

**INTERNATIONAL JOURNAL OF LAW  
MANAGEMENT & HUMANITIES**  
**[ISSN 2581-5369]**

---

**Volume 3 | Issue 6**

---

**2020**

© 2020 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

---

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at [editor.ijlmh@gmail.com](mailto:editor.ijlmh@gmail.com).

---

# Ambiguous Status of Electronic Bill of Lading in the Era of Digitalization: An Overview

---

MEETALI B. SHAMBHARKAR<sup>1</sup>

## ABSTRACT

*International trade becomes inevitable when the countries want to spread their own markets. In international trade, a major role is played by maritime transport. A large part of trade at international level is carried via sea. In international trade as both parties are situated in different countries, the process is completed with help of a middleman, called as 'carrier'. This could lead to emergence of various queries such as, at which place and to whom the goods are to be delivered by him etc. The answer to these queries lies in an important document used in international trade when it is carried out through sea route, that is, "Bill of Lading". As time went by improvements in technology took place, which led to evolution of 'Electronic bill of lading'. The article aims to highlight the meaning and functions of bill of lading. The article further focuses on the emergence of bill of lading and its ambiguous position in this era of digitalization.*

## I. INTRODUCTION

One of the most essential shipping documents in international trade is Bill of lading.<sup>2</sup> It is a legal document which is issued by a middleman also called as carrier to the seller, also called as shipper or to his agent. It contains all the important information relating to the goods traded such as its quantity, type and the place and person to whom the goods are to be delivered.<sup>3</sup> Almost 85% of world's international trade is carried by way of seas and oceans.<sup>4</sup>

With emergence of Electronic Data Interchange and its advantages, efforts were made to convert Bill of lading to Electronic Bill of lading. But this conversion of paper to electronic bill of lading led to various issues due to its ambiguousness, due to which it is difficult for trading parties to accept it as a document.<sup>5</sup> Thus, it becomes important to study the concept in

---

<sup>1</sup> LL. B (Gold Medalist) Nagpur University, LL.M in Corporate and Commercial Law.

<sup>2</sup> Ben Thompson, *Bill of lading meaning and types used in Global trade*, INCO DOCS (Sept. 9, 2018), <https://incodocs.com/blog/bill-of-lading-in-international-trade-shippers/>.

<sup>3</sup> Duygu Oner, *Turkey: The Relation between Contract of Carriage by Sea and Bill of Lading*, MONDAQ (Sept. 27, 2019), <https://www.mondaq.com/turkey/contracts-and-commercial-law/849028/the-relation-between-contract-of-carriage-by-sea-and-bill-of-lading>.

<sup>4</sup> 1 DONG WOOK SONG & PHOTIS PANAYIDES, *MARITIME LOGISTICS: A COMPLETE GUIDE TO EFFECTIVE SHIPPING AND PORT MANAGEMENT*, 23 (1<sup>st</sup> Ed. 2012).

<sup>5</sup> Marek Dubovec, *The Problems and Possibilities for Using Electronic Bills of Lading as Collateral*, 2 ARIZ. J.

detail.

## II. BILL OF LADING

‘Bill’ means a statement in written or printed form which states and show the cost for goods or services to be paid and ‘lading’ denotes the action of loading the goods. Thus, Bill of lading is a document issued by the carrier to the seller which acts as a record of the goods traded. It also evidences the fact that a sales contract has been entered between both mentioned.<sup>6</sup>

The bill of lading also becomes important as it enlists within itself all the details of the goods to be traded with their destination where they are to be reached.<sup>7</sup>

## III. OPERATION OF BILL OF LADING

For example, there is a seller and a buyer who want to sell and buy goods. So first, the seller and buyer will enter into a Sales contract. The buyer will issue Letters of Credit to seller. Once the buyer sends Letters of credit to the seller, the seller sends goods through his shipping agent to the port of seller’s country. But before this there is certain documentation process done by Shipping agent of seller. The seller’s Shipping Agent issues two sets of documents. One is original bill of lading which is signed and the other is copy of the original. The original bill of lading is signed by Master of ship and is given back to shipper’s shipping agent. It indicates that Master is saying that whatever cargo was there it has been loaded and its receipt has been given.

Once the sellers shipping agent receives original Bill of lading signed by Master, the goods will be shipped to port of the buyer. In meanwhile the seller’s shipping agent will forward the Bill of lading to the Seller and seller will forward to buyer. The buyer will give Original Bill of lading to his shipping agent. Then buyers shipping agent will after be receiving original bill of lading will issue Delivery order and will collect the goods from port and deliver it to the buyer.

