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EXHAUSTIVE EXAMINATION OF **THE BILL OF LADING ACT**

Authored By- Manish Tripathi & Parv Ranka

PREAMBLE

The Indian act is based on the bills of lading act, 1855 and 1856 passed by the British parliament (18 and 19 vict. C.111). the act has been declared to be in force in the whole of (British) India except scheduled districts. It is extended to the new provinces and merged states by the merged states (laws) act, 1949, and to the states of Manipur, Tripura, and Vindhya Pradesh by the union territories (laws) act, 1950. The act is further extended to the union territory of Pondicherry by the Pondicherry (extension of laws) act, 1968 with effect from 18th December 1969.¹

The preamble of the act speaks of two purposes for passing the bills of lading act, 1856.

- a) Firstly, where the bill of lading is issued to the consignor or consignee or is transferred by endorsement to an endorsee with a definite intention to pass the property in the goods specified in the bills of lading, the rights and liabilities under the contract between the ship owner and original shipper contained, in the bills of lading is transferred to the endorsee.
- b) Secondly, the endorsee on presentation of the bills of lading is entitled to claim the delivery of the goods contained in the bill of lading. The ship owner cannot be allowed to say that though the bill of lading was issued, no goods in fact were laden on board the ship. The shipping company is bound by its own statements in the bill of lading that the goods were received on board in apparently good order and condition. The shipping company will remain always liable to the *bona fide* holder for value of the bill of lading. In *Malabar steamship co. V. central bank of India, AIR 1939 Sindh 225*,² it was held that the shipping company owned a duty to the bank, the endorsee of the bill of lading on the principle of estoppel. Therefore, where the consignor obtained the bill of lading from the manager of the shipping company before the arrival of the ship and pledged the bill of lading with the bank

¹

[https://www.investopedia.com/terms/b/billoflading.asp#:~:text=A%20bill%20of%20lading%20\(BL,goods%20at%20a%20predetermined%20destination.](https://www.investopedia.com/terms/b/billoflading.asp#:~:text=A%20bill%20of%20lading%20(BL,goods%20at%20a%20predetermined%20destination.)

² <https://indiankanoon.org/doc/1017570/>

and disappeared after endorsing the bill of lading in favor of the bank, the shipping company was held liable to the bank to the tune of the value of the goods contained in the bill of lading and shipping company was not allowed to say that though the bill of lading was issued, no goods in fact were laden on the ship as the stock was seized by the police at the instance of the creditors of the consignor who defaulted.

EVOLUTION OF BILL OF LADING

Although India has a very ancient maritime tradition and practices, apart from the techniques of navigation and allied matters, no tangible evidence has been brought to light regarding the documentary aspects of shipments. Since Britain was ruling India for long, she has followed law and practices derived from England. Bill of lading is one such. It is not known when bills of lading were first used, although records of cargoes placed on board ocean-going vessels have probably existed for thousands of years. Greeks and Romans were all well-known seafarers, yet no evidence has been found of sea code. Ancient Indians were also seafarers trading with islands and ports around Indian ocean.³

In the early days of trading voyages, it was the practice of the merchant to travel with his goods in which case the particulars of the goods were entered into the 'book' or a ship's register or 'manifest', which formed part of ship's papers.

The requirement that every master must take on board a clerk is mentioned in the ordinance *maritime Trani* (an Italian town) of 1063 and refers to the ship's book and register. This appears to be the earliest reference to the keeping of records of goods loaded on board ships. The French writer Desjardins in his *droit commercial maritime* says that in a document of 1255, le fuero real it is said that the owners of ships should cause to be enrolled in the register all the articles put on board ships giving their nature and quantity.⁴

In the course of time, the merchant sought to avoid the necessity of travelling with his goods and eventually a system was developed whereby a document would be issued by the master in

³ <https://repository.law.miami.edu/cgi/viewcontent.cgi?article=2266&context=umlr>

⁴ <https://www.davidpublisher.com/Public/uploads/Contribute/600113cd64224.pdf>

the form of a receipt for the goods loaded on board. Thus the 'book' led to a document analogous to bill of lading which was nothing more than the receipt of the goods. Such receipt for the goods seemed to have been issued in Goa during the time of Portuguese rule.

The documentation procedures in the earliest shipping voyages are an unexplored area and it calls for intensive research. Indian sources offer good scope for such research, apart from sources of other countries. Mr. Alan Mitchel Hill in his very informative book, bill of lading laws and practice, has summarized the transitional stages in the evolution of bill of lading as under:

When merchants traveled with their goods, the particulars recorded formed part of the ship's papers and the development of a receipt from the master did not come until much later. In Paris a 14th century manuscript called customs of the sea has been preserved which is believed to have been drawn up, at Barcelona, in which the register book which had to be kept by the ship's clerk is mentioned. It further states that the merchant sought to make known to the ship's clerk before the ship sets sail any goods other than those entered in writing, as the ship owner would not be responsible for damage to goods other than those recorded. This writing, which according to customs of the sea also included an account of receipts and payments, seems to refer to the rudimentary bill of lading and seems to be in the nature of a document of title as well as the evidence of the merchant's right to the goods entered in his name, at the end of the voyage.⁵

These passages show a transitional period in the history of the bill of lading when it seems probable that oral evidence of shipments was replaced by the ship's register which led eventually to the private contract made between the individual merchant and the master. This period also saw a development when merchants travelling with the goods simply dispatched them to a consignee and this necessitated a signed extract from the register book as a separate and distinct document of title. It became very difficult to prove title if this single document was lost, as the shippers were in all respects at the mercy of the master who possessed the sole proof of contract.

In the latter half of the 16th century, the use of the bill of lading was widespread and was defined

⁵ https://link.springer.com/chapter/10.1007/978-1-4899-7236-1_1

in *Le guidon de la Mer*⁶ as the acknowledgement which the master of the ship makes of the number and quality of the goods on board and goes on to carefully distinguish it from the charter party by saying that ‘trois coppies’ of it must be drawn up. The words to the effect that ‘one of them being accomplished, the others shall be void’ also appeared around this time. It is also interesting to note that in the case of *Chapman v peers* (1534) it was expressly stated that it had long been the practice of merchants and the rule of law that no liability be attached to the master or owner of the ships for goods not entered in the book of lading. The need to transfer the title in the goods before they arrived at their designation was brought about by the spread of commerce and the increasing complexity of business, hence the endorsement of the bill of lading to the buyer. The first reported case in which endorsement is actually mentioned in connection with the assignment of a bill of lading is that of *Snee v Prescott* (1793). Thus, the practice was well established by the 18th century and the negotiable bill of lading was in common use.

The earliest bill of lading qualifications used at that time were of general nature such as ‘act of god’ or ‘inherent vice’, but the 18th century judicial decisions caused ship owners to strengthen their bills of lading, with provisions known as ‘exoneration clauses’⁷ or ‘negligence clauses’. These not only stipulated the old common law exceptions but also served to protect the ship owners from liability for all perils of the sea and navigation. As this tendency was accentuated throughout the maritime nations, ship owners began to exempt themselves from practically every liability, even for their own negligence, which led to disputes and complaints from merchants in international trade. As soon as an unfavorable court decision was given, the ship owner’s legal advisers were instructed to draft a fresh set of clauses to nullify the result for the future.

The growing dissatisfaction of shippers, bankers and underwriters eventually forced the ship owners to negotiate and improve the situation which in turn led to the adoption, between 1890 and 1901, of model bill of lading mostly in the bulk grain, coal and timber trades. In fact, a conference form bill of lading was adopted in 1882 at a meeting in Liverpool which was the first to recognize ‘due diligence’ and to fix a limit of liability of £100 sterling per package. This conference form bill of lading formed the basis of Hamburg rules adopted at Hamburg in

⁶ <https://thelawdictionary.org/le-guidon-de-la-mer/>

⁷ <https://www.lexology.com/library/detail.aspx?g=d6749954-2aaa-48e2-ae87-4481ebe6d507>

1885. The text of 'Hamburg' bill of lading considerably reduced the number of exonerating clauses which had been numerous up to that time, although it is understood that Italy was one of the last countries to resist the merchant's pressure for reform.

It was about this time that the problems between ship owning, and cargo interests came to a head in the British dominions and the United States and legislation was demanded to remove the chaotic states of affairs brought about by the ship owner's unlimited freedom of contract. Recommendations followed for the adoption of an international form for all bills of lading in order to highlight and prevent the casual manner in which alterations and additions were introduced without any consideration for the owners of goods.

Ocean bills of lading were obviously in urgent need of reforms because they had by this time acquired qualities other than that of a receipt. Merchants had discovered that by the use of banks and finance houses, it was possible to extend their trade by employing the same capital outlay and spreading the risk of loss by the payment of a simple premium or insurance. Thus, in the event of disaster, not uncommon in those days, they were able to remain in business. It became possible for banks to advance cash against the security of bill of lading which in turn made it possible for business to be extended by the purchase and shipment of other consignments. The bank having made the advance was likewise secured as it held the title to documents against payments at the port of discharge.

