

Documents of the Shipping Transport: Historical Origins, Legal Validity & Commercial Practice

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Abstract: The bill of lading and charterparty are vital for international trade and transport. To signify their enduring importance, this paper firstly seeks to illuminate the earliest historical evidence relating to the bill of lading and charterparty, and secondly, discuss their current legal and commercial nature and functions as well as their relationship with other transport documents such as the booking note, cargo manifest, mate's receipt, and delivery order. In this context, the paper examines the lifecycle of transport as regards the documents used in the bulk and liner markets.

Key words: Bill of lading, charterparty, sea waybill, booking note, delivery order, Mate's receipt, Cargo manifest.

1. Introduction

The most important documents governing the commercial and legal relationships between the parties in international sea transport are the bill of lading and the charterparty. Among other things, these documents define the obligations as well as the respective costs and earnings of the contracting parties, primarily the shipowner or carrier and the charterer or shipper. In addition, other documents, such as booking notes, delivery orders, mate's receipts, cargo manifests, and sea waybills, play interrelated, important roles in sea trade.

Charterparty is the contract which embodies the written form of the vessel's charter agreement, containing the terms and conditions which govern the relationship between the shipowner and the charterer. Therefore, the charterparty determines the obligations and rights of the contracting parties.

The bill of lading is the transport document which relates to the cargo carriage, governs the relationship between the shipper and the carrier and it is issued either upon the goods being received for shipment (received for shipment bill of lading) or traditionally,

upon their shipment on board the ship (shipped bill of lading).

2. Historical Origins of the Bill of Lading, Charterparty, Sea Waybill and Other Transport Documents

The (non-negotiable) sea waybill and the (negotiable) bill of lading are nowadays the best-known ocean transport documents that are still in use. They relate to cargo carriage alone and govern the relationship between the shipper and the carrier. They are issued either upon the goods being received for shipment (received for shipment bill of lading) or, traditionally, upon their shipment on board the ship (shipped bill of lading) [1].

These documents have a long history. Historically, the need for the waybills arose when merchants first decided that they would no longer accompany their goods during maritime transport but, instead, place them in the custody of the master and his clerk [2], who would act as bailees, for transportation to overseas destinations. The shipper could send the bill by the same or another ship in order for it to reach the buyer so that the latter would be able to present it and receive the goods. Yet these procedures are not relatively recent; on the contrary, the history of the use

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of waybills coexists with the history of transnational commerce. Its origins can be traced to at least around 3,000 years ago, as it will be presented at the analysis below.

2.1 Hellenistic Period (323 B.C.-331 B.C.)

The birth of the bill of lading was no doubt contemporaneous with that of the carrier, whereas it has a very long heritage [3-7], coming from the waybill that is — at least — recorded from the “Hellenistic Period”, roughly 323 B.C. through 31 B.C. The importance of Hellenic maritime law is evident because Roman law followed it on multiple points and because it contributed to the development of well-known Roman institutions; in fact, Greek maritime law, (Athenian and Rhodian Maritime Law, i.e., *The Lex Rhodia de Iactu*) as it is conveyed through Roman Law, forms the direct origin and foundations of modern maritime and commercial law [8, 9]. In particular, evidence found in papyri fragments show that carriers in Hellenistic (Ptolemaic) Egypt issued triplicate statements acknowledging the receipt of goods; those are the earliest origins of the sea waybills or “straight” bill. In particular, two copies were dispatched to the shipper, the third was held by the carrier. Those receipts described the quantity and quality of the shipment, the names of the consignor and the consignee, the shipping agent, the vessel’s details, the ports of origin and destination; hence, they have to be treated as forms of sea waybill or “straight” bill. Indicatively, papyrus frag. 98 (mummy 117 of the “Hibeh Papyri” collection, dated 252 BCE), describes the earliest (and most complete form) sea waybill.

Charterparty documents can also be found in ancient times. A complete description of a charterparty is found in Roman Egypt, dated April 15, 212 AD. But this relatively later date does not mean that charterparties did not exist in Mediterranean shipping before that period. A papyrus fragment, entitled “Sale in the form of a lease”, describes the sale of a vessel in a form of a long demise charterparty.

Undoubtedly, it is remarkable to discover that some 2250 years back there was a special type of investment vehicle that was designed specifically to facilitate equity investors in acquiring vessels. In this context, it is a long bareboat leasing agreement that would last for 60 years and ultimately lead to the ship’s purchase [10].

