

The Bill of Lading with an Emphasis on the Provisions of International Maritime Law

Iman Zeajeldim¹ and Hamid Reza Parhammehr²

Abstract: As we know, today international trade allocated huge volumes of the world economy. Economic growth in many countries is dependent on exports and sales of commodities in world markets and in this field transport through sea plays a major role. Bill of lading is one of the international marine transportation documents used in the marine transportation business by traders. Marine bill of lading as a written document contract of carriage and have been identified as the realization of the will of the parties during the years as a document containing the terms and obligations of the parties involved in a contract so the profile of the bill of lading specifies the obligations of the parties that will be responsible for carrying with issued marine bill of lading is committed to shipping and delivery of cargo at the port of destination without wane to the holder of the marine bill of lading. The document in the same way that it imposes an obligation on the carrier in charge is also invoked in his favor. To determine the rules governing the marine bill of lading is a significant problem because when goods during transport, is lost in the sea or damaged, necessarily, the responsibility of the carrier in charge or consignor must be determined in accordance with the law of the sea. It is also arguable to see what are the sea bill of lading terms of the nature of the business? In this case in Britain law and existing precedent in the country that accordingly seized possession of the bill of lading and transfer of goods is the transfer of ownership of the goods, if it is the will of the parties.

INTRODUCTION

Documents in international transportation and shipping regulations will help traders in the efficient and effective international business trading system. In this field of maritime transport is very important, in this case in the past, the buyer and seller in the trade have been looking for a solution that will ensure the same buyer with the payment for the goods and the seller will deliver the cargo and the seller will be certain that with delivery, will receive its payment. That's the reason why the cooperation and coordination with banks and transportation institutions and separation of duties between the buyer and seller a document called the marine bill was introduced. With passing time as the best document in international trade has been taken into consideration by those involved in this field of foreign trade that gradually was specifically credited globally. Marine bill of lading indicates this issue Goods has been received by the transporter in charge and even this document is also considered as a reason for the transportation contracts. Therefore, it proves that the goods have been loaded and the recipient of goods has the right of the demand for marine goods listed in the bill of lading after they reach the destination and ask the carrier in charge and also revealed the interest of its holder that goods belongs to him. However, it argued that marine bill of lading being international is subject to the provisions of regularities from one side of what is its nature legally and commercially? In response, it can be said that the maritime transport and maritime bill of rights, Iran maritime law was adopted in 1343, As well as in the international arena the Contracts for the International Transport were adopted on 25 August 1924 Brussels Convention on the part of the synchronizing the rules of Marine Bill of Lading. So far in the years 1968 and 1979 which has undergone only minor amendments no other reforms had been done. And after the Convention was adopted on 31 March 1978 Hamburg Convention

¹ Department of Religious *Jurisprudence* and *Islamic law*, Zabol University, Zabol, Iran

² Department of Private law, Zabol University, Zabol, Iran

*Corresponding author, E-mail: 2223018@gmail.com

and to some extent is the function the provisions of the bill of lading in the international arena and the Convention's provisions. But the nature of the document, bill of lading it can be said that from the French legal perspective, whether the bill of lading is considered to the exact and the legal meaning of the word and whether with endorsing the right of ownership to the buyer with all its advantages occurs or not is questionable. In English law and precedent of this country in the bill of lading, the ownership and transfer of the goods and transferring the ownership of goods seized possession if the will of the parties is accordingly, the course of Iranian law to some extent can be considered close to the precedent in England. In this study, we have tried to take advantage of the library research method and by referring to relevant sources, and examining them for taking notes and the related issues are sketched out in notes, then, they are analyzed and used in this study. This research is descriptive and analytical method. The research on two issues under the provisions of marine bill of lading, marine transportation and the legal nature of commercial has been prepared.

1. Marine Bill of Lading and Regulations Governing the Maritime Transport Agreements

Determining the rules governing the marine bill of lading is a significant issue because when goods during transport, in the sea is lost or damaged, the issue of the responsibility of the carrier or consignor should be necessarily determined according to maritime law.

