**INTERNATIONAL MARITIME TRADE: THE INDISPENSABILITY AND LEGALITY OF DOCUMENTATION BY SANDRA EBIKWO**

**1.0 INTRODUCTION**

Maritime transport is the backbone of international trade and the global economy. Around 80 per cent of global trade by volume and over 70 per cent of global trade by value are carried by sea and are handled by ports worldwide. Every day, thousands of ships sail the seas bringing large amounts of cargo from continent to continent. It suffice to posit therefore that in our global economy, maritime trade is indispensable.

On the other hand, documents are the backbone of international maritime trade. They are central to the effectiveness of maritime trade. Over the years, these documents have been improved upon by legislation to accommodate the interests of all parties to a transaction and to cover loop-holes which made those documents susceptible to fraud.

Documents are important to receive the goods at the port of delivery by the buyer, to enable the lawful holder resell the goods, important to sue the carrier should there be any damage to the goods due to the carrier’s negligence, important to the carrier as he could limit his liability depending on how the document is couched. Furthermore, documents are important to make insurance claims as the need arises, they are also important to the sellers as the content of the document is evidence of whether or not the seller fulfilled his part of the contract, important to the financial institutions that depend on its accuracy to finance trade transactions, important as well as it could be pledged as security, even important to determine whether or not the goods the documents represent would be allowed into an importing country, and they even determine the kind and amount of custom duties that would be paid on the goods being imported. The indispensability of the role which documents play in international maritime trade cannot therefore be overemphasized.

This article therefore brings to the fore how international trade by sea functions on the wheels of documentation. It is important to note that international trade involves transport by sea, air and road and documents are also central to all these modes of transportation. However, this article is centered on the functioning of international maritime trading system and the role of documents in that regard. It will not be discussing multi-modal trade nor transport documents under the multi-modal system.

The following are therefore the essential documents used in international trade by sea transactions: the bill of lading, straight bill of lading, delivery order, sea waybill, invoice, certificate of insurance, certificate of origin and the export and import licenses.

* 1. **BILL OF LADING**

The bill of lading is a document of great importance in international trade.[[1]](#footnote-1) A bill of lading is a document that records goods received from the shipper as having been received and loaded on board a ship.[[2]](#footnote-2) It is issued by a carrier of goods by sea, to the person with whom he has contracted for the carriage of the goods containing promises by the carrier to carry the goods to its destination in accordance with the terms of the contract on the promise by the shipper to pay freight for the carriage.[[3]](#footnote-3) The bill of lading serves as a receipt for the quantity and condition of the goods shipped.[[4]](#footnote-4) It is therefore evidence of the facts stated in it.[[5]](#footnote-5)

**2.1.1 BILL OF LADING - RECEIPT OF QUANTITY OF GOODS SHIPPED**

Under the CIF and FOB contract, the buyer needs evidence showing that the goods contracted for have been shipped and if shipped whether they conform with the stipulations of the contract before he makes any payment regarding the goods.[[6]](#footnote-6) It is in this light, that the bill of lading stipulates the weight and quantity of the goods received and shipped by the carrier.[[7]](#footnote-7)

1. **LEGALITY OF THE BILL OF LADING UNDER COMMON LAW**

At Common Law, any statement in the bill of lading specifying quantity is prima facie evidence of the quantity shipped.[[8]](#footnote-8) In *Henry Smith & Co v Bedouin Steam Navigation Co Ltd[[9]](#footnote-9),* it was held that a ship owner is bound to deliver the full amount of goods signed for by the master in a bill of lading, unless he can prove that the whole or some part of it was in fact not shipped.

This can be construed to mean that once a statement as to quantity or weight of cargo has been imputed in the bill of lading and signed by the carrier, the carrier is bound to deliver the quantity stipulated in the bill of lading against which his signature appears. Simply put, the carrier would be liable for that statement as to quantity contained in the bill of lading.[[10]](#footnote-10)

There was a similar court holding in the case of *Rasnoimport V/O v Guthrie & Co Ltd,*[[11]](#footnote-11) where the plaintiffs (holders of the bill) brought an action against the defendants. The bill of lading was signed and issued by the defendants as agents for the owners of a vessel and it stated that 225 bales of rubber had been shipped however, it was discovered that 90 bales were shipped and not 225. Mocatta, J. held that the plaintiffs were entitled to recover damages in contract representing the value of the bales undelivered.