2.2. Bronze Age (3200-1200 BCE)

Shipping documents with similar and mixed properties have been traced since the mid-2nd millennium BCE. Reference is made to the “El Amarna Letters” (ca 1350 BCE) and specifically to clay tablet “EA 35”, titled: “*The Hand of Nergal*”. It is an official correspondence between the king of Cyprus (the island is therein referred to as “*Alasiya*” or “*Alashiya*”) and the Pharaoh of Egypt, Akhenaten (Amenhotep IV), that includes several legal issues relating to the sale and carriage of goods, as well as a very concise hardship notice. In particular, the exchange reports a shipment of copper and timber¹ [11] and consideration in silver and other goods. The Cypriot consignor lists the shipped goods and asks for consideration as well as the settlement of the outstanding payments. It is also quite remarkable to read that the seller (and consignor) claims that due to force majeure, i.e., the “hand” of the God “Nergal” (a hostile warlord or perhaps a metaphorical term for an Act of God), which decimated the available workforce, he cannot fulfil the terms of contract, as regards the quantity of goods. In the context of carriage of goods, the correspondence can be considered as a mixed type of invoice and straight bill of lading (sea waybill) as it addresses to a particular recipient (the Pharaoh of Egypt) [12].

3. Contracts of Carriage and Property Interests within Liner and Bulk Markets

¹ The information obtained from EA 35 stimulates further investigation into Cypriot shipbuilding and its role as wood supplier.

3.1 Distinct Legal Uses of the Documents in Liner and Bulk Shipping

In liner shipping, the bill of lading that is issued upon receipt or upon shipment of the goods is conclusive evidence of the contract of carriage between the carrier and the non-chartering shipper. It is therefore clear that its terms play a significant role in determining the rights and liabilities of the contracting parties (carrier and shipper). Therefore, things in the containerships market are clear in that respect.

In bulk shipping, the main contract of carriage between the shipowner and the charterer is the charterparty. In the hands of the non-chartering shipper, the bill of lading has no contractual capacity at all. Indeed, though contractual in form, it may — in the hands of a person already in contractual relations with the carrier (e.g., a charterer) — be no more than a receipt [13]. In *Rodoconachi*², the plaintiffs chartered the defendants' ship to carry a cargo of cottonseed from Alexandria to the United Kingdom. The cargo was shipped and a bill of lading was issued that contained an exception that was not in the charterparty and that purported to relieve the shipowners from liability for damage arising “from any act, neglect, or default of the pilot, master, or mariners”. Due to cargo loss, the charterers sued for the negligence of the master. The Court held that the bill of lading was to be looked upon as a mere receipt for the goods. However, they arrived at that conclusion by examining *inter alia* the *animus contrahendi* of the parties when the bill of lading was signed. The above may be analysed as follows, especially on the paradox that is created when goods are sold during transit and the stipulation of “clause paramount”; in particular:

As the contract of carriage is mainly manifested by the charter agreement, the issue of a bill of lading (issued for each shipment) is a necessity that, among many things, becomes a proof of the goods shipped

and a document of title. In fact, the bill of lading however contains the terms and conditions of carriage if that bill is endorsed and transferred to a subsequent consignee [14]. In other words, charterers shipping their own goods on a chartered vessel require at least an acknowledgement of the quantity of goods taken aboard and the condition in which they were shipped. Bills issued to a charterer in such circumstances act merely as receipts for the cargo shipped and as potential documents of title should the charterer decide to sell the goods while they are still in transit. But the bills provide no evidence of the terms of the contract of carriage between shipowner and charterer since their relationship is governed solely by the terms of the charterparty. Nor will the Hague or Hague/Visby Rules apply to the contract of carriage while the bill remains in the hands of the charterer, although they will apply as soon as the cargo is sold and the bill negotiated to a third party.

3.2 Privity Issues with in-Transit Sales to a Third Party

Given the distinct legal operations of these two shipping documents, and the temporal importance of events like sales of goods en route in transport or the transfer of a bill from the hands of the charterer to the buyer, a paradox occurs if the cargo is sold to a third-party during transit. This can be seen often, for example, with oil shipments. When the bill of lading is endorsed (i.e., transferred) by the charterer to a third party (a consignee, endorsee, or transferee), from that moment on, the terms of the bill of lading become the only evidence of a primary contract of carriage between the original parties. The bill of lading also, subsequently defines the extent of the relationship collaterally created between the third party (the new buyer of goods) and the ship-owner³[15]. This is because the third party, which has not been originally a contracting party in the original charterparty signed

² *Rodoconachi v. Milburn*, [1886] 18 QBD 67, CA; also see *President of India v. Metcalf Shipping*, [1970] 1 QBD 289.