SECTION 1

Section 1 of the act provides that where the consignor does not reserve any rights in respect of the consignment booked by him and the bill of lading clearly shows that the goods in consignments should pass to the consignee or where the bill of lading is endorsed in the name of a third party as an endorsee in clear and unimaginable terms, then under the provision of this act such consignee or endorsee is entitled to sue the shipping company for loss or damage of or non-delivery of the goods as if the contract contained in the bill of lading had been made by the shipping company with such consignee or endorsee and such consignee or endorsee shall incur the same liability in respect of payment of freight, etc., as if the original contract was made with him. This is a clear departure from the common law rule that a mere consignee or endorsee has no right to file a suit against the carrier unless it is provided that he was the owner

of the goods. Such consignee or endorse at common law cannot file a suit under the contract entered into between the original consignor and remedy is by way of damages only.

Once a bill of lading is transferred, whether one bill or more in the whole set it can transfer the goods mentioned in the bill of lading and thereby property in the goods can sufficiently pass in favor of a third party (*Sanders v. Maclean, 1883 11 Q.B.D. 327*)⁸. However, an indorse who sells the goods under the bill but retains bill of lading remains liable under the contract (*Flower v. Knoop 1878 40 L.T. 180*) though the pledgee may be liable under the terms of bill of lading if he takes delivery of the goods mentioned in the bill of lading (*Brandt v. Liverpool 1923 All E.R. 656*)⁹.

The consignee who claims his rights under the bill of lading to recover the loss is equally bound by its terms under this section and therefore it is not necessary for the ship owners to prove that the consignee expressly authorized his shipping agent to accept the terms of the bill of lading (*Bombay steam navigation co. V. Vasudev, 29 Bom. L.R. 1551*)¹⁰.

SECTION 2

Section 2 of bills of lading act, 1856 provides that notwithstanding what is provided under the act, it will not prejudice the rights of the unpaid seller to stop the goods in transit even if the bill of lading shows a third party as a consignee or it is endorsed in Favour of a third party. Section 50 of the Indian sale of goods act, 1930 provides that “when the buyer of goods becomes insolvent, the unpaid seller, who has parted with the possession of the goods, has the right of stopping them (goods) in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until payment or tender of the price.”

Section 51 provides the duration of transit in the following manner: -

- 1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf takes delivery of them from such carrier or other bailee.

⁸ <https://swarb.co.uk/sanders-v-maclean-ca-1883/>

⁹ https://www.iclr.co.uk/document/1921000472/casereport_70774/html

¹⁰ <https://www.lawyerservices.in/Bombay-Steam-Navigation-Co-Ltd-Versus-Vasudev-Baburao-Kamat-1927-08-15>

- 2) If the buyer or his agent on that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.
- 3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent, the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.
- 4) If the goods are rejected by the buyer and the carrier or other bailee continues to be in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.
- 5) When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case whether they are in the possession of the master as a carrier or as agent of the buyer.
- 6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent on that behalf the transit is deemed to be at an end.
- 7) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been given in such circumstances as to show an agreement to give up possession of the whole of the goods.

Section 52 of the act provides that:

- 1) The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case, the notice to be effectual shall be given at such time and in such circumstances that the principal, by the exercise of reasonable diligence may communicate it to his servant or agent in time to prevent delivery to the buyer. ¹¹
- 2) When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods to, or according to the directions of the seller. The expenses of such redelivery shall be borne by the seller.

¹¹ <https://www.i-law.com/ilaw/doc/view.htm?id=130619>

The unpaid seller's right to stop in transit will be defeated if the goods are already re-sold by the buyer. The original buyer then stops the goods in transit as against the new buyer. This right will also be defeated if the buyer has taken delivery under the bill of lading. It was however held in *Re McLaren, Ex-parte cooper (1879), 11 Ch. D. 68* that where there is a direction to stop in transit the goods by the unpaid seller after a portion of which is already delivered before the unpaid seller has exercised his right to stop the goods in transit will not entitle the carrier to deliver the balance of the goods as stoppage in transit will become effectual to the balance of the goods the moment the unpaid seller has exercised that right.¹²

The cardinal principle regarding the passing of property in goods under a contract is that property passes where it is intended to pass. This is embodied in section 19 of the sale of goods act. Section 20 to 24 of the act lays down rules for ascertaining the intention of the parties unless they are in conflict with the terms of the contract. In the case of unascertained goods, the property in them passes when they are unconditionally appropriated to the contract by any of the parties with the assent of the other. Again, such assent need not be expressed and may even be given before or after the appropriation. Where the goods are delivered to a carrier for the purpose of transmission to the buyer without the reservation of the right of their disposal, the seller must be taken to have appropriated the goods to the contract unconditionally. Such a right may be created expressly by the terms of the contract or may arise by the conduct of the seller in appropriate the goods to the contract subject to certain conditions. Under section 25(2) of the act, the seller's right of disposal is preserved when goods are shipped and by the bill of lading, they are delivered to the order of the seller or his agent.

In *Rungta v. Owners etc. In S.S. Edison, 66 C.W.N. 1083 (1102)* the contract between the parties provided that the payment for the goods was to be made under an irrevocable, divisible and transferable letter of credit to be opened by the buyer in Favour of the seller at the latest by the end of December 1956. Provisional payment under the said letter of credit was to be made against documents including full set of bills of lading to order of the buyer. Final settlement was to be made based on weight, analysis or iron contents determined at the discharge of the goods at the destination (in this case Yugoslavia). The terms of the contract did not give the seller any right of disposal of the goods once they were shipped and the documents contemplated by the parties came into existence. The property in the goods thereof passed to

¹² <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/formatted-htmls/sea-cargo-manifest-0409-new.pdf>

the buyer on shipment and the issue of the bill of lading in Favour of the buyer. The seller was then left only with his rights under section 46(1) of the sale of goods act. But before this section can be invoked the seller must prove that (1) he was an unpaid seller and (2) that the defendant buyer was insolvent (3) the transit of the goods was not ended and (4) the property in the goods passed to the buyer.

The question of stoppage in transit only arises when the vendor loses possession. The vendor can exercise directly his lien for the unpaid till the goods are in his possession.

In the present case it was held that the property in the goods passed to the buyer and since the plaintiff did not ship the goods within the contract period, he cannot claim the price of the goods.

F.O.B. and C.I.F. contracts

Under F.O.B. (free on board) contracts once the goods are left on board the ship, the risk to the purchaser begins in respect of freight and other circumstances. In C.I.F.¹³. (cost, insurance and freight) contracts, the goods are to be carried by sea at the risk of the purchaser, but the seller performs his part of the contract by shipping goods of the contracted description in a ship bound for contracted destination and sending or tendering within reasonable time after shipment the shipping documents in the form of a bill of lading, an insurance policy and goods invoice¹⁴. The general rule regarding the passing of property in F.O.B. contracts was laid down in *brown v. hare*¹⁵. The general principles enumerated in this case is (1) that the contract being F.O.B. the goods were to be for account of the defendants as soon as delivered on board; (2) that taking the bill of lading to the shipper's own order, and then endorsing it to the defendants has precisely the same effect as taking the bill of lading to the order of the defendants; (3) the forwarding of the bill of lading to the broker was only for the purpose of his getting the defendant's acceptance on handing the same over in terms of the contract and with the intention not of preventing the passing of property but of controlling the possession only. In other words, the property passed when the goods were placed free on board in performance on the contract.

¹³ <https://www.jstor.org/stable/1333838>

¹⁴

http://www.akellawfirm.com/yayinlar/THE_MAIN_DIFFERENCES_BETWEEN_CIF_AND_FOB_CONTRACTS_UNDER_ENGLISH_LAW.pdf

¹⁵ <https://simplestudying.com/brown-v-hare-1858-27-l-j-ex-377/>

Maintainability of the suit after endorsement

A bill of lading is a document of title. It is a well-known mercantile document of title which when transferred in the business world by endorsement, passes to the endorsee good title to the goods covered by such bill of lading. Being itself a document of title, endorsement of the bill of lading necessarily means something to do with title, either transferring the title or completing the acquisition of title or perfecting it or putting a conclusive seal by providing the document of title or facilitating or protecting possession or possessory title. Endorsement of a bill of lading can never be an act which has nothing to do with title and by applying section 1 to this act, the endorsement of the bill of lading will complete and perfect the purchaser's title.