1.1. Regulation and Rules of the Bill of Lading

During the periods, the laws and rules that govern the contract of carriage transport documents were compiled and adopted which were mostly needed at the global level since the rules were considered fair and balanced in the status division of damage between the owners of goods on the one hand and on the other hand ship owners which are voluntarily included in the contracts. According to Article 10 of the Brussels Convention it is adopted that the Convention is dominant in respect to any transportation contract, provided that it is issued in one of the countries acceding to the Convention. Inclusion of the provisions of this Article is so that all marine transportation bill of lading issued to them are put as the subject to the provisions of the Convention even if the transport is a matter of internal aspects, while the provisions of this Article of the Convention is not found on the Iran Law of the Sea. That's why the fourth chapter Iran law of the sea, is called as maritime transport which is true to any marine bill of lading, irrespective of the country where the bill of lading is issued whether or not that country is a signatory to the Convention or not on the conflict cases it is better to be implemented theregulation of Convention where maritime transport is of international type. (Hashemi, Seyed Ali, based on duty in charge of shipping goods, the provisions of The Hague, Hamburg and regulations and Islamic Law, Research Journal of the University of Imam Sadeq (PBUH), No. 9, 1388, Tehran, p. 57) Also on the bill of lading shipping regulations Islamic Republic of Iran it has been established: Bill of Lading sea transportation contract and all disputes arising out of or in connection with it, including the establishment and the legal effects of an exclusive right under the law of the sea and especially the provisions contained in the Hague stipulated Brussels International Convention of 25 August 1924 to synchronize some of the provisions of the marine Bill of Lading in a way so that the Iran maritime law of 25 January 1965 adopted rule will be implemented and addressing these claims is exclusively in jurisdiction of the courts in Tehran. The emphasis on dominance of the Hague rule in the law of marine Bill of Lading issued by the States Parties to the Convention Although it is common, but is not necessary because according to the Bill of Lading issued in Article 10 of the Convention for the States Parties, it is under this Convention and Article 5 of the Visby law stipulates that all the elimination of the marine Bill of Lading under which the load is carried from country to country and the port of loading, port of discharge or one of the discharge ports in one of the Member States of the convention shall be determined regardless of the law of lading and regardless of the nationality of the ship carrier in charge, consignor or deliverer to the recipient or any other interested party, other conditions of the Convention on the Bill of Lading will apply. (Mohamed zadeh.

Alireza, Convention 1978 in the case of Hamburgsea transport rules, *Journal of Law and Political Science at Tehran University*, Volume 32, 1373, Tehran (p. 278). According to the Convention in 1924 in Brussels, where a set of uniform rules in the Bill of Lading in sea (known as the Hague regulations) have been developed, was amended by the 1968 Brussels protocol. The protocol includes a series of provisions (known as Regulation Visby) and provides improvements made for the Hague Regulations. The preliminary Hague Regulations and its amendments form a set of unified rules known as the Visby Hague. The regulations were basically revised by “the 1978 United Nations Convention on the maritime transport of goods.” The latter Convention “Hamburg Rules” were accepted that a large number of states have already signed Hague regulations and The Hague Visby only refers to that part of the contract which is related to the sea and it covers the time interval between ship loading and unloading of goods. . (Fradrick, David C. « Political participation and legal reform in the international maritime rulemaking process: From Hague to the Hamburg rules», *J. ML. C*, Vol. 22, No. 1, January 1991, pp. 81–117).