³ See the analysis of Chen Liang, with regard to the delimitation of the rights of third parties that are not part of the contract of carriage, e.g., a non-owning consignee or buyer.

between the shipowner and the charterer, is now involved as third party at least concurrently with the main provider of service, the carrier. Consequently, once the bill of lading is endorsed to a third party, it is conclusive evidence of the shipment of the goods [16]. Any oral or written agreement between the buyer — who has now becomes a shipper — and the ship-owner that was not expressed in the bill of lading will not affect a third party buyer of the goods, especially if that charter involves unusual or onerous terms of which the third party was ignorant⁴[17].

In these circumstances, a legal question may arise as to whether the shippers were, or reasonably should have been, aware of the terms of the charter. The reason for this is that the third party can neither rely on nor be bound by a term — especially an oral one that has not been expressed in the contract of carriage — to which has not agreed. These are issues that are commonly dealt with in relation to the doctrine of privity of contract under the general law of contract [18]. Therefore, by the moment of its transfer, the rules of bill of lading would prevail *de facto* over the charterparty, at least as regards the relation between the buyer and the shipowner. This has practical significance in general maritime law incidents; say a deviation. Thus, in case of deviation of a bulk carrier, one should first consider the time in which the deviation was made and when the bill of lading was transferred to the new buyer. If the deviation had occurred after the bill of lading is endorsed, then the bill of lading would govern the relation between the carrier.

⁴ In *Crooks v. Alan*, [1879] 5 Q.B.D. 38, 40 and *Lewis v. M’Kee*, [1868] L.R. 4 Ex. 58. It was decided that if a shipowner wishes to introduce a novel clause into his bill of lading, as one exempting him from liability or other obligations, ought to make it clear in words, but also to make it conspicuous by inserting it in such type and in such part of the document that a person of ordinary capacity and care could not fail to see it. Hence, a bill of lading is not the contract, but only evidence of the contract, and it does not follow that a person who accepts the bill of lading which the shipowner hands him, is necessarily and without regard to circumstances bound to abide by all its stipulations.

To avoid this paradox and in order to harmonise the terms in a bill of lading and a charterparty, the protective “clause paramount” is used to incorporate the terms of the charterparty into the bill of lading. In case of ambiguity in both documents’ terms, only the terms of the charterparty determine the rights and liabilities of the contracting parties. A bill of lading cannot vary or add to the terms of that charterparty unless the charterparty contains an express provision to that effect. Accordingly, a shipper who is issued a bill of lading, who has actual or constructive knowledge or who may be ignorant of a charterparty provision that allows for bill of lading additions or variations, is not obliged to accept a bill of lading that incorporates a charterparty’s terms⁵.

4. Legal and Practical Issues in the Lifecycle of Bills of Lading and Charterparties

4.1 Lifecycle of the Bill of Lading

In liner shipping, the shipowner (carrier, operator) runs a regular service between more or less fixed ports and on a fixed time schedule. The liner operator acts as a common carrier, accepting the general cargoes shipped between the ports covered by his service. A shipper, who wishes to use only a part of a vessel, contacts the agent of a particular line, who then confirms the booking of cargo space onboard the ship by issuing the so-called “booking note”, or “shipping note”, or else a “fixture note”. Unlike the charterparty, in English law, this initial contract is not definitive of the contractual terms. These will be fleshed out by the terms of the carrier’s usual bill of lading. This may happen expressly, as in *Armour & Co Ltd v. Walford* (1921, 3 KB 473), or impliedly, as in *Pyrene Co Ltd v. Scindia Navigation* (1954, 2 QB 402) [19]. So, when the goods have been received for shipment or shipped on board the vessel, a bill of lading will be issued on

⁵ *Peek v. Larsen*, [1871] L.R. 12 Eq. 378; *Sandeman v. Scurr*, [1866] L.R. 2 Q.B. 86; *The Stornoway*, [1882] 51 L.J. Adm. 27.

behalf of the carrier⁶; consequently, the bill of lading evidences the contract of cargo carriage between the carrier and the shipper (or the endorsee).

