

Bills of Lading: Nature and Functions

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Article 257 of the UAE Maritime Commercial Code expressly stipulates that the carriage contract is evidenced by the bill of lading which is issued by the carrier or his representative at the demand of the shipper. In addition, the bill of lading is a document of title giving the consignee or the endorsee of the bill the right to sell the goods while they are in transit. A bill of lading is therefore one of the most important documents in the shipping world.

Three Types

There are three types of bills of lading: Nominate bills of lading, order bills of lading and bearer bills of lading. Briefly, a nominate bill of lading requires the delivery of the goods to a named party and is a non-negotiable document of title. An order bill of lading provides for the delivery of the goods to the order of a specified person "or assigns", and may be negotiated by endorsement or endorsement in blank. A bearer bill of lading permits any holder of the bill of lading to take delivery of the goods, and may be negotiated by simple delivery, without endorsement. These three types are enumerated in Article 264 of the UAE Maritime Commercial Code.

The Bill of Lading as a Receipt

The bill of lading, being a receipt for the goods, contains in its free space (known as the margin) a description of the goods. This description is perhaps the most vital part of the whole bill of lading, because the consignee or endorsee of the bill of lading, who wishes to buy the goods by having the bill of lading endorsed to him, normally has no opportunity of verifying the representations of the buyer as to their quantity and quality by examining them. The consignee or the endorsee therefore parts with the purchase price in reliance upon the carrier's description of the goods in the bill of lading.

In other words, the bill of lading is an acknowledgment of the receipt of the goods specified in it. It usually indicates (1) the leading marks necessary for the identification of the goods, as furnished in writing by the shipper before loading; (2) either the number of packages or pieces or the quantity or weight, as indicated by the shipper in writing; and (3) the apparent good order and condition of the goods (Article 258 of the UAE Maritime Commercial Code). If fraudulently or negligently made, such representations may form the basis of an action in tort against the carrier by third parties who suffer loss in reliance on them, in particular consignees who take up and pay for the shipping documents when, if the true facts had been stated, they would have been entitled to reject them. In this context, it must be noted that the stipulations of the Hague-Visby Rules and the Hamburg Rules are broadly similar to this effect.

A bill of lading is prima facie evidence or, in certain cases, conclusive evidence of the facts contained in it, for example, as to the condition of the goods, quantity, marks, quality, and date of loading (Article 266 of the UAE Maritime Commercial Code). The bill of lading may contain a conclusive evidence clause.

Where the bill of lading is prima facie evidence only, the burden of proving that it is incorrect is on the carrier. The carrier or the master or agent of the carrier must, after receiving the goods into his charge, issue to the shipper upon his demand, a bill of lading showing, among other things, the leading marks necessary for the identification of the goods as furnished in writing by the shipper and the apparent order and condition of the goods, save where the carrier, master or agent has reasonable ground for suspecting

that the marks, number, quantity or weight do not accurately represent the goods actually received or which he has had no reasonable means of checking.

In considering the precise legal position relating to the statements in the bill of lading relating to the cargo, regard must be made not only to the contractual clauses but also to the applicable maritime Rules (Hague, Hague-Visby and Hamburg Rules or any other Rule). It is also necessary to consider separately the extent to which a bill operates as a receipt as to quantity, condition and quality. It is important to note the legal purpose of focusing on the bill of lading as a receipt. A bill of lading holder who shows that goods have been discharged in quantities or in a different condition from that recorded in the bill of lading will have good evidence that the damage or loss occurred during the time when the goods were in the custody of the carrier. The evidence will be used to show that the carrier has been in breach of an obligation to look after the goods as laid down in the contract, or in the Hague, Hage-Visby or Hamburg Rules.

The bill of lading may also be considered conclusive evidence regarding the representations contained in it. A bill of lading which:

1. represents goods to have been shipped on board a vessel or to have been received for shipment on board a vessel; and
2. has been signed by the master of the vessel or by a person who was not the master but had his express, implied or apparent authority of the carrier to sign the bills of lading,

Is conclusive evidence in favour of a person who has become the lawful holder of the bill, against the carrier of the shipment of the goods or, as the case may be, of their receipt for shipment. Such a bill of lading is not, however, conclusive evidence of statements as to the order and condition of the goods or any other such matters.

This principle is founded on a common-law rule according to which where a person has made to another a clear and unequivocal representation of fact, with knowledge of its falsehood or with the intention that it should be acted on, and the other person has acted on such representation and thereby altered to his prejudice, an estoppel arises against the party who made the representation, and he is not allowed to aver that the fact is otherwise than he represented it to be. Thus, the shipowner is estopped as against the assignee of a bill of lading by an erroneous statement in it that freight has been paid in advance or that goods have been shipped in apparent good order and condition.