In *A.N. Navigation v. Jethalal AIR 1959 cal. 479(488)*¹⁶ it was held that though the first plaintiff had the real title before the actual endorsement on the bill of lading will not disentitle him from claiming on the bills of lading in the suit after the endorsement.¹⁷

SECTION 3

This section can be divided into two parts. The first part deals with the situation in which a consignee or endorsee for valuable consideration is protected against any defense raised on behalf of the shipping company that inspite of the signing of a bill of lading by the master of the vessel or any other person on his behalf, the goods or part of the goods in fact were not laden on the ship. The first part of the section clearly operates as an estoppel against the shipping company (*firm Malabar steamship co. V. central bank of India Ltd., AIR 1939 siVdh, 225*)¹⁸. The bill of lading is sufficient evidence to establish the fact that the goods were actually put on board and were received by the master of the ship. A bill of lading disclaiming liability as to number or quantity firstly does not offer any prima facie evidence and has no probative value (*Pannalal Krishnalal v. Osaka shosen Kaisha, 70 CWN 307*)¹⁹. The statement in the bill of lading as to the number of bags shipped does not constitute conclusive evidence against the ship owner, though the judicial committee found, strong prima facie evidence that the stated number of bags were shipped unless there was some provision in the bill of lading which precludes the result. The terms "weight, contents and value when shipped unknown" were

¹⁶ <https://indiankanoon.org/doc/1821928/>

¹⁷ <https://legalddata.in/court/read/2470091>

¹⁸ <https://indiankanoon.org/doc/1017570/>

¹⁹ <https://www.casemine.com/judgement/in/56b48f54607dba348fff77d6>

construed to mean that in signing a bill of lading there was disclaimer of knowledge in regard to the weight or contents or value of such bags, but there was no disclaimer as to the number of bags (*attorney general of Ceylon v. Scindia steam navigation co. Ltd., 1962 AC 60*)²⁰. Where a bill of lading purporting to be for 50 tons of coal contained a printed clause ‘weight, contents and value unknown’ and similar words were also written above the signature of the master, it was held that under section 3 of the bill of lading act 1856 in the above form was not, in the hands of a consignee for value, conclusive evidence against the master of the shipment of 50 tons *W.N. col & Co. V. J.S. Castle (1872) 9 Bom. FICR 321*.

Where the shipping company issues a bill of lading without noting down any defects in the goods or packing, it will be termed as a clean bill of lading. A clean bill of lading is one that does not contain any reservation as to the apparent good order or condition of either the goods themselves, or their packaging. Therefore, a defect in packing is noted in a bill of lading, it would render it an unclean bill (*The Ellerman & Bucknall Steamship Co. Ltd. V. Sha Bhgarjee Sonmull and others, AIR 1966 S. C. 1892*)²¹.

The second part of the section deals with the position where the shipping company can prove that the holder of the bill of lading, I.e., either the consignee or the endorsee knew or had knowledge at the time of receiving the bill of lading that whole or part of the consignment mentioned in the bill of lading was not laden on board the ship. The shipping company can further show that the signature of the master of the ship was obtained by the shipper by fraud or misrepresentation and that there was no neglect or default on the part of the master or any other person signing the bill of lading in question or issuing the same to the shipper. The proviso to the section will not avail the shipping company where it is provided that the master had knowingly signed a false statement (*Evans v. James (1928) 34 Cora. Cas. 172*)²². A mistake in writing figures of the particles is not sufficient to make the shipping company liable when mate’s receipt shows certain articles as in dispute (*Valieri v. Boyland (1866) L.R. L.C.P. 382*).

SHIPPER’S RISK

The term ‘shipper’s risk’ or ‘merchant’s risk’ should only mean such loss or such damage that

²⁰ <https://www.casemine.com/judgement/uk/5b2897b62c94e06b9e1991a3>

²¹ <https://www.lawyerservices.in/ELLERMAN-AND-BUCKNALL-STEAMSHIP-CO-LTD-VERSUS-SHA-BHAGAJEE-SONMULL-1960-10-21>

²² <https://www.i-law.com/ilaw/doc/view.htm?id=141008>

might arise consequent upon the goods being put on the deck which will have to be proved by the shipping company. The loss must be related to the goods being shipped on the deck²³. The clause that the goods are shipped on deck at the owner's risk will not be of any avail to the shipping company in case where the goods are totally lost and not delivered. In *home insurance Co. Ltd., New York by its agents Volkart Bros. Madras and another v. Ramnath & Co., Madras, AIR 1955 Mad. 602*²⁴, nine drums were shipped from Bombay to Madras 'on the deck at the shipper's risk' and were lost as they could not be traced on arrival of the ship at Madras. Held, that the shipping company was liable. The words, "at merchant's risk" will not exempt a ship-owner from liability to contribution in a case of proper jettison. The words cover a case not only of improper jettison but of a loss caused by a collision and stranding owing to the negligence of the master or crew (*Dharamdas Thawardas v. the Persian Gulf steam Navigation Co. Ltd. 78 I. C. 972: AIR 1925 sind 76*).

EXEMPTION CLAUSE IN A BILL OF LADING

This is to provide for the rights and liabilities of the parties in reference to the contract to carry, and that it is not concerned with liabilities to contribute to the general average. The question whether an exemption clause covers the liability to contribute in general average in a case of proper jettison depends on the intention of the parties²⁵. There is nothing to prevent a ship owner from making an exception in his own favor by which he is to be relieved from the ordinary laws of the sea, but if he wishes to do so, he ought to do so in clear words. If a ship owner wishes to introduce into a bill of lading so novel a clause as one exempting him from general average contribution, a clause which not only deprives the shipper of an ancient and well understood right, but which might avoid his policy and deprive him also of all recourse to the underwriter, he ought not only to make it clear in words but also to make it conspicuous by inserting it in such type and in such a part of the document as that a person of ordinary capacity and care, could not fail to see it (*Dharamdas v. the Persian Gulf steam navigation co. Ltd. 78 I. C: AIR 1925 sind 76*).

Prior to the passing of the carriage of goods by sea act, 1925, the English common law was

²³ <https://www.chrobinson.com/en-in/resources/blog/keep-your-cargo-out-of-danger-best-practices-for-transportation-risk-management/>

²⁴ <https://indiankanoon.org/doc/1696298/>

²⁵ <https://www.incegd.com/en/news-insights/maritime-exclusion-clause-bill-lading-effectively-excluded-liability-damage->

deck#:~:text=Clause%20(c)%20of%20the,deck%20cargo%20or%20live%20animals.%E2%80%9D

applied in this country. Under the English law it was open to a carrier by sea to limit his liability by a writing such as in bill of lading the conditions that the company would not be liable for any damages, etc. or that the liability for the company would absolutely cease when the goods are over or beyond the side of the company's own ship level with the rail or that company shall not be liable for any damage capable of being covered (*Woosaji v. the Asiatic steam navigation Co. Ltd.* 45 I. C. 168). It is however not permissible to the carriers under the carriage of goods by sea act, 1925 to claim immunity from the consequences of their own negligence by stipulating that the ship will not be responsible for shortage or loss for that clause would clearly be ultra vires the statute, and therefore, null and void. Therefore, if the loss or damage arises from the neglect, fault or failure in the duties and obligations as provided in the statutory articles or rules, then a clause in the bill of lading exempting the carrier from liability for such loss and damage would be null and void and of no effect (*Asiatic Steam Navigation Co. Ltd. V. Dharamshi & Co.* AIR 1959 Cal 479)²⁶.

DELIVERY OF GOODS UNDER A BILL OF LADING

Under English law, a ship owner is not entitled to deliver goods to the consignee without the production of the bill of lading²⁷. But where the name of the consignee appears on the bill of lading or where the person who first presents the bill of lading and takes away the goods, the ship owners are not liable when subsequently somebody challenges the right of the ship owners. In *Glyn mills v. east and west India dock co.*, (1882), L.T. 390²⁸ the goods were delivered to x under the bill of lading but during the voyage x pledged one bill with the bank for loan and obtained delivery of the goods from the defendants with a second bill. In a suit by the plaintiff against the defendants to recover the value for wrongful delivery, it was held by the house of lords that the defendants were entitled to deliver the goods on the second bill of lading as the defendants had no notice of any dealings by x with the first set of bills. Lord Blackburn, who delivered the judgement said, the master must interplead or deliver to the one who he thinks has the better right, as his peril if he is wrong. And I think it probably would be the same if he had knowledge that there had been an assignment, though no one had given notice of it or as yet claimed under it. At all events, he would not be safe, in such a case in delivering without

²⁶ <https://indiankanoon.org/doc/1821928/>

²⁷ <https://www.marineinsight.com/maritime-law/what-is-bill-of-lading-in-shipping/>

²⁸ <https://vlex.co.uk/vid/glyn-mills-currie-and-793826257>

further inquiry. But..... when the master has no notice or knowledge of anything but that there are other parts of the bill of lading, one of which it is possible may have been assigned, he is justified or excused in delivering according to his contract to the person appearing to be the assignee of the bill of lading which is produced to him.

BURDEN OF PROOF

²⁹The bill of lading generally is prima facie evidence against the ship owner of the shipment on board of the goods acknowledged under the bill of lading to have been shipped. “The evidence to displace the bill of lading must show not merely that the goods may not have been shipped, but that they were not (*smith v. Bedouin (1896) A.C. 70*)³⁰ but this may be shown by conclusive evidence that after receipt by the ship owner none of the ships were lost or stolen and that he has delivered all that he received. The statement in the bill of lading is not to be displaced merely by a consideration of the balance of probabilities” (*scrutton, charterparties and bills of lading, 16th Edn., p.70*).