The bill of lading is a negotiable instrument [20] that is considered to be a “document of title”, representing the cargo, and may be traded. Accordingly, it provides the bearer with the right to take delivery of the goods or to transfer the ownership via endorsement, while in transit. The [traditional] bill of lading is still the most used shipping document in bulk and liner markets, overall serving the usual three main functions:

- it is a receipt for goods shipped onboard the vessel⁷;
- it is (*prima facie* or conclusive) evidence of the contract of carriage between the shipper and the carrier⁸;
- it is a document of title enabling the seller, who has shipped the goods for delivery to the buyer, to transfer the right to obtain delivery of the goods to the buyer or the holder of the document⁹.

It is obvious that all three main functions aim to link crucial information and rights deriving from the contract of carriage, allowing the consignee to be in a position to collect the cargo at the place of destination, or to transfer its ownership to a new buyer.

A large number of “bill of lading clauses” governs the carrier’s relationship with the shipper. The bill of lading, often filled in by the shipper or by a forwarding agent, is issued and signed by a

representative of the carrier or shipowner such as the master of the vessel or more often by the shipping agent under their standing authority and in accordance with the law of agency¹⁰. Notably, due to the containerisation, where numerous bills of lading are issued, that traditional signature has been increasingly replaced by electronic means.

While there is no fixed rule about the set of original copies in which a negotiable instrument (such as the bill of lading) is issued, the usual practice is for a bill of lading to be issued in triplicate. Once issued, the master has instructions to hand it to the end consignee on arrival to avoid the possibility of there being no original bill of lading for presentation at the discharge port. The consignee then presents the original back to the master and claims delivery of the subject goods. In *The Mobil Courage*¹¹, among other things, it was recognised that such practices were common (at least) in the oil trade. Although the court didn’t thoroughly analyse the matter of the commercial practice, it appears that where it has been contractually agreed among the parties, the courts may oblige the carrier to deliver the subject cargo against a bill of lading carried onboard, which the master hands over to the receiver who then hands it back for delivery of the cargo.

⁶ A summary of the general practice is given in *Heskell v. Continental Express*, [1950] 83 Ll. L. Rep. 438, 449; *see also* *Jl MacWilliam Co Inc v. Mediterranean Shipping Company SA*, [2005] (*The Rafaela S*) [2005] UKHL 11, ¶38, where the Court also summarises the 1971 UNCTAD’s description of the sequence of events in the life of a bill of lading. In this context *see* United Nations Conference on Trade and Development (UNCTAD), *Bills of Lading*, ¶21, TD/B/C.4/ISL/6/Rev.1 (1971).

⁷ *The Peter der Grosse*, (1875) 1 P.D. 414 at p. 420 per Sir Robert Phillimore’s opinion.

⁸ *S. S. Ardennes (Cargo Owners) v. S. S. Ardennes (Owners) (The Ardennes)* [1951] 1 KB 55; *Leduc & Co v. Ward*, [1888] 20 QBD 475.

⁹ *Sanders v. Maclean*, [1883] 11 QBD 327.

¹⁰ *See Carver supra* at 182; *Aikens et al. supra* at §3.54-3.55. The owner’s liability is explained on the grounds that the agent or the master have at least ostensible authority to enter on principal’s behalf into transactions of the type in question so as to bind the shipowner. At least, since *Grant v. Norway*, [1851] 10 C.B. 665, it is clear that a master has no authority to sign bills of lading for goods which have not been shipped. This remains the common law position, although the effect of this rule has been largely, but not entirely, rendered irrelevant by the COGSA (1992), §4 (Eng.), as well as in art. III r. 4 of the “Hague-Visby Rules”.

¹¹ In *The “Mobile Courage”* (1987) the master refused to sign the triplicate bill of lading against presentation of which the cargo could be discharged, as required by the charter. The court firstly recognised that the practice of triplicate copies was common in the oil trade; secondly, it held that the actions of the master disentitled owners to demurrage for the delay that ensued. *See Mobil Shipping and Transportation v. Shell Eastern Petroleum (Pte) Ltd (The Mobile Courage)*, [1987] 2 Lloyd’s Rep. 655.

