

## **Relationship between Contract of Carriage of Goods and Bill of Lading**

*International commercial transaction, in particular, several legal relationships that create entire net of this transaction, include numerous parties and documents. One of the main documents of this transaction is bill of lading. Bill of lading, on the one hand, includes the provisions of contract of carriage and serves as main evidence of this contract; on the other hand, bill of lading grants third party (the consignee) with the right over the cargo.*

*First stage of international commercial transaction is contract for the international sale of goods, parties of which are seller and buyer. United Nations Convention on Contracts for the International Sale of Goods (CISG) refers to the obligations of the seller that include to deliver the goods to the buyer. The obligations of the seller might also include conclusion of the contract of carriage, if the parties agree on such through the contract of sale of goods. For this purposes the seller has to provide carriage of the goods, in handing the goods over to the first carrier for transmission to the buyer. Accordingly, CISG, beyond the general obligations of the seller, refers to the transport documents and imposes the obligations upon the seller for the purposes of the contract of carriage.*

*Subject of research of this article is bill of lading, used in international carriage of goods by sea. Legal relationships related to this transaction are regulated through International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, as amended by the Brussels Protocol (the Hague-Visby Rules), and by the United Nations Convention on the Carriage of Goods by Sea of 1978 (the Hamburg Rules). The article also refers to United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (hereinafter – the Rotterdam Rules), that is not yet in force because of insufficient number of ratifications.*

*Parties of contract for international sale of goods are the seller and the buyer. As for the contract of carriage, parties of it are the shipper and the carrier. Transport documents are initial part of international carriage of goods and issuing of them, usually, takes place after conclusion of contract for international sale of goods and contract of carriage.*

*Commercial transaction depends on accuracy of the transport documents that are used in international carriage of goods. Bill of lading evidences provisions of contract of carriage and also, does include some of them. Contracts preceding the bill of lading might be concluded in verbal form, through electronic communications or by conduct, without clear acceptance and signature. In such cases the bill of lading might have contractual nature and serve as a contract. Also, bill of lading, as the document of title, transfers contractual rights to the third party – the consignee, creating grounds for legal relationship between the consignee and the carrier. Whereas the contract of carriage does not exist or the bill of lading does not comply to it, the bill of lading is the only document to determine the rights of the consignee and obligations of the carrier before him.*

*All of the abovementioned issues make clear functional diversity of the bill of lading that are beyond being only receipt of goods and prima facie evidence of the contract of carriage. Accordingly, accuracy of the information contained in bill of lading shall be provided by the parties, especially during the development of it as far as this is the main source to indicate the following: will of the parties involved in commercial transaction, provisions of*

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\* Ph.D Student of Ivane Javakhishvili Tbilisi State University, Faculty of Law.

*contract of carriage, agreement of the parties on allocation of the rights and obligations between them, liable parties and liability/limitation of liability.*

**Keywords:** *International sale of goods, international carriage of goods, charterparty, bill of lading, shipper, carrier, consignee, freight, transport document*

## **1. Introduction**

International commercial transaction, in particular, several legal relationships that create entire net of this transaction, require involvement of not only seller and buyer of the goods, but also involvement of forwarders, carriers, bankers, lenders, insurers and various regulatory authorities – as a sum, fifty different parties might take part in such transaction.<sup>1</sup> Accordingly, international commercial transaction consists of several contracts and documents, namely: contract of sale of goods, contract of carriage of goods, bill of lading, invoice, insurance contract and letter of credit.<sup>2</sup>

One of the main documents of this transaction is bill of lading. Bill of lading, on the one hand, includes the provisions of contract of carriage and serves as main evidence of this contract; on the other hand, bill of lading grants third party with the right over the cargo, though this third party might not be on face for the moment of conclusion of contract of carriage. Due to these functions, bill of lading might serve not only as the evidence of the contract of carriage but also as the contract itself, taking into consideration that it might duplicate substantial conditions of it.

This article aims to analyse the bill of lading as a contract as well as document of title, according to the case law and English and German legislation, through comparative research method.