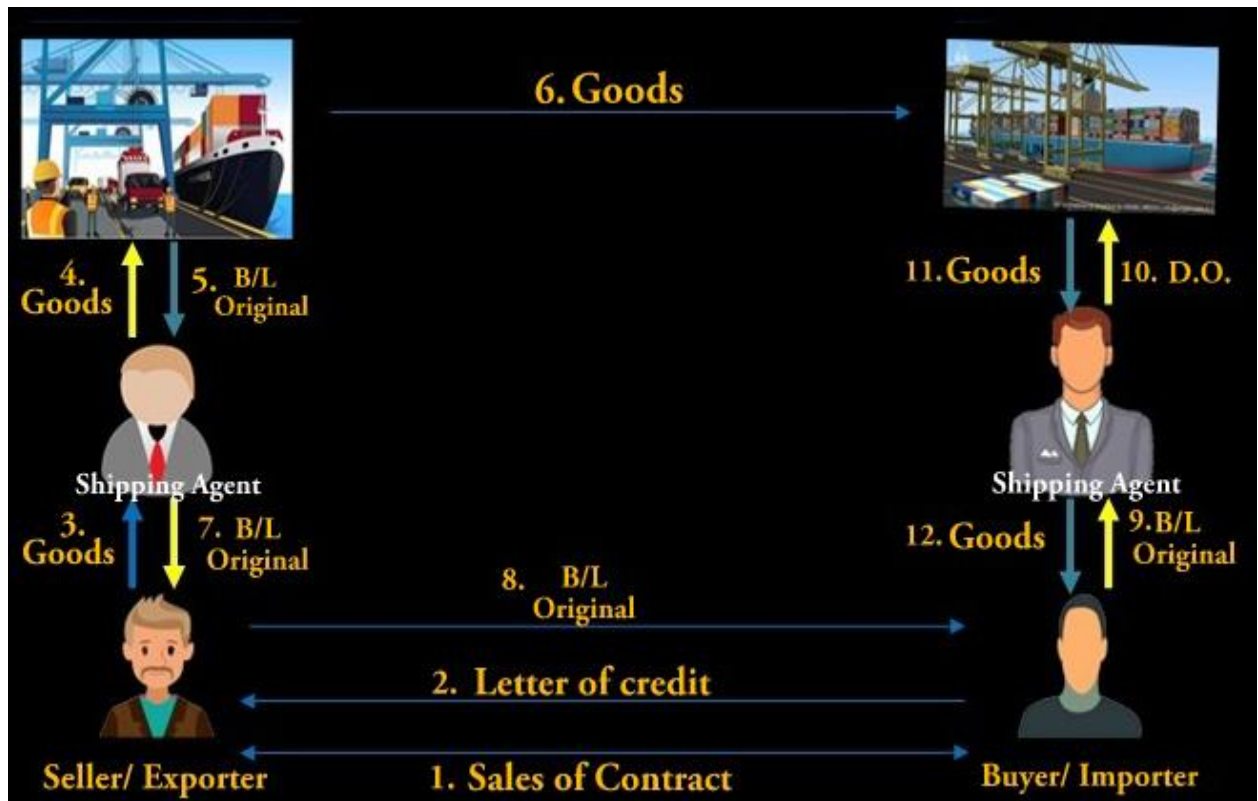
The payment is decided based on Incoterms which are defined by International Chamber of Commerce. It is necessary for the buyer to surrender the original Bill of lading for delivery of goods.

---

Int’l & Comp. L. 437, 437-38 (2006).

<sup>6</sup> Raunek, *Bill of Lading in Shipping: Importance, Purpose and Types*, THE MARITIME INDUSTRY GUIDE (July 9, 2020), <https://www.marineinsight.com/maritime-law/what-is-bill-of-lading-in-shipping/>.

<sup>7</sup> Evan Tarver, *Bill of Lading*, INVESTOPEDIA (January 28, 2020), <https://www.investopedia.com/terms/b/billoflading.asp>.



**Diagrammatic Representation of Operation of Bill of Lading**

#### IV. FUNCTIONS OF BILL OF LADING

Bill of lading performs three important functions, which are as follows: -

##### 1) Receipt of goods

As soon as the carrier receives the goods which are to be traded, he issues and signs bill of lading at the request of shipper. This bill of lading is provided to shipping agent of the seller. This issuance of bill of lading by carrier to seller's shipping agent acts as a 'receipt' and acknowledges the fact that all goods which are to be exported are loaded on the ship.<sup>8</sup>

Among other things, here the bill of lading when it is issued to the shipping agent of the shipper by the carrier it must also indicate in writing about the condition, quality and volume of goods.