If the ship owner is bound by the contents of the bill of lading, his bailee, the port trust who acted as clearing agent for the ship owner would equally be bound (*The Madras port trust v. K.P.A.T.A Nadir, AIR 1968 Mad. 42*)³¹.

Section 3 of the bills of lading act, 1856 is limited to the master or the person signing the bill of lading. In *Pohuman v. the Karachi port trust, AIR 1925 Sindh 221* plaintiffs who were holders of certain bills of lading of tin plates filed a suit against the shipping company and port trust to recover the value of 57 mild steel plates short accounted for. The suit was dismissed by the lower court except one plate which was proved to be short landed. Plaintiffs filed revision against the order of the lower court. In their written statement port trust submitted that 2070 plates bearing various marks were landed at Karachi of which 2014 plates were delivered to the consignee according to the proper marks shown in the bill of lading of the plaintiff. The remaining 56 plates bore different marks from those shown in the bill of lading of the plaintiffs. Those 56 plates were tendered to the plaintiff but were rejected. Plaintiff relied on the description of the plates as given in the bills of lading and the provisions of section 3 of the bills of lading act and contended that in the absence of any proof that the bill of lading was

²⁹ <http://shipinspection.eu/burden-of-proof-and-bills-of-lading/>

³⁰ <https://www.casemine.com/judgement/uk/5a8ff82660d03e7f57ebbcf6>

³¹ <https://indiankanoon.org/doc/1795318/>

granted under misinterpretation, without any default on the part of person signing them, and wholly due to the fault of the shipper or the holder of such bills of lading, the particular marks as shown in the respective bills of lading were put on board. Held, ordinarily the bills of lading would no doubt afford such evidence against the shipping company but in view of the difficulty of verifying particular marks on the articles of a similar nature shipped on board that the shipping companies protect themselves by inserting a clause that the marks or numbers though shown in the bill of lading are unknown to them and that they do not admit that the marks or numbers shown in the bill of lading are correct.³² They also protect themselves against obliteration of marks and since the bill of lading in the present case exempts the shipping company, the description of marks as given in the bill of lading is therefore no evidence against the shipping company. It was therefore for the plaintiff to prove by evidence *aliunde* that plates bearing the particular marks were actually handed over to the shipping company and since they had failed to prove the revision application must also fail as against the shipping company. Plaintiff could not rely on the description given in the bills of lading against port trust as section 3 of the bills of lading act is limited to the master or the person signing the bills. Even if it is argued that the port trust was acting as the agents of the shipping company, they would equally be entitled to take advantage of the exemption in the bill of lading.

SHIPMENT UNDER A BILL OF LADING SALE OF GOODS ACT, 1930

The shipment of the goods under the bills of lading has a different legal effect than handing over a consignment to a common carrier. Under the sale of goods act, 1930, where there is a contract for the sale of unascertained goods the property: in the goods does not pass to the purchaser unless there is unconditional appropriation of the goods in a deliverable state to the contract³³. In the case of such a contract, delivery of the goods by the vendor to the common carrier is an appropriation sufficient to pass the property but it is not so where the goods are handed over for shipment on board a ship under a bill of lading. Where the goods are delivered on board a vessel to be carried, and a bill of lading is taken, the delivery by the seller is not delivery to the buyer, but to the captain as bailee for delivery to the person indicated by the bill of lading³⁴. The seller may therefore take the bill of lading to his own border. The effect of this

³² <https://www.oocl.com/eng/resourcecenter/blterms/Pages/carrierrespclauseparamount.aspx>

³³ <https://www.linkedin.com/pulse/role-bill-lading-international-sales-transaction-sarper-sever>

³⁴ <https://www.marineinsight.com/maritime-law/what-is-bill-of-lading-in-shipping/>

transaction is to control the possession of the captain and make the captain accountable for delivering the goods to the seller as the holder of the bill of lading. The bill of lading is the symbol of property, and by so taking the bill of lading the seller keeps to himself the right of dealing with property shipped and also the right of demanding possession from the captain, and this is consistent even with a special term that the goods are shipped on account of and at the risk of the buyer (*Carona Sahu Co., Pvt. Ltd. V. State of Maharashtra, AIR 1966 S.C. 1153(1155)*)³⁵.

“The English cases, however, on which the sale of goods act was founded seem to show that the appropriation would not be such as to pass the property if it appears or can be inferred that there was no actual intention to pass it. If the seller takes the bill of lading to his own order and parts with it to a third person, not the buyer, and that third person, by possession of the bill of lading, gets the goods, the buyer is held not to have the property so as to enable him to recover from the third party, notwithstanding that the act of the seller was a clear breach of the contract” (*Gabarron v. Kreett (1875) 10 Ex, 274*)³⁶.

CONTRACT OF AFFREIGHTMENT

The word ‘affreightment’ is derived from the French word “*affreightment*” which means the leasing of a vessel. Today the term is applied to all contracts of carriage by sea and is extended to contracts of carriage by other modes of transport.³⁷

A contract may be concluded between the carrier and a shipper for the carriage of goods from one port to another port, subject to certain terms evidenced in a bill of lading or a contract may be arranged between the ship owner and a shipper (termed a charter) for the hire of the whole or part of a vessel for a particular voyage or voyages or for a period of time, in the terms of a charter party. In every contract, there must be some consideration for its performance, and in the contract of affreightment this consideration is termed freight.³⁸

Every contract of affreightment imposes on both parties to the contract specific obligations,

³⁵ <https://indiankanoon.org/doc/251334/>

³⁶ <https://vlex.co.uk/vid/gabarron-and-another-v-803513129>

³⁷ <https://blog.ipleaders.in/all-about-a-contract-of-affreightment/>

³⁸ <http://www.matrixmaritimeservices.com/our-services/long-term-contracts-of-affreightment/>

rights and immunities either implied by common law or expressed by statute or by the written terms of the contract itself.

Implied obligations and immunities in a contract of affreightment:

In all contracts of affreightments there are certain implied obligations and immunities, subject to any express term that may be agreed otherwise by the parties. Briefly they are:

- The carrier accepts the responsibilities and liabilities of the bailee. However, the carrier is impliedly exonerated for loss or damage to the cargo arising from acts of God, state enemies and inherent vice. Bailee is a person, also called a custodian, with whom some article is left, usually pursuant to a contract (called a “contract of bailment”), who is responsible for the safe return of the article to the owner when the contract is fulfilled.
- the carrier undertakes to provide a sea-worthy ship.³⁹
- The vessel must proceed on the agreed voyage with reasonable dispatch, and without unreasonable deviation.
- The shipper undertakes not to ship dangerous goods without notice.

The carrier’s right to freight is impliedly secured by a lien on the goods. Lien is the right to detain or retain the property of another person for non-fulfillment of an obligation. If, subsequent to the formation of a contract of affreightment, its performance becomes impossible (for example, by the outbreak of hostilities), the contract is discharged.

Statutory obligations, rights and immunities in a contract of affreightment:

Certain statutory exemptions to ship owners’ liabilities have also been conferred by the merchant shipping acts. Briefly, they are as to:

- a) Dangerous goods
- b) Loss or damage by fire arising without the ship owner’s fault or privity.
- c) Loss or damage to valuable goods, such as jewelry, and the like.
- d) The power of the ship owners to apply for limitation of liability.

³⁹ https://www.pearsonhighered.com/assets/samplechapter/w/i/l/s/Wilson_COGBS_C02.pdf

Legislation based on the-Hague rules, 1924 and the carriage of goods by sea act, 1924 of U.K. has been imposed in most of the leading maritime countries of the world; so, there is some measure of uniformity in such legislation. the Indian carriage of goods by sea act, 1925, regulates shipments under bill of lading on outward voyages from India. The provisions of the Indian act are the same as the Hague rules, 1924, as amended by the Hague Vislay rules 1979 which are now discussed.