2.1. The Sea Bill of Lading or Shipping Contract

Marine transportation contract is the contract between the exporter (consignor) and the owner of the ship (transport operators, transport operators or carriers). Marine Bill of Lading is the document delivery which means exporter of Bill of Lading acknowledges the receipt of the goods with indicated features in the Bill of Lading and declares having to carry all the goods from a specific source to a specific destination that this sense of the Bill of Lading from the literal meaning is somewhat common and it is not too far away. In this respect, the marine Bill of Lading is a document that by the ship or cargo ship or its representative after loading goods is being signed and is delivered to the sender of the goods. Thus, the legal relationship between the consignor of the goods and receiver of goods contained in the Bill of Lading is established. In addition, the document is tradable whose rights (ownership of the goods specified in the Bill of Lading) can be transferred to another person. (Mohammad Zadeh AR, Convention 1978 in Hamburg transport maritime rules, *Journal of Law and Political Science at Tehran University*, Volume 32, 1373, Tehran (p. 260). From the legal perspective and based on international rules, Bill of Lading shipping document is known as binding and indicates the presence of a conventional (formal, customary) of consignor and the carrier of the goods listed in the Bill of Lading, by issuing a Marine Bill of Lading, the carrier shall be committed accordingly to the contents of the Bill of Lading, freight Bill of Lading holder is responsible to take delivery at the destination without wane. As the contents of the Bill of Lading are for the benefit of transport operators it is mutually a confession against him. Because the claim of no delivery or false or wrong of maritime lading issued from operators in charge of transport is not accepted. That's why transportation contract is adjusted according to printed paper that has been prepared before by its transport operators. And in common term it is called for the goods and Bill of Lading and the carrying passengers (travel ticket). Thus, according to this document is considered the most important and credited document in the marine Bill of Lading in international trade. (Hashemi, Syed Alireza, the basis of duty in charge of shipping goods, the provisions of The Hague, Hamburg regulations and Islamic Law, *Journal of the University of Imam Sadeq (PBUH)*, No. 9, 1388, Tehran, p. 65). Also in paragraph 7 of Article 57 of Iran law of the sea: the marine bill of lading document within which the complete features of the cargo is mentioned once the reservation by the commander of the ship or a person designated by him for this purpose to be signed and thereby undertake the responsibility of transport by ship destined to be delivered to the recipient. Marine Bill of Lading or similar documents is the same as receipt of the received cargo. But none of the international conventions provide the complete definition of the marine Bill of Lading, and only Hamburg Convention of a marine Bill of Lading defines itself in article 1 as: Bill of Lading is an evidence to suggest a contract or receipt of goods by sea and by which the carrier is obliged to carry the goods to the recipient of the goods that his name has been inserted in the Bill of Lading or to deliver to the carrier Bill of Lading. Today, most of the marine Bill of Lading is issued in accordance with the provisions of the Hamburg Convention, and in the Bill of Lading endorsement few articles of the above provisions of the Convention are mentioned.

(Mohammad Zadeh AR, 1978 Convention rules on Hamburgmaritime transport, Journal of Tehran University of Law and Political Science, Volume 32, 1373, Tehran (p. 262) In accordance with the above definition the following are the elements of the marine Bill of Lading, which are: **FREIGHT**: pay that the sender pays for the transport of goods to the transport operator in charge.

Ship Rental Contract: If the amount of exported goods is so much that it is required to rent a whole ship, the ship transportation contract conditions should be included in the ship lease document. In most cases, the exporter cargoconstitutes only part of the ship cargo. In this case, the conditions of the transportation contract appear in a document called a Bill of Lading.

Bill of Lading: It is the receipt the owner of the ship gives and thereby confirming that the goods have been delivered to him to carry.

Consignor: May be the seller or based on the sale agreement, is the buyer. It is the Shipping agent (forwarder) or it may be any other person who sends the goods.

Forwarder: It is the person that for the remunerationprovides transporting goods arrangements from one country to another but do not take responsibility for the carriage of goods, but it acts as a professional intermediary between the sender and receiver of goods on the one hand and on the other hand acts as cargo operator.

Receiver: The person to who the goods is sent. This person might be the purchaser or forwarding agent or any other person who acts on behalf of the importer.

Legal Transporter:The person, who has signed a contract with the sender to carry goods, may be theactual carrier itself or do it throughthe shipment by another person. In such a case usually the personresponsible for actions to be taken the omission of actions will be knownas the carriers. TheCarriers who transport the goods may be the ship owner or renter.