To an ever-increasing extent, the traditional bill of lading in modern cargo transportation has been replaced by a “sea waybill” or by other documents which do not have the same legal qualities as the bill of lading (e.g., consignment notes) [21]. A sea waybill serves as evidence of the contract of carriage and as receipt of cargo taken “on board” a vessel. Unlike a bill of lading, the waybill is a transport document where delivery is to be made to the named consignee, since waybills and consignment notes set out the name of the party entitled to receive the goods mentioned in the document and also identify the type and quantity of the good. Only the named person and not any holder of the document is then entitled to claim delivery of the goods. Thus, seawaybills are not negotiable documents. However, a bill of lading may be also made out “to a named person”, “to a named person or order”, “to the holder/bearer” or “to a named person not to order”. In the first three cases the bills of lading are regarded as “quasi-negotiable” documents of title.

The use of the traditional bill of lading can cause problems if the goods reach the port of discharge before the bill of lading comes into the hands of the buyer. The latter will only be able to persuade the shipowner to deliver if he provides a suitable guarantee to indemnify the shipowner against any misdelivery claims¹². Apart from the inconvenience caused by arranging such guarantees, there will also be some cost involved for the buyer if the shipowner insists on a bank providing the guarantee. These problems can be practically avoided by using a sea waybill.

4.2 Lifecycle of the Charterparty

In bulk (or tramp) shipping, the basic document is the charterparty of which all terms and conditions are negotiated individually. In this case, the shipowner is

plying between different ports depending on where he finds suitable cargo. A charterer directly or through the ostensible authority of a broker [22]¹³ enters the market with an order (called a cargo order). The cargo order presents the interest of the charterer for a specific type of charter, a specific type of trade, and a specific type of vessel. In addition, a shipowner directly or through a broker enters the market with a position list. The position list presents the interest of the shipowner for a specific type of charter and includes the particulars of the vessel as well as her geographical position. If an order is firm, the shipowner may choose to make a firm offer right away. The stage of chartering negotiation procedure starts when the first firm offer is structured [23, 24]. Offers and counter-offers from each side will then follow until everything has been agreed. When both parties have agreed on every detail, a recap of the deal follows. This recap will set out in full all the details of the fixture and the wording of the various clauses agreed. As a matter of principle, oral agreements are generally binding, but due to the necessity of evidence, the parties — based on the fixture — draw up a charter.

The charterparty is almost always made out on standard forms. There are frequent deletions in the printed text and additional clauses are added. As in liner shipping, bills of lading are issued upon receipt or upon shipment of the goods. The bill of lading is typically issued in three originals and a number of non-negotiable copies. The carrier or the shipper will, through agents, have the originals as well as a number of copies filled in. Under the charterparty terms, the master will sign the bill of lading when he has ascertained that all cargo has been loaded on board, and the shipowners have collected the freight under

¹² Aikens et al. *supra* at §5.43, 5.44; Wilson *supra* at 121, 137, 154. See *East West Corporation v. DKBS 1912 & AKTS Svendborg and Utaniko Ltd. v. P&O Nedlloyd B.V.*, [2002] 2 Lloyd’s Rep.182 and [2003] 1 Lloyd’s Rep. 239.

¹³ As regards matters of authority, the broker can also incur liability to the other party to the transaction if it makes a misrepresentation in its personal capacity rather than on behalf of its principal, for example, as to the creditworthiness of its principal; this was the situation in “*The Arta* (1986)”. See *Markappa Inc v. N W Spratt & Son Ltd (The Arta)*, [1985] 1 Lloyd’s Rep. 534.

the normal freight prepaid conditions [25, 26]. The charterparty may sometimes stipulate that the charterer's agent will sign the bill of lading.

For avoiding any possible conflict between the bill of lading provisions and the charterparty provisions, the carrier usually tries to make the terms and conditions of the charterparty applicable to the bill of lading by stamping on the bill of lading a clause of the type: "*This bill of lading shall be subject to the terms and conditions of charterparty between...and...dated...*". Frequently, the seller of goods is not prepared to accept such a clause because, when payment is to be made under a documentary credit, the paying bank may, following the provisions of UCP, refuse to accept a bill of lading making reference to a charterparty, unless it has been expressly instructed to accept such a bill of lading. Overall, the charterparty and the bill of lading remain two distinct contracts. This is equally true when the terms of a charterparty are expressly incorporated into the bill of lading.