The ship owner's responsibilities and liabilities:

1. To exercise due diligence and care; to make the ship seaworthy; properly man, equip and supply the ship; and to make the ship cargo worthy.
2. Properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried, subject to the various immunities provided.
3. On demand, and after receipt of the goods, to issue a bill of lading showing:
 - Leading marks necessary for the identification of the cargo;
 - Number of packages, pieces, quantity, or weight, as furnished in writing by the shipper; and
 - The apparent order and condition of the goods. The bill of lading is then prima facie evidence of the receipt by the carrier of the goods as therein described.
4. To assure the accuracy of the details furnished by the shipper, otherwise the shipper shall indemnify the carrier against all loss, damage and expenses arising or resulting from such inaccuracies.
5. to receive notice of loss in writing at port of discharge at time of, remove unless damage be not apparent, when notice note be given within three days.
6. To provide the shipper with a "shipped bill" on request after loading.
7. The ship owner can decide not to contract out of or lessen his responsibilities imposed by the act under article 5 of the act. He can surrender his rights or immunities or increase his responsibilities, provided such surrender or increase is embodied in the bill of lading.⁴⁰

The ship owner's rights and immunities

⁴⁰ <https://www.legalbites.in/rights-liability-limitation-of-liability-of-shipowners/>

1. To be relieved from loss or damages arising or resulting from un-seaworthiness unless caused by want or due diligence.
2. To be relieved from responsibility for loss or damage arising from: -
 - Negligent navigation or management of the ship.
 - Fire, unless caused by actual fault or privity of the carrier.
 - Perils of the sea, act of God, act of war, public enemies, arrest or restraint by princes, rulers or people or seizure under legal process, quarantine restrictions, act or omission of the shipper or agent, strikes, riots, civil commotions, saving or attempting to save life or property at sea, inherent vice, insufficiency or inadequacy of marks, latent defects not discoverable by due diligence, or other cause arising without actual fault or the carrier agents.
3. Not to have the right to claim from the shipper for loss or damage sustained without the actual fault or neglect of the shipper or his agent.
4. Not to be liable for any loss or damage resulting from any deviation in saving/attempting to save life or property at sea, or any reasonable deviation. At any time before discharge to land, destroy or render innocuous dangerous goods without compensation when shipped without the carrier's consent. The shipper is liable for all damage or expense directly or indirectly resulting from shipment.
5. Not to be liable for any loss or damage exceeding £ 100 per package or unit, (amended in 1993 to read special drawing rights (SDR) 666.67 per package or SDR 2 per kilo of the gross weight of the goods whichever is higher) unless the nature and value have been declared by the shipper before shipment and inserted in the bill of lading.

BILL OF LADING, IT'S FUNCTIONS, TYPES AND IMPORTANT CLAUSES

“A bill of lading is a receipt for goods placed on board or to be placed on board a vessel, signed by the person who contracts to carry them or his agent, and is the written evidence of the terms on which the goods are to be carried for a specified freight”.

When the goods are delivered into the custody of the carrier, the first receipt usually given is the dock receipt or, if the goods are received alongside in ship, the mate's receipt when the goods are actually loaded on board. This receipt is surrendered in exchange for the bill of lading. From the time of issue of the mate's receipt, the ship owner holds the goods on the terms of his usual bill of lading; and is responsible for the safety of the goods, unless he restricts his pre-shipment liability. A ship owner may contract out of such responsibility because the act applies only from the time the goods are actually loaded on board the vessel. In practice, it is usual, therefore, for the bill of lading to stipulate that the carrier bears no liability before shipment or after discharge. This brings into focus the wide cover provided by underwriters under the transit clause of the institute cargo clauses.

Neither the dock receipt nor the mate's receipt is a document of title, nor are the statements made therein conclusive against either the master or the ship owner. Consequently, the shipper who has sold the goods is anxious to obtain the bill of lading at the earliest possible moment, because this document constitutes a document of title.

The "shipped" bill of lading can only be issued after the actual loading of the goods. However, delay because of congestion on wharves and the like frequently occurs, and in consequence, the bill of lading may, in many cases, only be available for transmission abroad and arrive in the country of import after the arrival of the goods themselves. This naturally causes inconvenience to all parties, and possibly delays in delivery of the cargo. In addition, if there is an agreement to ship by a specified vessel the bill of lading must evidence shipment by that vessel.⁴¹

To meet these difficulties some shipping companies have adopted the practice of issuing a "received for shipment" bill of lading, as in the USA. Banks are usually averse to negotiating such a form of bill of lading, unless the contract of sale makes express provision therefore. The reason for such action is that the bill of lading does not evidence actual shipment, the cargo may be shut out of the named vessel, the goods may be lost or damaged before actual loading and the tender of a "received for shipment" bill of lading is a doubtful fulfillment at law of a shipper's obligations under a shipping contract.

⁴¹ https://www.researchgate.net/figure/Shipowners-charterers-obligations-liabilities-in-the-main-types-of-charter_tbl1_304579107

The important functions of a bill of lading are:

- A bill of lading is a receipt for the goods by the carriers.
- It is written, but not conclusive, evidence of the terms of the contract of carriage.
- It is a negotiable or quasi-negotiable document through the bank.
- It is a document of title.

The bill of lading is a receipt for the goods:

In this respect, the bills of lading act, 1855, of the U.K. provides (corresponding bill of lading act was passed in India in 1856). “Every bill of lading in the hands of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as against the master or other person signing the same, provided that the master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper or of the holder”.⁴²

It will be observed that a master is bound by statements of fact contained in a bill of lading, which he has signed, and is responsible for misstatements, whether made by mistake or through negligence. The position of the ship owner must be carefully noted. The master has no implied authority from the ship owner to sign bills of lading for goods, which have not been shipped, and therefore, statements in the bill of lading as to weight, quantity and number of goods shipped are not conclusive as against the ship owner. However, there is strong evidence against the ship owner and if the latter disputes their accuracy the burden of proving inaccuracy rests upon him. The carriage of goods by sea act, 1925, provides that a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods therein described. The only exceptions to this provision are the shipment of bulk cargoes, coming within the terms of rule 4 and 5 of article III of the act.

The bill of lading is the written evidence of the terms of the contract of carriage. Although no document is legally necessary in the contract of affreightment between the carrier and the shipper, in practice the terms agreed are invariably expressed in writing in the form of a charter

⁴² <http://shipinspection.eu/the-bill-of-lading-as-a-receipt-for-goods/>

IMPORTANT CLAUSES IN BILL OF LADING

A. Transshipment

It's impossible for a ship owner to carry cargoes to every port, and so some cargo is transhipped. There are occasions, however, particularly in abnormal times, when transshipment, forced discharge and/or reshipment may be necessary. The bill of lading gives carriers liberty to do this. The institute cargo clauses provide protection to the assured during transshipment, forced discharge and reshipment.

B. Deviation

The carriage of goods by sea act allows the ship owner to make a reasonable deviation.

C. Liberties clause

Owing to the international situation, ship owners protected themselves by inserting in bills of lading a clause which provides that if circumstances should arise which cause the master to consider it unsafe to proceed to or enter the port of destination, he may carry the cargo to the nearest safe and suitable port and discharge it there. The responsibility of the vessel then ceases, and such discharge constitutes a complete delivery under the contract of carriage.

D. The transit clause of the institute cargo clauses

This clause provides protection to the insured against the above eventualities. a sub-clause provides that the insurance shall remain in force in the following circumstances:

- During delay beyond the control of the insured,
- During any deviation, forced discharge, reshipment or transshipment.
- During any variation of the adventure, arising from the exercise of a liberty granted to ship owner or charterer under the contract of affreightment.

Another sub-clause of the transit clause provides that if, after discharge of goods at the final

port of discharge but prior to delivery or expiry of 60 days, as the case may be, the goods are to be forwarded to a destination, other than the one insured, the insurance shall not extend beyond the commencement of transit to such other destination. Insurance cover in such circumstances has to be specially arranged.

The termination of contract of carriage clause provides that if prompt notice is given to insurers, and continuance of cover is requested, subject to payment of additional premium, if any, the insurance cover any be continued by insurers either:

Until the cargo is sold or delivered at such port, or

- Until the expiry of 60 days after arrival of the cargo at such port (this time limit may be extended by special agreement) whichever shall first occur.
- If the cargo is forwarded within the above period of 60 days (or any agreed extension thereof) to the destination named in the policy, or to any other destination, until the transit is terminated in accordance with the provisions of the transit clause.

E. G.A. clause

The bill of lading frequently stipulates how general average losses are to be adjusted, and it is usual for underwriters on cargo to pay general average according to York-Antwerp rules.⁴³

F. “Both to blame” collision clause

This clause is inserted in bills of lading in situations, which involve American jurisdiction. In many maritime countries, the law provides that if two ships collide with each other, the liability to pay for damages to each other is determined and apportioned, according to the degree of blame attached to each. If cargo is damaged, the cargo owner can recover a proportionate cost of the damage from the non-carrying vessel. He cannot do so from the vessel carrying his cargo because the bill of lading exempts the ship owner from such liabilities. However, in practice the insurers pay for such damage and, under subrogation proceedings, recover the loss from the non-carrying vessel.