## **2. Contract for the International Sale of Goods**

First stage of international commercial transaction is contract for the international sale of goods, parties of which are seller and buyer. According to the United Nations Convention on Contracts for the International Sale of Goods (hereinafter – CISG), the seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention. Obligations related to international sale of goods might also include organizing of carriage of this goods. Such obligation might be imposed upon the seller or the buyer, according to the contract concluded between them. Taking into consideration that CISG applies to contracts of sale of goods between parties whose places of business are in different States, the seller may have to conclude contract of carriage in order to meet all the requirements of Article 30 of CISG. According to Article 31, subparagraph (a) of CISG, if the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists if the contract of sale involves carriage of the goods, in handing the goods over to the first carrier for transmission to the buyer.<sup>3</sup> In order to perform this obligation, conclusion of

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<sup>1</sup> *Dubovec M.*, The Problems and Possibilities for Using Electronic Bills of Lading as Collateral, *Arizona Journal of International and Comparative Law*, Vol.23, #2, 2006, 438.

<sup>2</sup> *Todd P.*, *Bills of Lading and Bankers' Documentary Credits*, 4<sup>th</sup> edition, Informa Law, 2007, 22.

<sup>3</sup> United Nations Convention on Contracts for the International Sale of Goods, Article 31, subparagraph (a) <<https://www.jus.uio.no/lm/un.contracts.international.sale.of.goods.convention.1980>> [22.06.2022].

contract of carriage between the seller and the carrier is inevitable. Obligations that are determined through this contract, the party shall provide performance of the third party to this contract – the carrier.

CISG, beyond the general obligations of the seller, refers to the transport documents. According to the Article 32, paragraph 1 of the CISG, if the seller, in accordance with the contract or this Convention, hands the goods over to a carrier and if the goods are not clearly identified to the contract by markings on the goods, by shipping documents or otherwise, the seller must give the buyer notice of the consignment specifying the goods<sup>4</sup>; paragraph 2 of the same article sets the obligations of the seller for the purposes of the contract of carriage, in particular, if the seller is bound to arrange for carriage of the goods, he must make such contracts as are necessary for carriage to the place fixed by means of transportation appropriate in the circumstances and according to the usual terms for such transportation.<sup>5</sup> This clause of the CISG extends to the legal relationship related to the sale of goods, and imposes the obligations upon the seller for the purposes of the contract of carriage. The seller, according to the contract of carriage, is the party of it - a shipper.

### **3. International Carriage of Goods**

#### **3.1. Contract of Affreightment/Charter**

When a shipowner, either directly or through an agent, undertakes to carry goods by sea or to provide a vessel for that purpose, the arrangement is known as a contract of affreightment<sup>6</sup>. Traditionally, two main types of such arrangement might be indicated: contract of affreightment, embodied in the charterparty and the one - evidenced by the bill of lading. When the shipowner concludes the contract in order to give the entire space of the ship in exchange of freight, for particular route or period of time, such arrangement shall be embodied, usually, in the charterparty. On the other hand, if the shipowner offers services related to the carriage to anyone, who would like to organize international carriage of goods, such contract, in most cases, shall be evidenced by the bill of lading.<sup>7</sup>

A charterparty is a contract which is negotiated in a free market, subject only to the laws that regulate supply and demand.<sup>8</sup> There are essentially two basic forms of charter (voyage charter and time charter), depending upon whether the vessel is chartered for a period of time or for one or more voyages.<sup>9</sup>

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<sup>4</sup> Ibid, Article 31, paragraph 1.

<sup>5</sup> Ibid, Article 31, paragraph 2.

<sup>6</sup> *Wilson J.*, Carriage of Goods by Sea, Pearson Education Limited, 7<sup>th</sup> ed., 2010, 3.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid, 4. Another type of charter is bareboat-charter when the ship is leased without the crew. See <<https://www.bimco.org/contracts-and-clauses/bimco-contracts/barecon-2017>> [22.06.2022].

### **3.2. Contract of Carriage**

Parties of contract for international sale of goods are the seller and the buyer. As for the contract of carriage, parties of it are the shipper and the carrier. It is important to figure out which party of the contract for international sale of goods does represent the shipper for the purposes of the contract of carriage; according to this indication, it shall be easier to determine the moment of shifting the risk of loss or damage of the cargo, as well as other circumstances that might be crucial for the performance of the obligations according to the contract of sale of goods.

Generally, contract of carriage differs from the contract of sale of goods by the parties, their rights and obligations and documents issued due to it. It must be noted that in case of international contract on sale of goods the parties are entitled to determine and agree upon their rights and obligations. Unlike this, in case of contract of carriage, free will of the parties is limited as far as most issues related to it are comprehensively regulated through the international conventions.