4.3 Relationship of Contracts of Carriage with other Transport Documents

In this section the relationship of contracts of carriage (charterparty and bill of lading) with other documents of transport is examined thoroughly.

4.3.1 Mate's Receipt

From the shipowner's point of view, it is important that the bill of lading is in conformity with the mate's receipt and the cargo manifest. A mate's receipt is issued by the mate of the vessel on behalf of the owner or charterer, in accordance with law of agency. In a charterparty, a clause will require the master to sign bills of lading in accordance with mate's receipts. For example, the *NYPE 2015* form, clause 8(a) "performance of voyages" states that "*...Charterers shall perform all cargo handling, including but not limited to loading, stowing, trimming, lashing, securing, dunnaging, unlashings, discharging, and tallying, at their risk and expense, under the supervision of the Master*", while further it

complements in clause 31(a) "bills of lading" that "*...the Master shall sign bills of lading or waybills for cargo as presented in conformity with mates' receipts*". Likewise, "Shelltime 4" reads: "*as Charterers or their agents may direct . . . without prejudice to this charter*". In the same context, clause 9 of the *Baltimex 2001* reads: "*...The Master shall be under the orders of the Charterers as regards employment, agency, or other arrangements...*". One must note some subsequent also issues regarding agency and liability of the carrier. In particular, agents who are strangers to contracts for carriage (e.g., management companies, employed by the shipowner to run the chartered vessel) do not qualify for the protections of COGSA (1992) is still equitable, especially in light of the well-established option to extend contractually those protections to agents via the 'Himalaya' clause; practically this means that may be (vicariously) be liable in tort for common law negligence by virtue of the bills of lading, which were signed on behalf of the master they employ [27].

The bill of lading acknowledges that the goods have been "shipped in apparent good order and condition" — the "clean bill" — if the mate's receipt is also clean". Otherwise, any comments regarding the quality or quantity of the goods may be transferred to the bill of lading. To prevent claims against the ship arising at the discharge port the mate's receipt must reflect the accurate condition of the cargo. The "receipt" function of this document is similar to the bill of lading's function as a receipt for cargo on board the ship. This has the effect of confirming that the carrier is responsible for the goods, and it is the first evidence of the condition and quantity of the goods when they are received. The function of a mate's receipt to be distinguished from that of a bill of lading is that the former is not a document of title; mere endorsement or transfer without notice of a mate's receipt to the ship-owner or his agent does not pass ownership in the

goods¹⁴. Therefore the mate's receipt does not give the holder the same rights as a bill of lading does. The mate's receipt does recognize the property rights held by any person named therein as owner, and it functions as an acknowledgment that the shipper holds the goods on that person's account, that the goods are in the shipowner's possession at his risk under the law of bailment¹⁵. Thus, the ship's mate receipt is evidence that the shipped property is that of any person named therein as owner, and so it allows the master to deliver the bill of lading to such a person¹⁶. Even though a mate's receipt is not negotiable, it may in some countries (like Malaysia) acquire the status of a document of title by virtue of custom. In England, no such custom is found [28].

4.3.2 Cargo Manifest

The complete list of cargo loaded, as compiled from the bill of lading, forms the cargo manifest of the ship issued by the port agent. It is also legally significant as it belongs to the group of documents that need to be available as regards the ship's legal readiness. This is explained whereby legal readiness is meant that the ship must have all her papers in order, in accordance with the customary practice of the port, so that there is no legal impediment to the commencement of loading or discharge when the charterers or those concerned are ready so to do; the absence of which normally prevent her from becoming an "arrived ship". The cargo manifest captures information from bills of lading and other transport documents issued for the carriage of goods on board ships. In contrast to a bill of lading, which serves as a legal instrument focusing on ownership, a cargo manifest is often more concerned with physical aspects of the cargo, such as weight and size.

4.3.3 Delivery Order

A delivery order is a release document issued by the

authorised agent on behalf of the ship-owner (carrier), by attornment (Attornment is an act by a bailee in possession of goods on behalf of one person acknowledging that he will hold the goods on behalf of someone else), releasing the cargo to the consignee mentioned in the bill of lading [29, 30]. It is issued by the carrier in exchange for:

- 1) the duly endorsed original bill of lading;
- 2) a copy of a sea waybill issued; and
- 3) a duly authorised bank guarantee in the absence of an original bill of lading¹⁷.