2. All kinds of The Bill of Lading of Sea and its Nature

Bill of Lading is the evidence indicating the transportation of goods that the consignor or his agent issues as a receipt of the goods. The following introduces different kinds of lading and its commercial nature

1.2. Types of Bill of Lading

According to the explicit text of the law of the sea (paragraph 7 of Article 52 and paragraph 4 of Article 54) Bill of Lading was the receipt or proof of delivery of goods,according to Paragraph 3 of Article 54 of the Law of Sea, after receiving the goods and acceptance of responsibility for cargo by theperson in charge of transportation, freight operatorhas the right to demand the issuance of Bill of Lading. And cargo operators have been forced to accept his request and to issue a Bill of Lading. (Hashemi, SeyedAlireza, the basisof charge of shipping goods, the provisions of The Hagueand Hamburg regulations and Islamic Law, Journal of the University of Imam Sadeq (PBUH), No. 9, 1388, Tehran, p. 89) In accordance with Article 61Sea Bill of Lading or carrier like a checkmay be issued a certain personname or carrier or draft. If the Bill of Lading issued in the name of the carrier,the transportation operator delivers the goods to the bringer of the Bill of Lading, and if it is issued in the name of a specific person or draft, then the above-mentioned persons may transfer it to another person by endorsement. Therefore,the MasebMarine Bill of Lading is proof of ownership or document seized goods. If the original version isprovidedfor the commander of the ship after the complete identification and address and the position of the transferee all goods are delivered to the holder of the Bill of Lading. Types of Bill of Lading are presented in the following paragraphs.

A- Bill of Lading of the goods loaded on a ship: the Bill of Lading is a document issuedafter receivinggoods on board the ship. This is the most reliable Bill of Lading from the perspective of the

importer and the bank involved in the transaction, because it shows the date and the time in which the ship was sent.

B- The Bill of Lading of the goods received to carry: This kind of bill of Lading only emphasized that the person in charge of transportation received the goods to carry but it does not indicate the transportation of the cargo for sure.

C- One way- Bill of Lading: This kind of document is issued when the goods received different methods to carry this cargo. When the transportation institution issues one-way- Bill of Lading is responsible to carry all the way in the route and other institutions involved in carrying the goods often bearing with the operator issuing the bill of lading have secondary contracts and are not considered their partners.

D- Group Bill of Lading (Groupage B / L): forwarders are authorized to categorize the cargo in groups the similar goods that from different vendors are sent to the same destination as a package submit as a cargo to consign. In this case, the ship owner is required to issue a group Bill of Lading. Since forwarder cannot give the Bill of lading issued by the ship owner to each of goods vendors so he tends to issue transportation certification for each of its goods retailers, this document called **House Bill of Lading** or internal Bill of Lading and at the destination the representative of forwarder takes action to open the group cargo and based on the domestic Bill of Lading, delivers the sent cargo to recipients. The advantages of this method is to save shipping costs, packaging, less insurance costs, often faster transmission, less risk of theft or larceny, less damage to goods, the rate of transport costs in comparison with the separate transport of goods is cheaper. It is noted that the above-mentioned Bill of Lading are non-negotiable and cannot be transferred.

E- The Bill of Lading or white back (Short Form B / L): On the back of bill of lading a lot of small print has been inserted in the traditional marine Bill of Lading that causes the complexity of the transaction on this Bill of Lading. In 1979, the Board of simplifying international trade procedures issued a new form Bill of Lading or white back (**Short Form B / L**) considering the legal and practical conditions is identical to the traditional Bill of Lading, and it is just simpler and it can be used for any shipping company. In the early 1970s, a similar plan in other countries such as Canada, the US and Scandinavia was used that in regard to the legal and practical showed up its usability. The white back Bill of Lading is negotiable Bill of Lading and in this respect is no different from the usual Bill of Lading. Only instead of detailed and fine conditions set forth on the back of the traditional Bill of Lading, only the standard few words line is printed on the Bill of Lading Bill of Lading indicating the condition, according to the uniform regulations under Article 25 and letters of credit in International Chamber of Commerce Publication No. 400 or the white back (**Short Form B / L**) is accepted by banks Bill of Lading unless in the validity paper other conditions are set down.