It is important for the carrier to make these representations in bill of lading. If these are made fraudulently in deceitful manner or with negligence, any third party who suffers loss by keeping faith on such representations can take an action of tort against the carrier. The person holding the bill of lading could show that the goods were dispatched in different volume or

<sup>8</sup> Will Kenton, *Through Bill of Lading*, INVESTOPEDIA (June 26, 2019), <https://www.investopedia.com/terms/t/throughbilloflading.asp>.

condition than what is stated in bill. This would prove the fact that damage to the goods have been occurred when they were in carrier's custody.<sup>9</sup>

## **2) Evidence of Contract**

It is falsely believed that bill of lading is proof of existing sales contract between shipper (seller) and buyer. But in reality, the bill of lading acts as an EVIDENCE that there exists a carriage contract between the carrier and shipper to carry out the transportation as per the sales contract.<sup>10</sup>

## **3) Document of Title**

One of the important functions of Bill of lading is that, it also serves as a document of title. The person possessing the bill of lading has the right to collect the goods from carrier. The carrier could only deliver the goods to the person who possesses the bill. The person having possession of bill of lading only has the right to get the possession of goods from the port.<sup>11</sup>

# **V. DISADVANTAGES OF PAPER BILL OF LADING AND EVOLUTION OF ELECTRONIC BILL OF LADING**

## **1) Slow process**

The process of paper-based bill of lading could be considered as very slow, as the bill of lading is to be physically transferred from one person and place to another. This makes the whole process of international trade slow as it takes a very long duration of time for the bills to be transferred. Speed is the need of hour, and this slowness observed in the paper bill of lading can lead to even more concerns as it is not able to keep pace with time.<sup>12</sup>

## **2) Increased cost**

These hours of travel of Bill of lading can also increase the freight charges resulting into increased cost. Moreover, printing paper documents is more costly and therefore would again increase the cost.

## **3) Fraud**

Fraud is another problem associated with such bills as these bills could also be made fraudulently and delivered. Delivery of such fraudulently bill can mistakenly make the carrier

---

<sup>9</sup> Zeina Wakim, *Bills of Lading: Nature and Functions*, MONDAQ (May 24, 2018), <https://www.mondaq.com/marine-shipping/704366/bills-of-lading-nature-and-functions>.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> Kamal Alawamleh, *Traditional Bill of lading v. Electronic Bill of lading: Pros and Cons and the way forward*, 3 IJMAS. 87, 87-88 (2017).

responsible for the losses.<sup>13</sup>

## VI. ELECTRONIC BILL OF LADING

Information and Communication Technology has greatly affected lives of people. As the concept of Electronic Data Interchange came, it became possible to transmit data electronically. It helped in replacing the documents in paper form to electronic form. Thus, transport documents can now also be transferred electronically.<sup>14</sup>

Moreover, the disadvantages associated with bill of lading as stated above, made it more necessary to find a solution for paper-based bill of lading. Rapid acceleration in the trading activities further made it necessary for quick movement of goods around the world.

Electronic Bill of lading is the legal and functional equivalent to the traditional paper-based bill of lading.<sup>15</sup>

It is necessary for electronic bill of lading to perform all three functions of paper-based bill of lading as stated above. Thus, it must be able to perform the function of being legally accepted as a receipt and as an evidence of sales contract and also of document of title.

If the electronic bill of lading is able to perform these functions then only it could be called as a legal and functional equivalent to the traditional bill of lading.<sup>16</sup>

## VII. GLOBAL GOVERNING LAW FOR ELECTRONIC BILL OF LADING

### 1) UNCITRAL Model Law on Electronic Commerce

The Model Law was adopted by the United Nation in 1996. This was adopted in order to be seen as a model by countries in order to unify their laws on international trade and to include and provide recognition to the use of modern technology in business. The Model law is to be considered by the countries when they make their law on electronic commerce.<sup>17</sup>

Based on this Model law, twenty countries made legislation for their respective jurisdictions. In these twenty countries, India was also present.