The carrier can however limit or even extinguish his liability as to the weight and quantity of the goods shipped by inserting a clause stating that the “weight, content and value when shipping unknown”. If the carrier inserts the above clause, then the bill of lading would no longer be construed in the light of that clause as prima facie evidence of the quantity of goods shipped.[[12]](#footnote-12)

1. **BILL OF LADING UNDER THE HAGUE/HAGUE-VISBY RULES**

Under the Hague/Hague-Visby Rules, the bill of lading is the evidence that the goods were received by the carrier in the quantity stated in the bill of lading. This means that the carrier cannot deny that he didn’t receive the quantity of cargo stated in the bill of lading. It must be noted that the Hague/Hague-Visby Rules didn’t say the bill of lading is evidence of the quantity shipped but only says it is evidence that a certain quantity was received by the carrier.

Article 3 Rule 3(b) provides that

“After receiving the goods into his charge, the carrier or the master or agent of the carrier shall, on demand of the shipper, issue a bill of lading showing among other things:

(b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper.”[[13]](#footnote-13)

Article 4 further states that ‘such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as described in article 3 rule 3(b) above’.[[14]](#footnote-14)

Another important fact is that the statements contained in the bill of lading as regards the weight or quantity could protect not just the holder of the bill but also the carrier depending on the statements contained therein and how well the lawful holder can prove any misrepresentation as regards the statement contained therein.[[15]](#footnote-15)

**2.1.2 BILL OF LADING - RECEIPT AS TO CONDITION**

The bill of lading in the hands of its lawful holder is evidence of the condition of the goods when placed on board or received by the seller. The buyer believes and first relies on what he sees stated in the bill of lading regarding the goods yet to arrive. In other words, any declaration in the bill of lading stating that the goods were received or shipped in a certain order or condition is evidence of the peripheral state of the goods.[[16]](#footnote-16)

At common law, any declaration regarding the condition in which the goods were shipped stated in the bill of lading is prima facie evidence in favor of the shipper but conclusive evidence in the hands of the lawful holder of the bill.[[17]](#footnote-17) In *Compania Naviera Vas Conzada v Churchil & Sim[[18]](#footnote-18)* where the shippers chartered a ship to carry certain goods to London and the bill of lading contained the clause “shipped in good order and condition” when in fact, the goods were apparently damaged before shipment. The Court held that the ship owners were bound by their statement in the bill of lading and therefore estopped from denying the statement attested to by their signature in the bill of lading. This could arguably mean that the courts would not allow the carrier to deny any statement inserted by them in the bill of lading stating that the goods were received and shipped in apparent good order and condition.[[19]](#footnote-19)

The words “apparent good order and condition” means that the carrier is not to be held liable for the “commercial quality” of the goods but only for the physical or exterior condition of the goods he received and shipped.[[20]](#footnote-20) This protects the carrier who is merely a carrier and not an expert as to the quality of the goods he receives for shipment. In this way, the carrier is expunged from liabilities regarding the quality of the goods but would be liable for only the physical condition of the goods. To ensure that the carrier is expunged from liability of any sort, then the carrier ought to accurately describe the state of the goods as received from the seller/shipper in the bill of lading.

The position under the Hague-Visby Rules is provided for in Article 3 rule 3(c) to the effect that the carrier or the master or agent of the carrier, after receiving the goods shall on the request of the shipper issue a bill of lading showing the apparent order and condition of the goods.[[21]](#footnote-21)

Article 4 also provides that any bill of lading in accordance with Article 3 rule 3(c) is prima facie evidence of the receipt by the carrier of the goods described therein.[[22]](#footnote-22) The problem with this provision is that it does not necessitate the writing of the bill of lading **unless** the shipper/seller specifically requests that a bill of lading be written. This is a loophole on the part of the Hague Visby Rules as it leaves room for fraud on the part of the carrier who could input any state or condition to the goods as opposed to the actual condition in which he received it. The Hague Visby Rules must necessitate the making/writing of a bill of lading to reflect the true nature of the goods.

The Hamburg Rules on the other hand (are a set of **rules** governing the international shipment of goods, resulting from the United Nations International Convention on the Carriage of Goods by Sea adopted in **Hamburg** on 31 March 1978)

provides in article 16(2) that;

“…If the carrier or other person issuing the bill of lading on his behalf fails to note on the bill of lading the apparent condition of the goods, he is deemed to have noted on the bill of lading that the goods were in apparent good condition…”[[23]](#footnote-23)

It suffice to posit therefore that Article 16(2) of the Hamburg rules attempts to correct the error and or loophole that was created in Article 3(3) of the Hague Visby rules by providing that there is an implied presumption that the goods received by the carrier were in apparent good condition whether or not the carrier states so. In light of this provision therefore, the onus therefore falls back on the carrier to particularly input the actual state or condition of the goods received in order not to incur undue liabilities for goods that were not in good condition when received.