F- Regular Bill of Lading or trajectory liner (Liner B / L): This Bill of Lading issued by the shipping companies that are traveling on regular routes. In other words, the ships under preset programs enter or leave at specified times to certain ports. Shipping lines that have regular service routes and destinations are the same, may form a conference that in such conferences on issues such as arrangements and conditions of Bill of Lading, freight and mooring facilities, agreements may take place among members who are required to observe it.

G- Non Negotiable Bill of Lading (Non Negotiable Sea Way B / L): non-negotiable Bill of Lading is the Bill of Lading that is not proof of ownership of goods and is not transferable. Cargos of these types of programs in the Bill of Lading are to be delivered only to the person who is the recipient of the goods and since negotiable sea Bill of Lading due to several ownership has been in several interactions to get to its ultimate owner and because the process is long and slow, so some shipping companies to avoid the long history developed non-negotiable Bill of Lading and used it.

Also according to the law of Bill of Lading for the recipient and the person for who the endorsement is written with his name has been given the rights and obligations that include:

A - The recipient of goods or Bill of Lading or the person for who the bill of lading is endorsed with his name, has the right to take delivery of goods at the port of destination in accord with the terms contained in the Bill of Lading from the carrier. In case of any failure, he can carry on litigation against the transportation operator and require the damage caused by intentional or negligent acts of the carriers to the goods.

(B) - Basically, the recipient of goods are not liable in principle to pay rent unless the rent the condition for the payment is indicated in the Bill of Lading providing that the receiver is responsible for thereof. (Sweeney, Joseph C. , "The Rules of Hamburg: the Point of View of an Anglo - Saxon Jurist ", DMF, June 1979, pp. 323-335)

2.2. The Legal Nature of Bill of Lading

Bill of Lading may be issued as Negotiable or non-negotiable. The marine transportation with the negotiable Bill of Lading accelerates business and regarding this draws the attention of buyers, insurers, banks and the holder of the document. However, in the case of tradable and non-tradable lading issued in the form of a Bill of Lading, and whether to endorse the bill of lading the concept of real property transmission takes place or not, the legal discussion is very detailed. However, from the viewpoint of French lawyers to issue a negotiable Bill of Lading there is no legal barrier, and whether the Bill of Lading is considered as the legal title of ownership of the goods to the exact meaning of the word and whether to endorse the right of ownership to the buyer occurs with all the advantages is questionable and subject of debate. In this regard, the view of prominent French jurist worthy of mention is Professor Depentavis. He believes that (there is no possibility of issuing a document that can be used to replace the goods, as in this case, the issue is not the determination but the issue of possession and the right at sight is raised. Exercising of the right of ownership of the property is done with material hegemony, a right embodied in a document will not be actualized and the right in possession of a document is not the actual possession of merchandise. Bill of Lading transmission through the endorsement is not thereal property transmission of goods in the view of the French master Bill of Lading is not the ownership document of goods. (Mohammad Zadeh, Alireza, 1978 Convention rules on Hamburg maritime transport, Journal of Law and Political Science at Tehran University, Volume 32, 1373, Tehran (p. 254). In this case, the English lawyers have other statements, and states that if banks accept the Bill of Lading as negotiable documents, in that case business norm is to show the ability to transfer the document. Bill of Lading possession and transfer of goods possession from the perspective of English judges is the transfer of the ownership of goods if the two sides will be determined to do so.) Fredrick, David C. , « Political participation and legal reform in the international maritime rulemaking process: From Hague to the Hamburg rules», J. ML. C, Vol. 22, No. 1, January 1991, pp. 81–117).

Iran's internal rules of the law, there is no prohibition or administration of the issuance of a transferable Bill of Lading. Only Article 61 of the Maritime Act of 1343 stipulates that the sea Bill of Lading: (Sea Bill of Lading may be issued like a certain check with a person's name or bearer or money orders.) It seems that the purpose of the legislation of the marine Bill of Lading shall be the possibility to issue checks in the name of a specific person, the holder or draft be achieved or given the right to transfer ownership of the marine Bill of Lading endorsed is like common approach business documents (checks and promissory notes and bills of exchange). The common business practice also confirms this view.

