

International Business Transactions

Bills of Lading and Carriers' Responsibilities

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Relevant Laws Covering Carriers, Contracts of Carriage and BOLs

International Conventions:

- **Hague Rules (1924)**
 - in effect in most shipping countries
 - Only apply to outbound shipments only. A nation's laws are to apply to BOL written within the country, not to BOLs written in a foreign country (from which shipments are coming).
- **Hague/Visby Rules (1968)**
 - Visby are amendments to the 1924 Hague Rules
 - in effect in most shipping countries
- **Hamburg Rules (1978)**
 - in effect in about 32 countries but not yet in force.

US Federal Statutes:

- **Harter Act (1893)**
 - pre-COGSA and non-conforming to the international treaties
 - Applies to inbound *and* outbound shipments.
- **Federal Bill of Lading Act** (aka "Pomerene Act") (1916, consolidated in 1994)
- **Carriage of Goods by Sea Act ("COGSA") (1936)**
 - enacted the Hague Rules in the US
 - Applies to outbound *and* inbound shipments, even though the Hague Rules were supposed to apply only to outbound shipments. So shipments to the US from a Hague(/Visby) country may be subject to two mandatory rules, the rules of the originating country and those of the US. But US courts must apply the COGSA in these cases.

Other US laws:

- **Uniform Commercial Code, Article 7.**

Federal Bills of Lading Act

(a.k.a. “Pomerene Act”)

Section 80110. Duty to deliver goods

(a) “... the carrier *must* deliver goods covered by a bill of lading on demand of... the holder of a negotiable bill... when the... holder:

- satisf[ies] [any] lien of the carrier,
- has possession of the bill and... offers to indorse and give the bill to the carrier; and
- agrees to sign... a receipt for delivery.”

Federal Bills of Lading Act

Section 80110. Duty to deliver goods

(b) “... a common carrier *may* deliver the goods covered by a bill of lading to--

(1) a person entitled to their possession;

...or

(3) a person in possession of a negotiable bill if—

... (B) the bill has been indorsed to that person... by the consignee or another indorsee.”

Federal Bills of Lading Act

Section 80111. Liability for delivery of goods

“(a) A common carrier is liable for damages to a person having title to, or right to possession of, good when –

(1) the carrier delivers the goods to a person not entitled to their possession unless the delivery is authorized under section 80110(b)(2) or (3) of this title....”

Federal Bills of Lading Act

Section 80113. Liability...

“... The carrier is liable... to the holder of goods transported under.... a negotiable bill if the holder gave value in good faith relying on the description of the goods in the bill...”

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Section 7-502. Rights Acquired by Due Negotiation

“(1)... a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

- (a) title to the document;
- (b) title to the goods;
- (c) ... rights to the goods...; and
- (d) the direct obligation of the issuer [of the BOL] to hold or deliver the goods....free of any defense or claim by him.

(2)... title and rights so acquired are... not impaired....even though any person has been deprived of possession of the document by... theft...”

Some Harter Act (1893) Provisions

The Harter Act contains, among other things, stipulations voiding non-responsibility clauses addressing:

- (i) any “loss or damage arising from negligence, fault, or failure in proper loading stowage, custody, care or proper delivery of any and all lawful merchandise or property committed to its charge;” and
- (ii) a carrier’s obligation “to carefully handle and stow her cargo and to care for and properly deliver [the cargo] . Carriers cannot disclaim liability. 46 USC 190, 191)

There are also some provisions in the Harter Act regarding the form and content of a BOL

Some COGSA Provisions

- Carrier must state marks, quantity, apparent condition and weight on BOL. Therefore, the carrier must inspect the goods upon receiving them – *§1303(3)*.
- Need only be a reasonable inspection, but must be a reasonable (non-lax) inspection. Carrier need not be an expert or employ experts for this purpose. (Common interpretation of *§1303(3)*)

Some COGSA Provisions

- However, the COGSA (following the Hague Rules lead) limited carrier liability to \$500 per package, unless the shipper makes a declaration in the BOL as to “the nature and value” of the goods before shipment. (If so declared, the shipper would have to pay more – according to the value.) (§1304(5))
- Actual text: “Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding \$500 per package... or in the case of goods not shipped in packages, per customary freight unit...” (§1304(5))
- Shippers have to be given a “fair opportunity” to declare the true value (though this requirement is not found in COGSA itself).
- This limit was established in 1936 and hasn’t changed. Since \$500 in 1936 money is worth considerable more than \$500 today (b/c of inflation), courts have become increasingly reluctant to enforce this limitation.

Takeaways

1. The goal of the BOL system is to best ensure that (i) carriers deliver goods to those who have the right to possess the goods and (ii) in cases where it is contemplated that the goods could be sold while in transit, the description of the goods in the BOL is accurate (so third party buyers can have faith in BOLs).
2. Even more basically, the goal of the system is to encourage and facilitate commercial transactions and trade.
3. Delivery of goods to one who has possession of a negotiable BOL may – or may not – protect the carrier for any liability for misdelivery.
4. US law come from many sources, many provisions of which may overlap or be contradictory.
5. Traditionally, carriers are strictly liable for the description in the BOL, unless this contract term is expressly disclaimed by an exculpatory clause. But it may be that standard of reasonableness mitigates the traditional strict liability (e.g., it may be argued that carriers are held to stricter standards of quantity measurements (e.g. weight and count), as opposed to quality measurements (e.g. “El Cids”)).
6. Carrier must make a reasonable inspection of the goods, but no more. And risk liability if they do not.
7. Carriers don’t necessarily know what they are carrying and don’t want to know – but to decrease their exposure to liability for misdescription on the BOL, at least under US law, they may have to make very specific declarations.
8. Ultimately, in any particular context, what the carrier is responsible for may turn on (i) what “load” means, and who did the “loading” and (ii) what is reasonable for the carrier to know upon a “reasonable” inspection.
9. In buying and selling sales documents (e.g. BOLs) bank *may* be treated differently from merchants who are in the business of buying and selling the underlying merchandise.