**2.1.3 BILL OF LADING AS EVIDENCE OF THE CONTRACT OF CARRIAGE**

Once the carrier receives the goods for shipment, and attests in the bill of lading that the goods have been received for shipment, this is conclusive evidence that the carrier has contracted with the shipper to ship the goods received by him as provided by the Carriage of Goods Act 19992 in Section 4. It is important to note the words “conclusive evidence of shipment”. This phrase is to the effect that the bill of lading is an evidence of the contract of carriage as the contract of carriage itself is usually entered into orally long before its terms are imputed into the bill of lading.[[24]](#footnote-24)

Also in *Owners of Cargo Lately Laden on Board the Ardennes v Owners of the Ardennes (The Ardennes)[[25]](#footnote-25)* Lord Goddard C.J held “It is ...well settled that a bill of lading is not itself the contract between the ship owner and the shipper of the goods, though it has been said to be excellent evidence of its terms...” The court held that the terms of the bill of lading did not prevent the shippers from giving evidence as to the true contract.

Thus, the bill of lading serves as evidence of the contract of carriage to an indorsee and by extension, vests the rights and liabilities resulting from the contract of carriage in the indorsee.[[26]](#footnote-26) This could be said to mean that the indorsee of the bill of lading would have the right to sue under the contract of carriage as well as be responsible for any liability that might arise from the carriage contract. Thus thebill of lading provides conclusive evidence of the terms of the contract and the consignee was bound by it.*[[27]](#footnote-27)*

It could then be argued that the consignee would be bound by whatever agreement whether good or bad, which was negotiated by the seller with the carrier before transferring all his contractual rights to the consignee.

**2.1.4 BILL OF LADING AS DOCUMENT OF TITLE**

The function of the bill of lading as document of title is viewed as one of the most important functions of the bill of lading. The sole reason why the bill of lading is termed a document of title is because of its ability to transfer title to a third party. Schmittoff and Goode asserted that in international trade, the most important function of a bill of lading is to enable the transfer of title in goods in transit.[[28]](#footnote-28) Transferability lies at the heart of the traditional common law concept of a bill of lading.[[29]](#footnote-29) In *Lickbarrow v Mason[[30]](#footnote-30)*, the question was whether or not the bill of lading can by law transfer property. The court held that it could transfer property by endorsement to a consignee or an indorsee because it was an order bill. It suffices to say then that common law would only accept a bill of lading as a document of title if it is negotiable. However this view has changed with the court’s decision in the case of *JI MacWilliam Co Inc v Mediterranean Shipping Co SA (The Rafaela S)[[31]](#footnote-31)* the House of lords held that A "straight" bill of lading, not made out to bearer or order but to a named consignee, was ‘a bill of lading or any similar document of title within the Hague Visby Rules Article 1(b). It is pertinent to note that for the non negotiable bill of lading to be viewed by the courts as a document of title, the Hague-Visby Rules would first have to be incorporated into the contract of carriage by the parties.

The bill of lading is also viewed as a symbol of the goods at sea. Thus the dictum of Bowel L J in the case of *Sanders v Maclean[[32]](#footnote-32)* “...the bill of lading by law merchant is universally recognised as its symbol and the indorsement and delivery of the bill operates as a symbolic delivery of the cargo...”.

Section 2 & 3 of the Carriage of Goods by Sea Act[[33]](#footnote-33) enables the holder of the bill of lading to sue the carrier for negligence and holds the holder responsible for liabilities that might arise from the carriage contract. In *East West Corp v DKBS[[34]](#footnote-34)* the court held that where a shipper bailed goods to a shipping line in accordance with the bill of lading and where the rights of suit arising out of the contracts of carriage were transferred to a third party, any rights enjoyed by the shipper over the goods continued as against the shipping line on the same terms.

**3.1 DELIVERY ORDER**

Delivery orders are usually used where the cargo being shipped is bulk cargo and there are numerous buyers. In this case, a delivery order is issued to the buyer who has bought part of the goods and not all the goods on board.[[35]](#footnote-35) The Carriage of Goods by Sea Act 1992[[36]](#footnote-36) applies to ship’s delivery order and describes it as any document containing an undertaking which (a) is issued under the contract of Carriage by Sea and (b) by the carrier to a person identified in the document to deliver the goods to which the document relates to that person. Thus the ship’s delivery order is to enable the buyer take delivery of the goods and by the undertaking contained in the delivery order, the buyer can bring a claim against the carrier for any damage due to his negligence or even a claim for none or wrongful delivery.