---

<sup>13</sup> *Ibid.*

<sup>14</sup> Issane Kamlang, *On the Government of Electronic Bills of lading: An appraisal*, UNIVERSITY OF OSLO (Sept.4, 2008), <https://www.duo.uio.no/bitstream/handle/10852/22836/ISSANEE%20KAMLANG%20ON%20THE%20GOVERNMENT%20OF%20ELECTRONIC%20BILLS%20OF%20LADING%20AN%20APPRAISAL.pdf?sequence=2&isAllowed=y>.

<sup>15</sup> Florian Kuester, *Electronic Bill of lading-How is paperless trade possible?*, COMBINED TRANSPORT MAGAZINE (Feb. 9, 2017), <https://combined-transport.eu/electronic-bill-of-lading>.

<sup>16</sup> *Ibid.*

<sup>17</sup> Oluwaseun O. Ajaja, *Electronic Bill of Lading: An easier way to sea carriage*, SSRN. 2, 8 (2015).

## VIII. RULES AND SYSTEMS GOVERNING ELECTRONIC BILL OF LADING

### 1) SEADOCS

The first ever system created for governing Electronic Bill of lading was SEADOCS. It used a Central registry where the bill of lading in the paper form were given. The registry was managed by Chase Manhattan Bank. All the parties to the transaction had the opportunity to communicate through the stated bank. However, it was not a fully automated system.

#### Shortcomings

The traders were not willing to use this system as they did not want to record transactions in the registry as due to this, they would be later under inspection of tax authorities. Moreover, the banks were uncomfortable with the system as the only access to the registry was with the one, who is their competitor. The liability of the participants was also not established. Apart from the original shipper, there was no provision to transfer the rights as well as liabilities to any transferees of the bill.<sup>18</sup>

### 2) CMI Rules for electronic Bill of lading

The Committee Maritime International (CMI) Rules for electronic bill of lading was being adopted in 1990.

The main aim of this rule was to establish a mechanism where this traditional paper-based of lading would be reinstated with its electronic equivalent, that is, electronic bill of lading. These rules do not require substitution of any provision in the national legislation of the country. The advantage of these rules could be taken by the parties if they incorporate it in their contract. It is necessary for the parties to first agree upon these rules being used in their contract.<sup>19</sup>

When the goods are delivered by the shipper to the carrier, the carrier issues a receipt which is in the form of electronic message sent to the shipper's electronic address. This message would describe details of goods such as its volume, condition etc.

Along with this receipt message, a private key is also issued by the carrier to the shipper. The person holding this private key is the person who has the power to claim the delivery of goods. He also has the power to transfer it to another party. The party finally holding the

---

<sup>18</sup> *Ibid.*

<sup>19</sup> Kriti Lohar, *Critical Analyse of the Advantages and Disadvantages of Traditional Bill of Lading and Electronic Bill of Lading and the necessity and the possibility of wide introduction of the Electronic Bill of Lading*, ACADEMIA, [https://www.academia.edu/14344981/Critical\\_analyse\\_of\\_the\\_advantages\\_and\\_disadvantages\\_of\\_traditional\\_Bill\\_of\\_Lading\\_and\\_Electronic\\_Bill\\_of\\_Lading\\_and\\_the\\_necessity\\_and\\_the\\_possibility\\_of\\_wide\\_introduction\\_of\\_the\\_Electronic\\_Bill\\_of\\_Lading](https://www.academia.edu/14344981/Critical_analyse_of_the_advantages_and_disadvantages_of_traditional_Bill_of_Lading_and_Electronic_Bill_of_Lading_and_the_necessity_and_the_possibility_of_wide_introduction_of_the_Electronic_Bill_of_Lading).

private key informs the carrier about this and the carrier then confirms it. After confirming the carrier provides him with a new key and cancels the old one.<sup>20</sup>

### **Shortcomings**

Excessive responsibilities are placed by these rules on carrier. Moreover, there is lack of clear liability which would be on the carrier. Therefore, the carriers are reluctant to take so much responsibilities on them. Moreover, the rules are silent over the allocation of liability if breakdown in the system takes place.<sup>21</sup>

### **3) BOLERO (Bill of lading Electronic Registry Organization)**

One of the fresh attempts to replicate the bill of lading in electronic form is BOLERO. Electronic messages are used in it to replicate the functions of negotiable bill of lading. Process of Title Registry is used by the system along with a messaging platform known as Bolero exchange. Thus, as when any message is sent on the system, it is first digitally signed before sending it to the recipient.<sup>22</sup>

### **Shortcomings**

It was criticized by many for being a closed network. It does not provide a satisfactory definition for Bolero Bill of lading as per the Maritime and other relevant conventions. The system takes a very limited liability upon itself in case of failure of the system or in case of breach of contract.<sup>23</sup>

## **IX. AMBIGUOUS STATUS OF ELECTRONIC BILL OF LADING IN THE ERA OF DIGITALIZATION**

The arrival of electronic bill of lading brought new transformation in shipping documents. But it is not as easy as it seems. It was thought that electronic form would provide solutions to disadvantages of traditional bill of lading. But at the same time, it also created ambiguities regarding its status in electronic form.