A different position arises under U.S. law, which provides that, in the event of collision

⁴³ <https://comitemaritime.org/wp-content/uploads/2018/06/1963-BILL-OF-LADING-CLAUSES-1.pdf>

between two ships, both be deemed to be equally at fault. The insurers, in turn, indemnify the insured cargo owners in respect of this liability subject to insured's notification to the insurers in the event of a claim by ship owners. Insurers have a right, at their cost, to defend the insured against such a claim.⁴⁴

G. Himalya clause

A ship owner who wishes to protect his master, crew or independent contractors will insert in charter party/ bill of lading words exempting such persons from liability. It is named the Himalaya clause, after the case of Adler and Dirkson (1985) involving a personal injury claim on board S.S. Himalaya and the clause has been inserted into the passenger ticket.⁴⁵

- **High sea sales:** As the bill of lading is a document of title, it becomes possible to effect “high sea sales” by the consignee, by endorsing the bill of lading in Favour of the purchaser of the goods. High sea sales do not attract sales tax. Since the bill of lading is a document of title, the ship owner is obliged to deliver and is justified in delivering the goods to the holder of the first bill of lading presented to him, always provided he is without knowledge or notice of anything making it wrong to do so. The ship owner is not entitled to, nor is he justified in delivering the goods to anyone who does not produce a bill of lading, and if the ship owner should do so he may become liable to pay damages for wrongful delivery. In practice, goods are often obtained from the ship owner without production of the bill of lading, the claimant giving him a letter of indemnity (P & I club require certain safeguards to be followed when releasing goods on a letter of indemnity).
- **Bill of lading as a negotiable instrument:** bills of lading making goods deliverable to order or to order or assigns are by mercantile custom “negotiable and transferable”. This does not connote true negotiability in law. In practice it is usual for a shipper to secure a “shipped” bill of lading made out for cargo to be deliverable “to order”- such a document is both a document of title and negotiable to this extent. However, all bills of lading are not so capable of negotiability. A bill of lading issued where the goods are deliverable to a named person,

⁴⁴ <https://www.investopedia.com/terms/b/both-to-blame-collision-clause.asp#:~:text=A%20both%2Dto%2Dblame%20collision%20clause%20is%20an%20insurance%20policy,war%20and%20tear%20or%20war.>

⁴⁵ <https://www.upcounsel.com/himalaya-clause#:~:text=The%20Himalaya%20clause%20is%20utilized,such%20as%20stevedores%20and%20longshoremen.>

where there is no absolute transfer of “property”, or where the bill of lading is pledged as security, is not negotiable.

- **Underwriter’s rights:** since the bill of lading is a document of title, the underwriter retains the complete set on payment of a total loss of cargo as proof of his right to the ownership of anything that may remain of the property insured and to safeguard his rights of subrogation.
- **Copies of bill of lading:** bills of lading are usually issued in sets of three or more copies, one of which being accomplished, the other to stand void. In addition to these three copies, a copy is made out for the captain, called the “captain’s copy”, and is retained by the agent of the ship and afterward handed to the captain with the other ship papers. In practice, the brokers who deal with the shipping of the goods keep a further copy.

Letter of indemnity:

If any packages are found to be damaged or defective when goods are received on a vessel, the nature of such damage or defect is noted on the bill of lading, and the document is then said to be "claused" or "foul" or "dirty". However, as under shipping contracts the seller of the goods is bound to deliver to the buyer a clean bill of lading, and also to satisfy the bank who is negotiating the documents, it has become customary, when goods are so found damaged at time of loading, for the shipper to give a "letter of indemnity" to the carrier in order to secure a "clean" document. This practice is detrimental to the interests of the underwriters because it nullifies, to a certain extent, their rights to subrogation. Efforts have been made to make the practice illegal, without effect, shipper and carrier do it confidentially. ⁴⁶

TYPES OF BILLS OF LADING

Bills of lading are usually classified as follows-

- a) Clean bill of lading- the bill of lading does not incorporate any adverse remark regarding the cargo or packing. This signifies shipment in good order and condition. Buyers generally stipulate in their letter of credit for a clean bill of lading to ensure that goods are shipped in

⁴⁶ <https://www.twill.net/faq/logistic-terms-updates/what-is-a-letter-of-indemnity/>

good order and condition. Banks will then accept only clean bill of lading before the value of the goods are released to the shipper. ⁴⁷

- b) Claused bill of lading- Here the bill of lading incorporates some remarks or adverse marks, e.g. "5 cases broken" (claused bill). If the letter of credit stipulates 'clean' bill of lading, then the bank will not accept 'claused' bill of lading. Sometimes a carrier accepts a letter of indemnity from shippers and issues a so-called 'clean' bill of lading without mentioning adverse remarks. The legal aspects of this procedure are discussed below.
- c) Received for shipment bill of lading- here, the carrier issues 'received for shipment' bill of lading when the shipper presents cargo whilst the ship will be arriving and loading the cargo later. This practice is in vogue in the USA where ship owners take berths / warehouses on lease where the cargo received can be kept, in safe custody. This bill of lading is negotiable through banks in the USA. In India, it is not feasible as at the ports the security of the cargo is in the hands of port authorities and not in the hands of ship owners. Ship owners are exposed to unlimited risks in this regard.
- d) Through bill of lading- when cargo is to be transhipped at an intermediate port by another vessel the first vessel issues a through bill of lading, collecting through freight covering transit from the port of shipment to the final port of discharge. This bill of lading is negotiable, and the cargo will be released by the second carrier at the final port of discharge, against the surrender of the through bill of lading issued by the first carrier. An example is Bombay to Lagos, with transshipments at Genoa. ⁴⁸
- e) Stale bill of lading- when the original bill of lading reaches the consignee after the vessel's arrival at destination it becomes stale. Because of such delayed arrival of the bill of lading; the consignee cannot clear the goods from the port within free days allowed by the port, thus incurring demurrage on the cargo. The shippers, in case of delay in transmitting documents,

⁴⁷ <https://www.investopedia.com/terms/c/clean-bill-lading.asp#:~:text=What%20is%20a%20Clean%20Bill,quantities%2C%20or%20deviations%20in%20quality.>

⁴⁸

<https://www.investopedia.com/terms/t/throughbilloflading.asp#:~:text=What%20is%20Through%20Bill%20of%20,borders%20and%20through%20international%20shipment.>

should ask the consignee to execute a bond to the carrier's agent at destination and obtain delivery order and clear the cargo within the free days allowed. After receipt of original negotiable bill of lading, it should be duly discharged and submitted to the carrier and the bond cancelled. According to letter of credit rules, shippers have to submit to banks, bill of lading and other documents within 21 days from the date of shipment I.e., the date of bill of lading, then only banks will pay. If shippers submit these documents after 21 days, banks will refuse payment saying that bill of lading has become stale.⁴⁹

- f) Short bill of lading- in this bill of lading only the essential information required will be mentioned, without stating all the terms and conditions of a full-fledged bill of lading. Nevertheless, this bill of lading is subject to all terms and conditions of a regular bill of lading. Sometimes the term 'short B/L' is used to denote a bill of lading issued under a voyage charter party, serving only as a receipt for the goods received on board the ship.⁵⁰

OTHER TYPES OF BILLS OF LADING:

- a) Straight B/L. (Recta B/L)- this is a non-negotiable B/L not transferable by endorsement. Such bills of lading are sometimes (through rarely) issued in respect of high value goods in favor of a named consignee only. Under a straight bill, the carrier is bound to deliver the goods to the originally named consignee, without production of the bill of lading.
- b) Open B/L- it gives no indication of the person to whom the goods are consigned. The carrier is discharged of responsibility if the goods are delivered to whoever presents open B/L. The receiver does not have the right to hold the goods if his title to the B/L is found to be defective.
- c) Express B/L- the express bill of lading is a document for the fast delivery of a consignment. The original B/L is not required in this case, which is surrendered at the load port.

⁴⁹ <https://www.letterofcredit.biz/index.php/2019/06/02/stale-bill-of-lading/#:~:text=A%20bill%20of%20lading%20that,bank%20after%20the%20presentation%20period.>

⁵⁰ <https://shippingandfreightresource.com/wp-content/uploads/wp-post-to-pdf-cache/1/short-form-blank-back-bill-of-lading.pdf>

d) Switch B/L- often called the trader's second set of B/L intended to replace the first set of B/L issued. Usually used where a seller/trader wishes to keep the name of his supplier I.e., shipper, secret- confidential from the ultimate buyer of the goods. Under this type of B/L only, the name of the shipper and/or consignee and/or notify party can be changed. The normal B/L number remains the same. To prevent fraud, the shipping company should never issue second set of B/L until the first set issued is surrendered to the shipping company.

e) Endorsed B/L- on the basis of endorsement B/L has been classified into two types:

- 1) To order and endorse in bank (merely signed without mentioning anybody's name). Since this is endorsed in blank any person who gains possession of the bill can get delivery of the cargo.
- 2) Endorsed to the order of..... when B/L is endorsed to a specified person, a bank or a company, only that party can claim delivery of the goods. (e.g., endorsed to the order of syndicate bank, and notify ABC company. The bank will endorse the B/L in favor of the consignee/ notify party, when they satisfy the bank by paying the amount due to the bank.

CONTRACTUAL RIGHTS UNDER A BILL OF LADING

Under a bill of lading, the contractual rights are those involved in contracts of (1) affreightment and (2) bailment. The shipper, in return for his liability to pay freight, is entitled to have the goods carried by the ship owner to the agreed port and there safely deliver in the same order and condition as that in which they were received, unless loss or damage thereto has been occasioned by causes excepted by implication, by law, or by the written terms of the contract, as evidenced by the bill of lading.⁵¹

Seaway bill:

ship owners issue seaway bill in place of bill of lading at the request of shippers. It is a non-negotiable document, which evidences:

⁵¹ <https://lawexplores.com/the-bill-of-lading-as-a-contract/#:~:text=7.27%20Where%20a%20bill%20of,of%20the%20bill%20of%20lading%E2%80%9D>.