Only with this delivery order can the consignee clear his cargo with customs and take delivery of the cargo from the port or terminal or depot or wherever it is stored. Once the delivery order has been issued, the bill of lading maybe considered as duly discharged and accomplished.

As it has been mentioned above, the bill of lading is usually sent to the shipper after the goods have been loaded on board the vessel. After examining the content of the bill of lading, the shipper forwards the original bill of lading to the cargo owner. An original bill of lading properly endorsed is a negotiable instrument carrying the right to demand and have possession of the goods described in it. Provided they have no notice of any other claim to the goods, the agent of the vessel is justified in delivering the goods to the first person who presents the original bill of lading to him. Then the cargo owner or his forwarding agent may, as holder of the bill of lading, present himself to the shipping agent in order to receive necessary information regarding the quay and the time at which the goods will be discharged. Upon arrival of the goods and after payment of the reception and freight costs, the cargo receiver can then present the delivery order to the carrier, whereupon he can collect

¹⁴ *Nippon Yusen Kaisha v. Ramjiban Serowgee*, [1938] A.C. 429.

¹⁵ *Evans v. Nichol*, (1841) 4 Scott's N.R. 43; *Craven v. Ryder*, (1816) 6 Taunt. 433.

¹⁶ *Cowasjee v. Thompson*, (1845) 5 Moo.P.C. 165.

¹⁷ See *Girvin supra* at 59, 61. In this context see *Aegean Sea Traders Corporation v. Repsol Petroleo S.A. and Another (The Aegean Sea)*, [1998] 2 Lloyd's Rep 39 QB; *Bank of Communications Co Ltd v. Universal Shipping Group Inc (The Dolphina)*, [2012] 1 Lloyd's Rep. 304 (H. Ct Sing).

the goods¹⁸.

4.3.4 Consignment Note

A consignment note is a transport document containing the particulars of goods for shipment (consignor, carrier, consignee, weight, condition of goods etc.), prepared by a consignor and countersigned by the carrier as a proof of receipt of consignment for delivery at the destination. This document must stay with the consignment until it reaches the final destination. It is an important piece of evidence in case of loss or damage of goods. It is an alternative to the bill of lading (especially in inland transport), without being either a contract of carriage or a document of title, and therefore, is not a negotiable instrument¹⁹[31].

4. Conclusion

This paper examines the historical, legal and commercial aspects of transport documents. The emphasis is given to the contracts of carriage, charterparty and bill of lading. More specifically the historical origin, roles, and lifecycles of the charterparty and the bill of lading in bulk and liner markets are presented thoroughly. Furthermore, the relationships of these contracts with other transport documents have also been examined from a commercial and legal perspective. Harmonisation between the terms of the charterparty, the bill of lading and the other transport documents is necessary for the smooth carriage of goods by sea and the proper delivery of cargo to the consignee.

