While some judges have urged restraint, others have been prepared to extend its application as a general panacea. Thus, in The Elli 2 the Court of Appeal held that, where cargo had reached the port of discharge in advance of the documentation, a guarantee to present the bill when it arrived was as effective as actual presentation in raising the inference of a contract. Again, where, in the circumstances of a particular case, there has been a degree of mutual co-operation between carrier and receiver of the cargo which is only explicable on the existence of some form of contractual relationship between them, the courts have been prepared

to imply a contract to give 'business reality' to the transaction. Thus, in The Captain Gregos (No 2) a consignment of oil, which had been the subject of a series of chain sales, was delivered to the ultimate purchaser in Rotterdam. The appropriate documentation not being available, the shipowner made delivery against a letter of indemnity. The available evidence suggested to the court that the cargo could not have been discharged into the purchaser's refinery complex in Rotterdam without the active co-operation of the purchaser and the crew of the vessel. In these circumstances the Court of Appeal found 'very powerful grounds for concluding that it is necessary to imply a contract between BP and the shipowners to give business reality to the transaction between them and create the obligations which, as we think, both parties believed to exist'. The same court was, however, less accommodating in the subsequent case of The Gudermes where a quantity of oil sold to the claimants was shipped on a vessel which was subsequently discovered to have no operative heating coils. The oil having cooled in transit, the claimant's sub-purchasers refused delivery in Ravenna, fearing the oil might clog their underwater sea line. The claimants accordingly arranged for the oil to be transhipped into another vessel off Malta, had it reheated on board and thereafter delivered at Ravenna. In an attempt to recover the cost of transshipment, the claimants argued that, as a result of the dealings between themselves and the carrier in respect of the transshipment, there was to be implied a Brandt v Liverpool contract on the terms of the bill of lading which expressly incorporated the Hague/ Visby Rules. The Court of Appeal rejected this contention and stressed that, before any contract could be implied, the conduct of the parties must be explicable only on the basis of the contract sought to be implied. In its opinion, the final decision must be one of fact and, in the circumstances of this particular case, the facts did not support the contention that any new contract between the parties should be implied. There are clearly limits to the extent to which the fiction can be taken. No contract was implied in The Aramis where there was a complete failure by the carrier to deliver any cargo. In this case a quantity of goods covered by several bills of lading had been shipped in bulk but, by the time the final bill was presented at the port of discharge, the supply of cargo had been exhausted. The Court of Appeal refused to imply a contract from the mere act of presentation of a bill of lading in the absence of any corresponding response from the carrier which could be interpreted as an 'acceptance' of the claimant's 'offer'. This decision effectively denied any remedy for non-delivery. Again, mere presentation of a bill of lading followed by part delivery will not constitute sufficient evidence to find an implied contract in circumstances where the conduct of the parties is equally

explicable as constituting performance of obligations and rights under the original contract. The absence of any consideration provided by the party presenting the bill of lading may be an important factor in reaching such a conclusion, but it does not appear to be decisive. Lastly, there are two practical problems resulting from the implied contract concept. The first raises doubt as to whether the device will provide a remedy for the consignee under a waybill. As waybills were designed to avoid the problems arising from the late arrival of shipping documents, and consequently are not normally presented to obtain delivery of the cargo, the implied contract device fails to provide a practical solution to the problem of the consignee's title to sue under such a document. The second query relates to the proper law of the implied contract. In the absence of any choice of law clause in the bill of lading, the proper law of a contract implied from the conduct of the parties at the port of discharge might differ from that appropriate to the original contract of carriage.