Several national legislations and international conventions provide different definition of the contract of carriage. According to the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, as amended by the Brussels Protocol (hereinafter – the Hague-Visby Rules), “contract of carriage’ applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.<sup>10</sup> Carriage of Goods by Sea Act 1992, UK, contains similar references.

United Nations Convention on the Carriage of Goods by Sea of 1978 (hereinafter – the Hamburg Rules) defines the contract of carriage as any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another; however, a contract which involves carriage by sea and also carriage by some other means is deemed to be a contract of carriage by sea for the purposes of this Convention only in so far as it relates to the carriage by sea<sup>11</sup>. According to the definitions of Carriage of Goods by Sea Act of 1979, UK, contract of carriage meant a contract for the carriage of goods<sup>12</sup>.

According to the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (hereinafter – the Rotterdam Rules), which is not yet in force because of insufficient number of ratification, define the contract of carriage as a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage.<sup>13</sup>

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<sup>10</sup> Convention for the Unification of Certain Rules of Law relating to Bills of Lading, as amended by the Brussels Protocol, Article I, (b) <[https://ca.practicallaw.thomsonreuters.com/9-570-7606?transition-Type=Default&contextData=\(sc.Default\)&firstPage=true](https://ca.practicallaw.thomsonreuters.com/9-570-7606?transition-Type=Default&contextData=(sc.Default)&firstPage=true)> [22.06.2022].

<sup>11</sup> United Nations Convention on the Carriage of Goods by Sea of 1978 (the Hamburg Rules), Article 1, paragraph 6, <[https://unctad.org/system/files/official-document/aconf89d13\\_en.pdf](https://unctad.org/system/files/official-document/aconf89d13_en.pdf)> [22.06.2022].

<sup>12</sup> Carriage of Goods by Sea Act of 1979, UK, Section 2. <<https://www.legislation.govt.nz/act/public/1979/0043/latest/DLM34000.html>> [22.06.2022].

<sup>13</sup> United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules) Art. 1, paragraph 1. <<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/rotterdam-rules-e.pdf>> [21/06/20202].

According to the Maritime Code of Georgia, Art.15, subparagraph “j”, “rights and obligations of the parties of contract of carriage by sea... shall be determined according to the law of the place of conclusion unless the parties agree otherwise”.<sup>14</sup> Accordingly, contract of carriage, concluded in Georgia, shall be regulated through the Civil Code of Georgia. According to Art. 668 of the Civil Code of Georgia, under a contract of carriage, the carrier shall be obliged to transport goods or passengers to the place of destination for an agreed fee.<sup>15</sup>

All of the abovementioned relieves that international conventions as well as Laws of Georgia and other national legislations, states of which have ratified international conventions listed above, share more or less similar definitions of contract of carriage. The Hague-Visby Rules is an exception from this approach, as far as it applies only in case of issuing bill of lading according to the contract of carriage. As for the regulations that determine liability of the carrier, moment of passing of risk of loss or damage of the cargo from the shipper to the carrier, indicators of the performance of the carrier, they differ from each other much more than the definitions of the contract of carriage and legal consequences vary as well.

### **3.3. Relationship between the Contract of Carriage and Charterparty**

In order to analyse the legal nature of the charterparty and bill of lading it is important to draw clear line between them, indicating the following:

For the purposes of international carriage of goods, charterparty is an agreement through which the ship is being leased. Parties of such agreement are the shipowner and the charterer that agree on lease of the whole capacity of the ship or only the part of it. The charterer pays the freight to the shipowner.

Parties of the contract of carriage are shipper and carrier. According to this contract the carrier undertakes to deliver the cargo from the port of loading to the port of discharge in order to deliver the cargo to the consignee. The shipper shall pay agreed fee to the carrier for this service unless the parties of international contract for sale of goods agree otherwise.

The Maritime Code of Georgia does not clearly distinguish the charterparty from the contract of carriage. According to the Article 114, paragraph 1 of the Maritime Code of Georgia, a contract of carriage of goods by sea is a written agreement according to which the carrier or shipowner undertakes to carry and deliver the cargo to the consignee, and the consignor or charterer undertakes to pay the shipping cost (freight).<sup>16</sup> According to the paragraph 2 of the same Article, persons who have entered into a written agreement on affreightment (a charterparty) shall be considered to be the charterer and the shipowner.<sup>17</sup> According to the paragraph 6 of the Annex of the Maritime Code of Georgia, freight [is] rent for the carriage of cargo by a ship;<sup>18</sup> according to the paragraph 7, chartering [is] leasing a ship for a certain period of time<sup>19</sup>; according to the pa-

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<sup>14</sup> Maritime Code of Georgia, Parliamentary Gazette, 25-26, 14/06/1997, Article 15, subparagraph “j”.