CONCLUSIONS

In the case of maritime transport and maritime Bill of Lading of rights in Iran, maritime law was adopted in 1343 and also in the international arena on Contracts for the International Transport on 25 August 1924 Brussels Convention on the synchronization of some rules Marine Bill of Lading was adopted that so far in

1968 and 1979, except for minor amendments have not been affected by other reforms and after the Convention was adopted on 31 March 1978 Hamburg Convention and partly is subject to the Bill of Lading in the international regulations and conventions in regard to these provisions, in accordance with paragraph 7 of Article 57 of the Iran law of the sea: marine Bill of Lading is a document that include the complete features of the cargo mentioned and by the commander of the vessel or a person designated by him it to be signed for this purpose and thereby undertake transport charge by ship destined to be delivered to the recipient. Marine Bill of Lading or similar documents is the receipt of the received cargo. Also the Hamburg Convention has defined the marine Bill of Lading in Article 1: Bill of Lading is the evidence that suggests a contract of marine transportation taking sea freight carrier in which the carrier is obliged to deliver shipping goods to the recipient that his name has been inserted in the Bill of Lading or Bill of Lading carrier. Today most of the marine Bill of Lading issued in accordance with the provisions of the Hamburg Convention will be issued and in the back of the Bill of Lading making some of the provisions of the Convention shall be mentioned. So in maritime law the Marine Bill of Lading can be defined as: the Bill of Lading is a document, that from the owner of the ship with mentioning the number and quality of cargo is prepared and arranged and accordingly the loading will take place based on which the three versions of the Bill of Lading must be drafted and issued. Bill of Lading was as a negotiable document accelerates business, in this respect, draws the attention of the buyer, insurer, bank and holder of the document, in French law the Bill of Lading is not the ownership document of the goods. However, the transporter is prohibited of the delivery document to a person other than the holder. Of course the French lawyers have suggested that if banks accept the Bill of Lading as negotiable documents, in that case, the common norm of business supports the ability to transfer the document, and in the legal procedure of the possession of the Bill of Lading and transfer of goods is the transfer of the ownership of goods, if the will of the parties is on this basis, and in the Iran domestic law of Article 61 of the law approved in 1343 for marine Bill of Lading provides: (Marine Bill of Lading may be issued like a check with a person's name or holder or money draft.) And it can be concluded that the legislature's intention of mentioning the possibility of issuing the marine Bill of Lading in form of checks in the name of a specific person or the holder or draft will be achieved, given the right to transfer the ownership by endorsement of the marine Bill of Lading is like common approach in business documents (checks and promissory notes and bills of exchange). The common business practice also confirms this view.

References

- [1] Contract of Carriage by Sea / contract of affreightment.
- [2] Frederick, David C., (1991), "Political Participation and Legal Reform in the International Maritime Rulemaking Process: From Hamburg to the Hague Rules". *J. ML. C*, Vol. 22, No. 1, January, pp. 81–117.
- [3] Hashemi, S. A. R., (1373), *The Basis of Charge of Shipping Goods: The Provisions of The Hague, Hamburg Regulations and Islamic law*. Tehran: Research Journal of Imam Sadiq University Journal (PBUH), No. 9.
- [4] Mohammad Zadeh, A. R., (1373), *1978 Hamburg Convention Rules on Maritime Transport*. Tehran: Journal of Law and Political Science at Tehran University, Volume 32, (254, 281).
- [5] Mozayeni, M. & Mahajer Tehrani, M. H., (1367), *International Banking*. Tehran: Banking Center of the Central Bank of the Islamic Republic of Iran, Volume 2.
- [6] Sweeney, Joseph C., (1979), "The Rules of Hamburg: The Point of View of an Anglo - Saxon jurist", *DMF*, June, pp. 323-335.
- [7] Taleqani, M. A., (1373), *Law dictionary Latin - Persian*. Yalda Publication.
- [8] Taromsary, M., (1383), *International Trade Law*. Tehran: Institute for Trade Studies and Research.
- [9] Marine Act of 1343 adopted: the sender (shipper / consignee) is a person who is in charge of cargo transportation contract planning the delivery of the bill of lading and delivers cargo to the ship to carry (Paragraph 5 of Article 52).