HAGUE/VISBYRULES IN CHARTERPARTIES

Although Art V of the Hague/Visby Rules provides that the rules do not apply mandatorily to charter parties, many standard form charters incorporate them on a voluntary basis. This result is achieved either by specific reference to the legislation enacting the Rules in the coun- try of shipment, by specific reference to the Rules themselves, or by a clause incorporating the substance of Arts III and IV.190 Such incorporation is usually effected by the inclusion in the charter party of a so-called Clause Paramount as, for example, clause 24 of the New York Produce Exchange 1946 form which specifically incorporates the provisions of the US Carriage of Goods by Sea Act 1936. Frequently, however, the charter party refers simply to a 'Paramount Clause', without any words of qualification. In such circumstance's shipowners have argued that, with so many possible interpretations available, the phrase is ambiguous and should be ignored. This approach was rejected by Denning LJ in The Agios Lazarus as 'a counsel of despair', taking the view that the court 'should try to give effect to this incorporation, rather than render it meaningless'. The Court of Appeal accordingly held that the intention of the parties in using the phrase was to incorporate the entire Hague Rules in their original form. Action of this type inevitably results in conflicts arising between provisions of the incorporated Rules and the existing terms of the charter party. In many cases the relevant paramount clause will provide that in cases of conflict the provisions of the Hague Rules are to take precedence. Where such an indication is absent, the courts tend to regard incorporation as a contractual issue and to approach such conflicts as matters of construction. As the Rules are not mandatorily applicable in this context, the objective of the courts appears to be a desire to avoid technicalities and to give effect to the intentions of the parties. Thus in Adamastos Shipping Co v Anglo-Saxon Petroleum the parties had written the US paramount clause verbatim into an oil tanker charter without noticing that the clause expressly provided for the incorporation of the Hague Rules into 'this bill of lading'. The House of Lords had little hesitation in holding that the intention of the parties was to incorporate the Rules into 'this charter party'. Again, in The Satya Kailash a vessel had been time chartered to lighten a second vessel which, being too heavily laden, was unable to enter port. During the lightening operation the two vessels collided as the result of

negligent navigation by the chartered vessel. In holding that the paramount clause in the charter, which incorporated the US Carriage of Goods by Sea Act 1936, entitled the shipowner to invoke the protection of the Hague Rules exception covering negligent navigation, the Court of Appeal decided that the provisions of the Act were applicable even though the charter involved no cargo-carrying voyage and no voyage to or from a US port was envisaged. Presumably, the courts would adopt a similar attitude in interpreting clauses seeking to incorporate into charter parties the provisions of the Hague/Visby Rules, since the requirement that the latter Rules should have the force of law is apparently only applicable where they are expressly incorporated into a bill of lading or non-negotiable receipt. Effect of incorporation The incorporation of the Hague or Hague/Visby Rules will affect many of the basic obligations arising under a charter party (I) The seaworthiness obligation The strict obligation at common law to provide a seaworthy ship will be replaced by the duty to exercise due diligence to make the ship seaworthy 'before and at the beginning of the voyage'. Some difficulty may be encountered in interpreting the latter phrase in the context of a charter party. Does the duty to exercise due diligence arise at the beginning of the initial voyage under the charter party or at the beginning of each and every voyage? Little difficulty may arise in the cases of a voyage charter or a trip charter where the relevant contracts envisage only a single voyage. What is the position, however, with respect to a charter which involves a series of voyages? A majority of the House of Lords in Adamastos Shipping Co v Anglo-Saxon Petroleum held that the duty applied to all voyages under a charter party, irrespective of whether the vessel had cargo aboard or was in ballast. The charter party involved in the case was a consecutive voyage charter, but Scrutton is of the view that the obligation is equally applicable to each voyage under a time charter 'where the charter requires the master to sign bills of lading for each voyage which themselves incorporate the Hague/Visby Rules'. He adds the rider, however, that 'the question must also turn on the construction of the charter as a whole'. The House of Lords in the Adamastos case also held that the provisions in Art IV rules 1 and 2 relating to the recovery of compensation for 'damage or loss' resulting from breach of the seaworthiness obligation were not limited in their operation to physical damage or loss of the goods. Consequently, they allowed recovery of damages for the loss of freight resulting from the unseaworthy vessel completing fewer voyages than expected within the period of the charter. Recovery in such circumstances was, however, dependent on the damage or loss arising within the general context of the activities envisaged in Art II of the Rules. (II) Exceptions Under a charter party the shipowner is normally