<sup>15</sup> Civil Code of Georgia, Parliamentary Gazette, 31, 24/07/1997, Article 668.

<sup>16</sup> Maritime Code of Georgia, Parliamentary Gazette, 25-26, 14/06/1997, Article 114, paragraph 1.

<sup>17</sup> Ibid. paragraph 2.

<sup>18</sup> Maritime Code of Georgia, Parliamentary Gazette, 25-26, 14/06/1997, Annex, paragraph 6.

<sup>19</sup> Ibid, paragraph 7

paragraph 8, charterer [is] a person or organisation taking a ship on charter<sup>20</sup>, according to the paragraph 9, shipowner [is] a person or organisation who rents out a ship<sup>21</sup>. Despite the fact that the Maritime Code of Georgia refers to the carrier for several times, does not define the meaning of it.

According to the definitions listed above, Maritime Code of Georgia puts an equal sign between the charterparty and contract of carriage. That means that Maritime Code of Georgia shall apply to the contractual relationship where the shipowner is the carrier himself/itself. However, the shipper is not the only party that might enter into the contractual relationship with the shipowner. The carrier, who is interested in affreightment in order to perform his contractual obligations, is also able to conclude charterparty with the shipowner. Such arrangement is out of the scope of the Maritime Code of Georgia.

It must be noted that the Hamburg Rules refers to the freight in Article 15, subparagraph (k), namely, “the freight to the extent payable by the consignee or other indication that freight is payable by him”<sup>22</sup> but does not refer to charterparty as far as it applies only to the contracts of carriage.

## **4. Bill of Lading**

### **4.1 Definition of Bill of Lading**

Transport documents are initial part of international carriage of goods and issuing of them, usually, takes place after conclusion of contract for international sale of goods and contract of carriage.

Universal definition of the transport document does hardly exist. Generally, transport document might be defined as the document that is evidence of receipt of goods by the carrier, is document of title and evidence of the contract of carriage. All of these functions are united into the bill of lading – transport document that is used in the process of international carriage of goods by sea.

For shippers with only a small quantity of cargo, chartering of the whole capacity of vessel is hardly a practical proposition<sup>23</sup>. In such case they are able to apply for loading and carriage services that are offered through liner traces by the expedition/carriage companies, for scheduled routes. If the cargo is packed individually, it must be loaded on board as it is packed into the containers, boxes or other means agreed beforehand by the parties of the contract of carriage. If the carrier rents the whole capacity of the ship, he shall conclude the charter with the shipowner. In either case, once the cargo is loaded, a bill of lading will be issued which will act, not only as a receipt for the cargo shipped, but also as prima facie evidence of the terms of the contract of carriage.<sup>24</sup>

Hague-Visby Rules does not define bill of lading but Article III, Rule 3 refers to the content of bill of lading such as initial marks of the cargo, number of units/parcels, weight and other

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<sup>20</sup> Ibid, paragraph 8

<sup>21</sup> Ibid, paragraph 9

<sup>22</sup> United Nations Convention on the Carriage of Goods by Sea of 1978 (the Hamburg Rules), Article 15, subparagraph (k).

<sup>23</sup> *Wilson J.*, Carriage of Goods by Sea, Pearson Education Limited, 7<sup>th</sup> ed., 2010, 5.

<sup>24</sup> Ibid.

information regarding the condition of the goods<sup>25</sup>; according to the Rule 4 of the same article, bill of lading is prima facie evidence of receipt of the goods by the carrier<sup>26</sup>. Contract of carriage is concluded before issuance of the bill of lading. Bill of lading itself evidences the clauses of the contract that is already partially performed. Carriage of Goods by Sea Act of 1992, UK, does not contain the definition of bill of lading but it sets that a bill of lading which (a) represents goods to have been shipped on board a vessel or to have been received for shipment on board a vessel; and (b) has been signed by the master of the vessel or by a person who was not the master but had the express, implied or apparent authority of the carrier to sign bills of lading, shall, in favour of a person who has become the lawful holder of the bill, be conclusive evidence against the carrier of the shipment of the goods or, as the case may be, of their receipt for shipment.<sup>27</sup>