**3.2 INVOICE**

The commercial invoice is a vital document in trade transactions as it provides a complete description of the goods and is usually used for customs identification, duty and tax assessment and for the final approval of entry of the goods into the importing country.[[37]](#footnote-37)

**3.3 INSURANCE CERTIFICATE**

The Insurance certificate is the document that certifies that the goods have been insured and covered for losses and damages; it also states the kind of insurance cover provided on the goods shipped.[[38]](#footnote-38)

**3.4 CERTIFICATE OF ORIGIN**

The certificate of Origin is usually used at the ports of discharge to identify the origin of goods, to know whether or not the goods being imported are from an embargoed country, to know whether as a result of world trade treaties between countries, such goods will be given tax concessions.[[39]](#footnote-39)

**3.5 THE ROLE DOCUMENTARY CREDITS**

The documentary credit is a tool which has been in use for over 175years to finance international trade transactions.[[40]](#footnote-40) The Uniform Customs and Practice for Documentary Credits defines documentary credit as; “any arrangement however named or described, that is irrevocable and thereby constitutes a definite undertaking of the issuing bank to honour a complying presentation”.[[41]](#footnote-41)

The documentary credit is opened by the bank upon the request of the buyer (applicant) and the bank undertakes under the credit facility to pay the price of the goods to the seller (beneficiary) if the seller tenders conforming documents.[[42]](#footnote-42) Documentary credit is “in essence, a banker’s assurance of payment against presentation of specified documents”.[[43]](#footnote-43) The bank here is acting as a trusted intermediary. The rationale behind the documentary credit is to provide the seller with security and this is usually used where the seller has not developed a sufficient relationship with the buyer to enable him to adopt a cheaper payment method.[[44]](#footnote-44)

Article 5 categorically states that the documentary credit functions only with documents and not with goods, services or performance to which the documents may relate.[[45]](#footnote-45) Article 7(a) and 15 provides that once the stipulated documents are presented to the nominated or issuing bank and the documents comply with the credit requirements, the bank must honour.[[46]](#footnote-46) However, if the documents do not comply with the credit requirements, the bank may refuse to honour or choose to negotiate.[[47]](#footnote-47)

Articles 18 to 25 and 28 of the UCP[[48]](#footnote-48) provides a detailed list of documents required under a credit arrangement; commercial invoice, transport documents, the bill of lading, non-negotiable sea waybill, charter party bill of lading, courier receipt, insurance document etc. In essence, documentary credit was designed not just as a tool for financing international trade but also designed to curb the risk of a fraudulent buyer not paying the seller or to protect the seller from a bankrupt buyer.[[49]](#footnote-49)

**4.0 CONCLUSION**

In conclusion, the place of documentation is as indispensable as the trade itself. Documentation do not just create order but also creates and extinguishes legal liability for all parties in international maritime trade. Hence, no loopholes must be left uncovered in order to guard against unsafe and or fraudulent trade system.