required to perform a wider range of activities than those involved in a bill of lading contract or envisaged by the exceptions listed in Art IV rule 2 of the Hague/Visby Rules. The question then arises as to whether, in a situation where the charter incorporates the Rules, the shipowner is entitled to invoke the immunities in Art IV to cover this wider range of activities. The Court of Appeal in the case of The Satya Kailash answered this question in the affirmative. The shipowner's vessel had been chartered to lighten another ship which was too heavily laden to enter port. During the lightening operation the two vessels collided as the result of the shipowner's negligent navigation. Despite the fact that a lightening operation did not normally form part of a bill of lading contract, the shipowner was allowed to invoke in his defense the navigation exception contained in the US Carriage of Goods by Sea Act 1936, which had been incorporated into the charter. In the words of Goff LJ, 'general words of incorporation can be effective to give an owner the pro- section of the statutory immunities in respect not only of those matters specified in s 2, but also of other contractual activities performed by him under the charter'. (III) Time bar The incorporation of the Hague/Visby Rules into a charter party will enable a shipowner to take advantage of the 12-month time bar in Art III rule 6. This provision will normally take precedence over any clause in the charter party providing for a shorter period of limitation, even where that clause provides for the reference of disputes toarbitration.

As with exceptions, there is a problem as to the extent to which a shipowner can rely on the time bar as a protection against claims for breach of any of the many obligations arising under a charter party which are not of a type to be encountered in a bill of lading contract. Two factors are of importance in this context. In the case from which this quotation is taken, a vessel (The Marinor) had been chartered for a period of ten years for the carriage of Sulphur acid from the charterers' plant in Quebec to East Coast ports in the United States. The charter included a paramount clause incorporating the Canadian Water Carriage of Goods Act. During the course of the charter, cargo was dis- charged in a contaminated condition on four consecutive voyages, allegedly due to the unseaworthy condition of the vessel. At this point the charterers decided that the next cargo of acid destined for Savannah should be delivered by an alternative vessel but, in order to give The Marinor a final chance, they decided to use the vessel to ship a cargo of acid for Tampa where the acid could be used in the fertilizer industry even if it were discharged in a contaminated condition. When this shipment was also found to be contaminated on discharge, the charterers commenced arbitration proceedings claiming damages on three counts for breach of the time charter. First, the difference between the actual price received for the cargo in Tampa and the

market price they would have received if the cargo had been delivered uncontaminated in Savannah; secondly, for the extra costs of the longer voyage to Tampa, and finally for the additional port costs in Tampa. Colman J upheld the shipowners' contention that all three claims were caught by the time bar in Art III rule 6 since all were 'sufficiently connected with the goods shipped'. On the other hand, the time bar was not applicable to a claim for the cost of the substituted vessel since this was not a claim 'in respect of ' any particular cargo. Again, in The Seki Rolette Mance J was of the opinion that 'it would be wrong to restrict the application of Art III rule 6 to goods being carried under a specific contract of carriage as distinct from goods "exposed to risk by reason of the charterers' involvement in the contractual adventure"'. In this case, as the result of a collision involving the chartered vessel, the charterer had personally lost property including, interiliac, a fork-lift truck, lashing equipment and a Mercedes Benz truck. Mance J held that the charterers' claims in respect of these items were caught by the time bar even though they did not form the subject-matter of the contract of carriage. The second factor to be taken into consideration is that the 12-month period runs from the time at which the goods are delivered or should have been delivered. For the time bar to operate, the claim must therefore relate to breach of an obligation which involves some form of delivery. This requirement was satisfied in The Seki Rolette, since the charterers' property, on board for purposes of the charter, would presumably have been returned to them on its termination. On the other hand, the time bar would not operate in respect of the charterers' alternative claim for lost bunkers because the bunkers were not due for delivery or redelivery but were intended to be consumed on the voyage. Clearly, much will depend on the courts' interpretation of the term 'delivery'. In the more recent case of The Sonia, a vessel had been chartered to carry a cargo of jet oil to Lagos under a charter party which incorporated specific articles of the Hague Rules, including Art III rule 6. On arrival at Lagos the cargo was rejected as off-specification, whereupon the vessel was dispatched to Abidjan to await orders. Eventually, the vessel was ordered to a Greek port, where the cargo was discharged some eight weeks later. In reply to the owners' contention that the charterers' claim for breach of charter party was time-barred, the Court of Appeal held that the 12-month period ran from the time that the cargo was actually discharged in Greece rather than from the time it should have been delivered in Lagos.

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