First uncertainty in electronic bill of lading lies in its ambiguous and unclear legal status. When question arises regarding admissibility of electronic evidence in the proceedings of court, the position of all countries is different. There are some countries which do not consider the electronic evidence as admissible in the court proceedings or give very less

---

<sup>20</sup> Sanelisiwe Ngcobo, *A Comparative study of The Paper and Electronic Bill of Lading under South African Law*, UNIVERSITY OF KWAZULU-NATAL (Oct. 16, 2017), [https://researchspace.ukzn.ac.za/bitstream/handle/10413/16141/Ngcobo\\_Sanelisiwe\\_2017.pdf?sequence=1&isAllowed=y](https://researchspace.ukzn.ac.za/bitstream/handle/10413/16141/Ngcobo_Sanelisiwe_2017.pdf?sequence=1&isAllowed=y).

<sup>21</sup> Oluwaseun O. Ajaja, *Electronic Bill of Lading: An easier way to sea carriage*, SSRN. 2, 14 (2015).

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*



weightage to it. In such circumstances, the countries which do not give much weightage to the electronic evidences in court proceedings, the admissibility of bill of lading generated electronically remains unclear.

Moreover, there are many countries which allow the contracts to be made and signed in electronic form. But there are very few countries who have specific law which supports use of electronic bill of lading. USA is one among them. Thus, uncertainty in legal status of electronic bill is a drawback.

For an electronic bill of lading to become effective in legal and commercial way, it is necessary that it is secure.

But when the bill exists in electronic form, threats like hacking and system's breakdown remains common.

Here another uncertainty arises regarding who will bear the losses caused to third party if system breaks down<sup>24</sup> or is hacked.<sup>25</sup>

The legal regime governing these electronic bills are also quite ambiguous, which leads to untrust among maritime industry.<sup>26</sup>

Next uncertainty in electronic bill is whether it can be used as document of title. Paper-based bill of lading is tangible and hence was considered as document of title. But electronic bill being intangible in form creates uncertainty in its usage as document of title.<sup>27</sup>

Another ambiguity lies in using electronic bill as collateral. When the document of title is in a physical form, it establishes a direct link between the rights of the creditor and his collateral. But when the document is in an electronic form, it is not clear that how this link would be preserved. Thus, another uncertainty in electronic bill is regarding its usage as collateral.<sup>28</sup>

## X. CONCLUSION AND SUGGESTIONS

In the era of digitalization, emergence of electronic bill of lading was essential. But due to various above stated existing ambiguities, its position in this digitalized era remains to be vague. It is high time that countries should take efforts to develop a suitable environment for

---

<sup>24</sup> Ibrahim Senegal, *Electronic Bills of lading: Implications and benefits for maritime transport in Senegal*, WORLD MARITIME UNIVERSITY (1999), [https://commons.wmu.se/cgi/viewcontent.cgi?article=1360&context=all\\_dissertations](https://commons.wmu.se/cgi/viewcontent.cgi?article=1360&context=all_dissertations).

<sup>25</sup> Kamal Alawamleh, *Traditional Bill of lading v. Electronic Bill of lading: Pros and Cons and the way forward*, 3 IJMAS. 87, 88 (2017).

<sup>26</sup> Vaseleios Ziakas, *Challenges Regarding the Electronic Bill of Lading*, 4 IJCF. 40, 41 (2018).

<sup>27</sup> Vaseleios Ziakas, *Challenges Regarding the Electronic Bill of Lading*, 4 IJCF. 40, 42 (2018).

<sup>28</sup> Marek Dubovec, *The Problems and Possibilities for Using Electronic Bills of Lading as Collateral*, 2 ARIZ. J. Int'l & Comp. L. 437, 459-60 (2006).

electronic bill of lading in their respective jurisdiction and trust among its users. It is also necessary that security devices are established to eliminate the risk of hacking etc. This is necessary to eliminate the above ambiguities in order to make electronic bill of lading accepted and used globally.

\*\*\*\*\*