1. Nicholas Gaskell, Regina Asariotis and Yvonne Baatz, *Bills of Lading and Contracts* (LLP Professional Publishing,2000)1 [↑](#footnote-ref-1)
2. Ibid 2 [↑](#footnote-ref-2)
3. Guenter H Treitel, Francis Martin Baillie Reynolds and Thomas Gilbert Carver, *Carver on Bills of Lading* (3rd edn, Sweet & Maxwell, 2011) 10 [↑](#footnote-ref-3)
4. John F Wilson, *Carriage of Goods by Sea* (7th edn, Pearson 2010) 120-128. [↑](#footnote-ref-4)
5. Professor Michael G Bridge, *Benjamin’s Sale of Goods* (ed.7th edn, Sweet & Maxwell 2006) 1146. [↑](#footnote-ref-5)
6. Paul Todd, *Bills of Lading and Bankers’ Documentary Credits* (4th edn, Informan law from Routledge, 2007) 61. [↑](#footnote-ref-6)
7. Wilson (n 4) 120 [↑](#footnote-ref-7)
8. Indira Carr, *International Trade law* (5th edn, Routledge 2014) 167. [↑](#footnote-ref-8)
9. (1896) A.C 70. [↑](#footnote-ref-9)
10. *Grant v Norway* (1851) 138 E.R 263. [↑](#footnote-ref-10)
11. (1966) 1 [loyd's Rep.]1. [↑](#footnote-ref-11)
12. Hogarth Shipping Company, Limited v Blyth, Greene, Jourdain & Co., Limited (1917)2 KB 534; Attorney General of Ceylon v Scindia navigation Co Ltd (1962) A.C 60. [↑](#footnote-ref-12)
13. The Hague/Hague-Visby Rules- The Hague Rules as Amended by the Brussels protocol 1968, Section 4 Carriage of Goods by Sea Act, 1992 [↑](#footnote-ref-13)
14. ibid [↑](#footnote-ref-14)
15. Noble Resources Ltd v Cavalier Shipping Corp (‘The Atlas’) [1996] 1 Lloyd’s Rep 642 [↑](#footnote-ref-15)
16. Bridge (n3) 1146 [↑](#footnote-ref-16)
17. Martin Dockray : *Cases and Materials on the Carriage of Goods by Sea* (3rd edn, Routledge-Cavendish,2004) 102, Wilson (n4) 102. [↑](#footnote-ref-17)
18. (1906) 1.KB 237, *Peter de Grosse* (1875) 1 p 416.38 [↑](#footnote-ref-18)
19. Dockray (n17) . [↑](#footnote-ref-19)
20. Cox Peterson & co v. Bruce & co (1886) 18 Q.B.D [↑](#footnote-ref-20)
21. The Hague/Hague-Visby Rules- The Hague Rules as Amended by the Brussels protocol 1968, Section 4 Carriage of Goods by Sea Act, 1992. [↑](#footnote-ref-21)
22. ibid. [↑](#footnote-ref-22)
23. Hamburg Rules United Nations Convention on the Carriage of Goods by Sea, 1978 [↑](#footnote-ref-23)
24. Wilson (n4) 129 [↑](#footnote-ref-24)
25. (1951) 1 K.B 55, Crooks & co and another v Allan & another (1879)5 Q.B.D 38 [↑](#footnote-ref-25)
26. Section 2 & 3 Carriage of Goods by Sea Act, 1992 [↑](#footnote-ref-26)
27. Leduc & co v Ward & Others (1888) 20 Q.B.D 475 [↑](#footnote-ref-27)
28. CM Schmitthoff & RM Goode, International Carriage of goods: Some Legal Problems and Possible Solutions (eds, London 1988) 3 [↑](#footnote-ref-28)
29. Bridge (5) 1127 [↑](#footnote-ref-29)
30. (1787) 2 Term Report 63 [↑](#footnote-ref-30)
31. (2005) 2 All E.R. 86 [↑](#footnote-ref-31)
32. (1883) 11 Q.B.D327, Earl Loreburn L.C. in Biddle Brothers v Clemens Horst & Co (1911)1 K. B 934,956, Sharpe & co Ltd v Nosawa & co (1917)2 K.B 814,818, Mitchel Cotts & Co (Middle East) Ltd v Hairco Ltd (1943)77 LI.Rep 106 [↑](#footnote-ref-32)
33. Carriage of Goods by Sea Act 1992 [↑](#footnote-ref-33)
34. (2003) Q.B 1509 [↑](#footnote-ref-34)
35. Carr (n8) 17 [↑](#footnote-ref-35)
36. Section 1 of Carriage of Goods by Sea Act,1992 [↑](#footnote-ref-36)
37. United Nations Conference on Trade and Development (UNCTAD), “ Documentary Risk in Commodity Trade”, UNCTAD/ITCD/COM/MISC.31 [↑](#footnote-ref-37)
38. ibid [↑](#footnote-ref-38)
39. Ibid [↑](#footnote-ref-39)
40. Professor Michael G Bridge (n3)1934 [↑](#footnote-ref-40)
41. Article 2 of The Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600 [↑](#footnote-ref-41)
42. Professor Michael G Bridge (n3)1935 [↑](#footnote-ref-42)
43. Roy Goode, *Commercial Law* (3rd edn LexisNexis-Penguin Books, 2004) 952 [↑](#footnote-ref-43)
44. Ibid 953; Paul Todd, *Maritime Fraud* ( informa, 2003) 13 [↑](#footnote-ref-44)
45. The Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600 [↑](#footnote-ref-45)
46. ibid [↑](#footnote-ref-46)
47. Ibid Article 16 [↑](#footnote-ref-47)
48. ibid [↑](#footnote-ref-48)
49. Todd (n44) 13 [↑](#footnote-ref-49)