By an express term, the bill of lading may be made conclusive evidence of the quantity shipped. In this case, in the absence of fraud, the shipowner is bound by the statement in the bill of lading, and cannot escape liability by showing that the goods specified in it, or some portion of them had not been shipped, or even that they had been lost before shipment by an accepted peril. The cause of the misstatement is immaterial; it may be a pure miscalculation, or it may be a mistaken belief that in the circumstances the goods had to be signed for although not put on board. If there is a miscalculation, the shipowner cannot, where there are two or more classes of goods concerned, escape liability for delivering less than the specified quantity of another class, since as against him both quantities are conclusive. Where, however, words are inserted qualifying the statement as to quantity, or where the charterparty contains an inconsistent condition which is incorporated in the bill of lading, the bill of lading is no longer to be regarded as conclusive evidence of the quantity shipped, and the shipowner, in spite of them, is not precluded from showing that the whole or part of the goods was not shipped.

Where the Hague-Visby Rules apply, a bill of lading issued by the carrier or the master or agent of the carrier to the shipper and showing, among other things, the leading marks necessary for the identification of the goods, the number of packages or pieces, or the quantity or weight, as the case may be, and the apparent order and condition of the goods, is prima facie evidence of the receipt by the carrier of such goods; and, where the bill of lading has been transferred to a third party acting in good faith, it is conclusive evidence.

In a bill of lading the words "shipped in good order and condition" do not import a warranty, but they do

amount to a representation of fact that the goods were shipped in apparent good order and condition; and, if an endorsee changes his position on the faith of this representation and afterwards sues the shipowner for delivering the goods in bad condition, the shipowner (at any rate where he was not induced to make the statement by fraud) will be estopped from denying that the goods were shipped in apparent good order and condition. The shipowner will not, however, be estopped to prove that the internal condition of the goods was bad.

Of course the bill of lading is only conclusive evidence as to what it acknowledges as having been shipped. Account must be taken of clauses qualifying the statements in the bill by the use of words such as "said to contain" or "weight unknown" and the extent to which the mandatory maritime Rules allow such qualifications. Where the bill of lading contains such qualifications it is called a "claused bill of lading". Furthermore, particular receipt problems arise where containers are used to carry goods.

The Bill of Lading as a Document of Title

It has been seen that a principal purpose of the bill of lading is to enable the person entitled to the goods represented by the bill to dispose of the goods while they are in transit. By mercantile custom, the possession of the bill is in many respects equivalent to the possession of the goods and the transfer of the bill of lading has normally the same effect as the delivery of the goods themselves. The bill of lading is thus a symbol of, or a key to, the goods specified in it.

In this context, it must be noted that the bill of lading is merely deemed to operate as a symbolic transfer of possession of the goods, but not necessarily as a transfer of the property in them. The transfer of the bill passes such rights in the goods as the parties intend to pass. Where the consignee or endorsee of the bill of lading is the agent of the shipper at the port of destination, it is evident that the parties, by transferring the bill of lading, intend only to pass the right to claim delivery of the goods from the carrier upon arrival of the ship.

Upon a transfer, therefore, of a bill of lading by way of sale, mortgage or pledge, the property in the goods passes either absolutely or otherwise, according to the intention of the parties, to the transferee, provided that the transferor was able to dispose of them; and the right of the original owner of the goods to stop them in transit is either wholly defeated, where there is an absolute transfer by way of sale, or becomes subject to the mortgage or pledge. Although a bill of lading is not in the full sense of the word a negotiable instrument, the title of the transferor to the bill of lading and his ability to dispose of the goods specified in it are nonetheless important elements to be taken into consideration.

As regards the shipowner, the bill of lading is a document of title, entitling its holder on production to delivery of the goods. Accordingly, a delivery to the holder of the bill of lading, even where he is not entitled to the goods, discharges the shipowner, provided that it is made in good faith without notice of any defect in the holder's title. The shipowner is not, however, discharged, however bona fide his act may be, by delivery to the wrong person without the production of the bill of lading.

The bill of lading as a contract of carriage

It has long been accepted that the terms set out on the reverse of the bill of lading are only evidence of the contract of carriage as between the shipper and the carrier, since the contract is agreed before the bill of lading is issued. In other words, the contract of carriage will generally be made before the goods are sent to the ship and the contract may afterwards be reduced into writing and expressed in the bill of lading.

It is equally accepted that as between the carrier and a bona fide transferee, the bill of lading terms of the contract of carriage are conclusive and the carrier is estopped from adducing external evidence to the contrary.

Where there is a charterparty, the bill of lading is prima facie, as between the shipowner and an endorsee,

the contract on which the goods are carried. This is certainly so when the endorsee is ignorant of the terms of the charterparty, and may be so even if he knows of them. As between the shipowner and the charterer, the bill of lading may in some cases have the effect of modifying the contract as contained in the charterparty, although, in general, the charterparty will prevail, and the bill of lading will operate solely as an acknowledgment of receipt.

Conclusion

The bill of lading, which is one of the most important document in the carriage of goods by sea, may be defined as a receipt for the goods delivered to and received by a ship, signed by the person who contracts to carry them, or his agent, and evidencing the terms of the contract of carriage under which the goods have been so delivered and received. During the period of transit and voyage the bill of lading is recognised by the law as the symbol of the goods described in it, and the endorsement and delivery of the bill of lading operates symbolic delivery of the goods. Property in the goods passes by such endorsement whenever and to the extent that it is the intention of the parties that the property should pass, just as in similar circumstances the property would pass by actual delivery of the goods.