References

- [1] Plomaritou, E., and Papadopoulos, A. (2018). *Shipbroking and Chartering Practice* (8th ed.). London: Informa Law from Routledge, Lloyd's Practical Shipping Guides, pp. 187-188.
- [2] Chester B. McLaughlin (1926). "The Evolution of the Ocean Bill of Lading." *The Yale Law Journal* 35 (5): 550-553.
- [3] Zimmermann, R. (1992). *The Law of Obligations. Roman Foundations of the Civilian Tradition*. Jutta & Co Ltd, pp. 408, 411, 515.
- [4] Flower, H. I. (2014). *The Cambridge Companion to the Roman Republic* (2nd ed.). Cambridge University Press, pp. 182-183.
- [5] Casson, L. (1971). *Ships and Seamanship in the Ancient World*. Princeton University Press, 1986, p. 317.
- [6] Reed, C. M. (2003). *Maritime Traders in the Ancient Greek World*. Cambridge University Press, p. 44.
- [7] Mousourakis, G. (2015). *Roman Law and the Origins of the Civil Law Tradition*. Springer, pp. 221-224.
- [8] Ashburner, W. (1909). *The Rhodian Sea-Law: Edited From the Manuscripts*. Clarendon Press.
- [9] Perdiccas, P. (1939). *On History and Outlines of Greek Maritime Law, 25 Transactions of the Grotius Society*. Brit. Inst. Int'l Comp. L., Cambridge University Press, p. 34.
- [10] Geneen, S. (2003). *Operating Leasing in Leasing and Asset Finance: The Comprehensive Guide for Practitioners* (4th ed.). Chris Boobyer edition, Euromoney Books, pp. 335-338.
- [11] Esther Unterweger, El Amarna letter 35: Early trade relations between Egypt and Cyprus (unpublished) Univ. of Southampton, Oct. 21, 2014, last visited June 5, 2019, <http://moocs.southampton.ac.uk/shipwrecks/2014/10/21/early-trade-relations-egypt-cyprus-el-amarna-letter-35>.
- [12] Moran W. (1987). *The Amarna Letters*. John Hopkins University Press, 1992, pp. 107-108.
- [13] Rogers, A., Chuah, J., and Dockray, M. (2016). *Cases and Materials on the Carriage of Goods by Sea* (4th ed.). Routledge, pp. 167-168, 242-243.
- [14] Wilson, J. (2010). *Carriage of Goods by Sea* (7th ed.). Pearson, pp. 6-7.
- [15] Chen Liang (1999). "Benefits and Burdens of Third Parties under Exception Clauses in Bills of Lading." *Tulane Maritime Law Journal* 24 (1): 225-268.
- [16] Todd, P. (2016). *Principles of the Carriage of Goods by Sea*. Informa Law from Routledge, pp. 107-108.
- [17] Eder, B., Bennett, H., Berry, B., Foxton, D., and Smith, C. (2011). *Scrutton on Charterparties and Bills of Lading* (22nd ed.). Sweet & Maxwell, pp. 87-90.
- [18] Treitel, G., and Reynolds, F. (2011). *Carrver on Bills of Lading* (3rd ed.). Sweet & Maxwell, pp. 208-209.
- [19] Baughen, S. (2015). *Shipping Law* (6th ed.). Routledge, pp. 9, 21.
- [20] Zekos, G. (1998). "Negotiable Bills of Lading and their Contractual Role under Greek, United States and English Law." *Managerial Law* 40 (2): 5-24.

¹⁸ Comptoir d'Achat et de Vente Boerenbond Belge SA v. Luis Ridder Limitada (*The Julia*), [1949] 1 All ER 269.

¹⁹ McCarren & Co Ltd v. Humber International Transport Ltd (*The Vechscroon*), [1982] 1 Lloyd's Rep. 301; but see Browner International Ltd v. Monarch Shipping Co Ltd (*The European Enterprise*), [1989] 2 Lloyd's Rep. 185, 188 (where the ratio of "*The Vechscroon*" was not followed).

- [21] Plomaritou, E., and Papadopoulos, A. (2018). *Shipbroking and Chartering Practice* (8th ed.). London: Informa Law from Routledge, Lloyd's Practical Shipping Guides, p. 189.
- [22] Baatz, Y. (2014). *Charterparties in Maritime Law* (3rd ed.). Informa Law from Routledge.
- [23] Cooke, J., Young, T., Ashcroft, M., Taylor, A., Kimball, J., Martowski, D., Lambert, L., and Sturley, M. (2014). *Voyage Charters* Informa Law from Routledge (4th ed.).
- [24] Coghlin, T., Baker, A., Kenny, J., Kimball, J., and Belknap, T. (2014). *Time Charters* (7th ed.). Informa Law from Routledge, p. 715.
- [25] Plomaritou, E., and Nikolaides, E. (2015). "Commercial Risks Arising from Chartering Vessels." *Journal of Shipping & Ocean Engineering* 6 (4): 261-268.
- [26] Plomaritou, E. (2014). A Review of Shipowner's & Charterer's Obligations in Various Types of Charter. *Journal of Shipping & Ocean Engineering* 4 (11-12): 307-321.
- [27] Plomaritou, E., and Voudouris, Y. (2019). "The Relationship of Bill of Lading, Charterparty and Other Transport Documents." *Journal of Economics, Management and Trade* 24 (6): 1-8.
- [28] Carr, I., and Stone, P. (2014). *International Trade Law* (5th ed.). Routledge, p. 36.
- [29] Law, J. (2018). *A Dictionary of Law* (9th ed.). Oxford University Press.
- [30] Goode, R. M. (2010). *Commercial Law* (4th ed.). Penguin Books.
- [31] Wiedenbach, L. (2015). *The Carrier's Liability for Deck Cargo: A Comparative Study on English and Nordic Law with General Remarks for Future Legislation*. Springer, p. 52.