- A contract for the carriage of goods by sea,
- The taking over or loading of the goods by the carrier, and
- By which the carrier undertakes to deliver the goods to the consignee named in the document.

The seaway bill incorporates the Hague Visby rules and the normal terms and conditions of the contracting carrier's bill of lading and has to be made out to a named consignee to whom the goods are to be delivered. The benefit of the document is that it does not necessarily have to be produced to obtain physical transfer of goods, adequate proof of identity of the named person being all that is required. The principal benefits of seaway bill are as follows-

- A) It does not have to be produced to obtain the goods and obviates postal delays particularly when fast transit times are involved, thus avoiding demurrage charges and shed-rent.
- B) Its suitable for "in-house" documentation where no financial risk is involved I.e., household and personal effects, samples and goods of no commercial value or shipments between companies or branches of a single multinational organization.
- C) Its suitable for open account trading where absolute confidence exists between the parties to the transaction.⁵²

COVERGENCE OF SEAWAY BILL TO A NON-NEGOTIABLE INSTRUMENT

it's generally possible, should the necessity arise, to convert a seaway bill into a non-negotiable waybill or vice-versa, provided that the cargo is still in the possession of the ocean carrier, and subject of course to the surrender of the complete set of original documents. The procedure is different from that of a bill of lading because the consignment should be manifested on a separate sheet and an arrival notice sent by the ship's agents at destination to the named consignee stating that the consignment has been affected under a waybill thus indicating that a bill of lading was not issued for the shipment. It is this notification or other suitable means of identification, which should be presented by the named consignee, together with any collection charges that have been incurred to obtain delivery of the goods. The seaway bill is acceptable when documents are transmitted through a bank for collection unless the bank actually finances the transaction or the letter of credit does not permit its use.

'COMBIDOC' AND 'FIATA' MULTIMODAL

⁵² <https://www.marineinsight.com/maritime-law/what-is-seaway-bill-in-shipping/>

TRANSPORT BILL OF LADING

There are two internationally accepted documents in multimodal transport field and they are the COMBIDOC evolved by the ballistic international maritime council (BIMCO) and FBL evolved by the international federation of freight forwardness associations (FIATA). The COMBIDOC is generally used by vessel operating MTOs while FBL is used by non-vessel operating MTOs, mostly freight forwarders. The FBL has been revised on the basis of the UNCTAD/ICC rule and is known as the FIATA M.T. bill of lading. The ICC has approved the document for purposes of documentary credit and has also authorized FIATA to show the IIC logo on it, with a view to protect the interests of all concerned, FIATA has prescribed specific procedures for the use of FBL.⁵³

The contents of both COMBIDOC and the FIATA multimodal transport bill of lading and substantially the same except for slight variations. They have standardized formats and spell out interalia the contractual obligations of the parties to the multimodal contract, their responsibilities as well as their rights and immunities.

- a) While the MTD (Multimodal Transport Document) prescribed by the government of India is applicable only to multimodal transport, the FIATA document and the COMBIDOC can be used even when transport is performed only by one mode. This provides flexibility in use.
- b) While the government of India document imposed MTO liability for loss resulting from loss of/or damage to goods or delay in delivery, there is no mention of any consequential loss except for delay in delivery in the FIATA document.
- c) In the FIATA document, the benefit of exemption from liability enjoyed by the ocean carrier when loss of/or damage to cargo occurs on account of immunities such as error in navigation or management of the ship, etc. Has been extended to the multimodal transport operators. This follows the corresponding provision in the UNCTAD / ICC rules. But in a similar provision does not appear in the government of India document.
- d) Regarding limits of compensation for delay in delivery the government of India document has limited the compensation to freight payable for the goods delayed but not exceeding the total freight payable under the multimodal transport contract. This is confusing as it refers to two limits. In order to reflect properly the corresponding provision of the UNCTAD / ICC rules, it should read that compensation for delay should not exceed the freight payable under the multimodal transport contract.

⁵³ <https://www.readcube.com/articles/10.2139%2Fssrn.2294399>

The corresponding provision in the FIATA document is to the effect that compensation for delay should not exceed twice the freight payable under the multimodal transport contract. The COMBIDOC refers only to compensation for delay payable at the stage when delay occurred is known and is limited to the freight payable for that stage of transport.⁵⁴

Documentation in multimodal transport should be viewed in the border perspective of its bankability to foreign buyers in international trade, especially in relation to India's exports. Documents which are currently in use by multimodal transport operators worldwide have so far posed no problem. Acceptance of MTD by foreign buyers depends upon the ability of the MTO in India to fulfil the contractual obligation for which he has to depend upon the available infrastructural facilities in the country like road, rail, safety, equipment, port facilities, and assured transit time. If these infrastructural facilities are well developed and efficiently operated, confidence in the system develops. In the present stage of development in India with many inhibiting problems, this confidence has not been built up so far in the minds of foreign buyers. This possibly explains their reluctance to accept the MTD until the infrastructural facilities prove their efficiency and dependability. In contrast ocean bill of lading enjoys acceptability by foreign buyers, as though centuries of experience, sea leg of the transport has proved to be relatively reliable.⁵⁵

PRECAUTION TO PREVENT FRAUDS

Bill of lading is issued by ship owners in sets of three original by one of which being accomplished and another stand void. The reason for this originated in very early days of international trade, when there was a significant risk of document being lost; if three were issued and sent separately, there was a good chance that at least one bill of lading would arrive safely. This system still continues presently but the system has obvious risk of fraud e.g., a consignee or endorsee having received all three sets, fraudulently enters into three separate sub-sales of the same goods.⁵⁶

Preventing such situations, buyers and banks can protect themselves by paying only against all three originals. Where payment is by banker's documentary credit, banks usually demand all

⁵⁴ <https://www.condor.eu.com/news/fiata-documents-and-forms/>

⁵⁵ <https://unece.org/sites/default/files/2021-10/T%20BLO9%20-%20FIATA%20Bill%20of%20Lading%20-%20update.pdf>

⁵⁶ <https://www.searates.com/blog/post/7-ways-to-avoid-common-freight-and-shipping-fraud>

three sets as security for their advances. Presently only original and duplicate are issued and the same precautions can be taken by buyers and bank.⁵⁷

DOCUMENTARY CREDIT (LETTER OF CREDIT)

Under documentary credits, the importer approaches his bank. On the basis of the instructions given by the importer, his bank gives a written undertaking to the overseas bank that if the exporter presents certain shipment and payment documents covering the goods within a fixed period, the bank will make payment to the exporter. Such an understanding is called 'letter of credit'.

The terms and conditions of a letter of credit relate to the delivery of the relevant set of shipping documents which include bill of lading, marine insurance policy, certificate of origin, commercial invoice, consular invoice, inspection certificate, packing list, declaration forms, etc.⁵⁸

Payments through a documentary letter of credit have the following advantages:

- a) Once the exporter fulfils the conditions of credit and presents the documents for negotiation to his bankers in his own country, he receives his payment as per the terms of the letter of credit and is entitled to receive full payment for the exports he has made.
- b) Once the letter of credit is established, the exporter may be reasonably sure that all the import trade regulations of the buyer have been complied with and that the transfer of funds against payment would not normally pose a problem from the exchange control authorities.
- c) Where the letter of credit is confirmed and without recourse, the liability of the exporter ceases, once he has presented the negotiable set of documents and adhered to all the conditions of the LC.
- d) A letter of credit in India is an important document, for a commercial bank advances pre-shipment finance, such as packing credit against the letter of credit.

Parties to a letter of credit:

⁵⁷ https://unctad.org/system/files/official-document/c4ac4d2_en.pdf

⁵⁸ <https://www.investopedia.com/terms/l/letterofcredit.asp>

- Opener- He is the importer who makes application to the bank and on whose behalf the letter of credit is opened.
- Opening or issuing bank- It is the importer's bank and it establishes the letter of credit on behalf of the opener.
- Beneficiary- He is the exporter who is entitled to receive the benefit under the letter of credit.
- Advising bank- This bank operates in the country of the exporter. This is the correspondent bank which sends an advice to the beneficiary, indicating that credit has been established in his Favour.
- Negotiating bank- The bank which negotiates the drafts under the credit is called the negotiating bank. By negotiating the drafts, this bank becomes "an endorser and Bonafide holder" of the draft and has recourse to the drawer of the bill until it is accepted and paid by the drawee.
- Paying bank- the bank on which the draft or the bill of exchange is drawn under the commercial letter of credit is called the paying bank. The paying bank can be the issuing bank, the confirming bank or the notifying bank. ⁵⁹

Operation of letters of credit:

- a) The importer opens an L/C with his bank stating the kind of L/C required.
- b) The opening bank issues the L/C and forwards it to its branch or its correspondent in the exporter's country and requests it to confirm the credit. The correspondent bank informs the exporter that an L/C has been opened in his name.
- c) The exporter ships the goods and presents the full set of documents to the bank along with the draft.
- d) The negotiating bank receives the documents and makes payment in accordance with the terms of the L/C.

⁵⁹ <https://www.dripcapital.com/resources/blog/letter-of-credit-lc>

- e) The documents are then sent by the negotiating bank to the issuing bank which hands them over to the importer.
- f) At maturity of the draft, the importer makes payment to the issuing bank and the issuing bank in turn makes payment to the negotiating bank. ⁶⁰

TYPES OF LETTERS OF CREDIT

1. Revocable letter of credit-

revocable credit is the credit which would be revoked, withdrawn, cancelled or modified by the opening bank with prior notice to the beneficiary. Revocable credit does not constitute any legal binding on the concerned bank or the beneficiary. The bank which establishes a revocable letter of credit cannot cancel the transaction once it takes place I.e., after the draft is negotiated. When a letter of credit has been modified or cancelled, a notice must be given to the beneficiary so that he may not send goods to the importer in future.

Revocable credit gives greater control to the importer over the activities of the exporter. If the importer is not satisfied with the goods he receives or with the delivery dates or is in any other way annoyed about the manner the exporter is handling the business, he can modify or cancel the documentary credit or threaten to do so. according to article 20 of the uniform customs and practices for practices for documentary credit, the negotiating bank has the right to be reimbursed for any payment, acceptance or negotiation made by it prior to the receipt of the notice of modification or cancellation under a revocable credit. ⁶¹

2. Irrevocable letter of credit-

Irrevocable credit is a definite undertaking on the part of an issuing bank. It constitutes commitment of the bank to the beneficiary that if all the terms and conditions of the credit are complied with, provisions for payment contained in the credit will be duly fulfilled. In simple terms, irrevocable credit is one which cannot be revoked, amended or cancelled by the issuing bank without concurrence of the beneficiary or any other interested party, including the

⁶⁰ <https://www.thebalancemoney.com/how-letters-of-credit-work-315201>

⁶¹ <https://www.letterofcredit.biz/index.php/2019/03/02/revocable-and-irrevocable-letters-of-credit/>

confirming bank, irrevocable credit is a firm commitment on the part of the opening bank, which once issued cannot be withdrawn by it unilaterally.

Normally, a credit is a conditional undertaking by a bank to pay. In case of irrevocable credit, the undertaking by the issuing bank is not conditional upon the solvency of the importer or the performance of obligations, but is absolute after the exporter has drawn his draft in accordance with the instructions. If the importer fails, the bank granting the credit takes over the risks, the exporter is thus relieved of such risks.⁶²

3. Confirmed letter of credit-

When the negotiating bank adds its information to an irrevocable letter of credit, the credit is called confirmed letter of credit, while advising the exporter about the opening of the letter of credit, the negotiating bank adds the following clause to that effect:

“The above credit is confirmed by us and we hereby undertake to honor the drafts drawn under this credit on presentation provided that all the terms and conditions of the credit are duly satisfied”

The negotiating bank adds its confirmation only if it is instructed to do so by the opening bank. Confirmed credit can neither be modified nor cancelled without the agreement of all concerned. This is a foolproof method of payment because if the exporter submits his bills in accordance with the terms of credit, the bank makes payment to him.⁶³

4. Revolving letter of credit-

A revolving letter of credit is one where the amount of credit is automatically renewed after the bills are negotiated. The opening bank specifies the total amount up to which the bills drawn may remain outstanding at a time. This letter of credit is issued in a revocable form so that the concerned bank may modify or cancel it if the importer delays taking up drafts on presentation.

⁶² https://thebusinessprofessor.com/en_US/122296-law-transactions-amp-risk-management-commercial-law-contract-payments-security-interests-amp-bankruptcy/irrevocable-letter-of-credit-definition

⁶³ <https://www.investopedia.com/terms/c/confirmed-letter-credit.asp#:~:text=What%20is%20a%20Confirmed%20Letter,bank%20fails%20to%20do%20so.>

5. Transferable letter of credit-

A transferable letter of credit is one which contains an express provision that the benefits under it may be transferred either fully or partly to one or more parties. It is only the beneficiary who can draw the bill of exchange under it. The amount of a transferable L/C can be divided in favor of more than one party. In our country, such an L/C can be transferred only once and that too within the country itself.⁶⁵

6. Non-transferable letter of credit-

In case of a non-transferable letter of credit, only the beneficiary can take advantage of it provided he submits the relevant set of documents to the bank. Ordinarily, all letters of credit are non-transferable unless it is specially mentioned that a particular letter of credit is transferable.⁶⁶

7. Back-to-back letter of credit-

This type of letter of credit can be opened by an exporter when he receives a non-transferable irrevocable L/C. He may request his banker to open a local or domestic letter of credit in Favour of some party, on the strength of the original L/C. These two credits are called back-to-back letter of credit, one being issued on the security of the bank. The distinctive feature of this credit is that it is based on the original credit and calls for the documents evidencing dispatch of the goods mentioned in the original credit. Such documents are in turn utilized by the exporter for negotiation under the original credit. Banks are reluctant to open back-to-back credit. If it agrees to open a back-to-back letter of credit, the original letter of credit is retained by the bank as a security.⁶⁷

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[https://content.next.westlaw.com/Glossary/PracticalLaw/lffc51023feff11e8a5b3e3d9e23d7429?transitionType=Default&contextData=\(sc.Default\)&firstPage=true#:~:text=A%20letter%20of%20credit%20that,importer%20must%20make%20regular%20payments.](https://content.next.westlaw.com/Glossary/PracticalLaw/lffc51023feff11e8a5b3e3d9e23d7429?transitionType=Default&contextData=(sc.Default)&firstPage=true#:~:text=A%20letter%20of%20credit%20that,importer%20must%20make%20regular%20payments.)

⁶⁵ <https://www.investopedia.com/terms/t/transferable-letter-of-credit.asp>

⁶⁶ <https://www.accountinghub-online.com/non-transferable-letter-of-credit/>

⁶⁷ <https://www.investopedia.com/terms/b/back-to-back-letters-of-credit.asp#:~:text=A%20back%20to%20back%20letter%20of%20credit%20involves%20two%20letters,used%20primarily%20in%20international%20transactions.>

12. Restricted letter of credit-

This type of letter of credit is called 'restricted' because of its mode of operation. If the shipping documents against a specific letter of credit are to be negotiated through the notifying bank only, then the letter of credit stating such a condition is called restricted letter of credit. Normally, the negotiating banks do not encourage restricted letters of credit because they lose business on such transactions and cannot earn foreign exchange. Further, if the letter of credit is restricted to another bank, such a bank may not finance the exporter. It may be noted that the term restricted does not appear on any letter of credit.⁶⁹

LEGAL VIEW

The use of the letter of credit as a tool to reduce risk has grown substantially over the past decade. Letters of credit accomplish their purpose by substituting the credit of the bank for that of the customer, for the purpose of facilitating trade. The law pertaining to letter of credit may be summarized in a nutshell thus, as has been done in the Halsbury's laws of England:

“It is often made a condition of a mercantile contract that the buyer shall pay for the goods by means of a confirmed credit, and it is then the duty of the buyer to procure his bank, known as the issuing or originating bank, to issue an irrevocable credit in favor of the seller by which the bank undertakes to the seller, either directly or through another bank in the seller's country known as the correspondent or negotiating bank, to accept drafts drawn upon it for the price of the goods, against tender by the seller of the shipping documents. The contractual relationship between the issuing bank and the buyer is defined by the terms of the agreement between them under which the letter opening the credit is issued; and as between the seller and the bank, the issue of the credit duly notified to the seller creates a new contractual nexus and renders the bank directly liable to the seller to pay the purchase price or to accept the bill of exchange upon tender of the documents. The contract thus created between the seller and the bank is separate from, although ancillary to, the original contract between the buyer and the seller, by reason of the bank's undertaking to the seller, which is absolute. Thus, the bank is not entitled to rely upon the terms of the contract between the buyer and the seller which might permit the buyer to reject the goods and to refuse payment therefore; and conversely, the buyer is not entitled to

⁶⁹ <https://www.tradefinanceglobal.com/letters-of-credit/restricted-letters-of-credit/#:~:text=A%20Restricted%20Letter%20of%20Credit,LC%20from%20a%20specific%20bank.>

an injunction restraining the seller from dealing with the letter of credit if the goods are defective.

CONCLUSION

Observing this, it is clear how significant the bill of lading because there is no means of recovering damages through accusations of loss, damage, or other ownership disagreements. Any legal adjudicator would invalidate the case on a technicality if the bill of lading in question isn't legitimate and properly filled out. For any form of transportation or transit to be completed successfully, the bill of lading is a pivotal part of documentation. It serves as irrefutable legal proof and a resource for cargo data for procedural necessities. In global commerce, bills of lading play an essential role. Rules have distinct consequences for the individuals involved relying on how they are observed.