#### **4.2. Issuing the Bill of Lading**

Traditionally, after the goods are loaded on board, on the grounds of contract of affreightment, the carrier or his agent signs the bill of lading and transfers it to the shipper.<sup>28</sup> The practice of issuing a “set” of three original bills of lading is very ancient.<sup>29</sup> Each of these three copies have equal content and legal force and are dated *samely*. If the carrier delivers the cargo to the consignee in exchange of one copy of the bill of lading, other copies are null and void<sup>30</sup>. According to the common practice, one of the copies remains in the hand of the shipper, another one shall be carried with the cargo and the last one shall be sent to the consignee. It is necessary the consignee to hold one of the copies before or for the moment of delivery, as far as the carrier is not obliged to deliver the cargo without the representation of the bill of lading.

#### **4.3. Content of the Bill of Lading**

According to the Article 1, paragraph 7 of the Hamburg rules, bill of lading means a document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the order of a named person, or to order, or to bearer, constitutes such an undertaking<sup>31</sup>. Article III, Rule 4 of Hague-Visby Rules similarly refers to the bill of lading as prima facie evidence of receipt of the goods by the carrier;<sup>32</sup> Rule 3 of the same article, as mentioned above, refers to the content of the bill of

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<sup>25</sup> Convention for the Unification of Certain Rules of Law relating to Bills of Lading, as amended by the Brussels Protocol, Article III, Rule 3.

<sup>26</sup> *Ibid*, Rule 4.

<sup>27</sup> Carriage of Goods by Sea Act 1992, Section 4, <<https://www.legislation.gov.uk/ukpga/1992/50/section/4>> [12/06.2022].

<sup>28</sup> Scrutton on Charterparties and Bills of Lading, Sweet and Maxwell, 24<sup>th</sup> ed, London, 2021, Article 48, 5-001.

<sup>29</sup> *Ibid*, 5-003.

<sup>30</sup> Maritime Code of Georgia, Parliamentary Gazette, 25-26, 14/06/1997, Article 122.

<sup>31</sup> United Nations Convention on the Carriage of Goods by Sea of 1978 (the Hamburg Rules), Article 1, paragraph 7.

<sup>32</sup> Convention for the Unification of Certain Rules of Law relating to Bills of Lading, as that Convention was amended by the Protocol signed at Brussels on 23 February 1968 and as furthermore amended by the Protocol signed at Brussels on 21 December 1979, Art III, Rule 4.

lading such as initial marks of the goods, weight and condition<sup>33</sup>. Article 15 of the Hamburg Rules contains much more comprehensive list of the clauses that must be contained into the bill of lading, including not only factual conditions of the goods (number of units/parcels, conditions, weight), the port of loading under the contract of carriage by sea and the date on which the goods were taken over by the carrier at the port of loading; (Article 15, subparagraph (f)), the port of discharge under the contract of carriage by sea (Article 15, subparagraph (g)), the freight to the extent payable by the consignee or other indication that freight is payable by him (Article 15, subparagraph (k)), any increased limit or limits of liability where agreed in accordance with paragraph 4 of Article 6 (Article 15, subparagraph (o))<sup>34</sup>.

Article 1, paragraph 14 of the Rotterdam Rules contains common definition, according to which “transport document” means a document issued under a contract of carriage by the carrier that: (a) Evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage; and (b) Evidences or contains a contract of carriage.<sup>35</sup>

#### **4.4. Bill of Lading as Document of Title**

Bill of lading not only evidences the legal relationship between the shipper and the carrier but also gives the third party – the consignee the right over the cargo. For the general purposes of the contract of sale of goods and contract of carriage, indicator of the carriers performance is the fact of delivery of the cargo to the consignee.

Courts, as well as other competent authorities, have different opinions regarding the legal nature of the bill of lading – whether it is the contract itself or only evidence of it.<sup>36</sup> In the legal relationships that shall be regulated by the private law, both in continental European and Common Law countries, the basis for such relationships might be the contract as well as other legal grounds, determined by the applicable law. As a result of the latter, tort or other quasi-contractual relationship shall be on face that is not based upon the free will and agreement of the parties.

Quasi-contractual relationships are common also for the process of international carriage of goods by sea. The consignee does not intend to conclude contract with the carrier. However, he is entitled to introduce the bill of lading and claim for delivery of the cargo. Accordingly, the relationship between the carrier and the consignee is the quasi-contractual relationship: they did not conclude the contract based upon their free will, did not agree substantive conditions of it but they do have rights and obligations before each other. Similar relationship exists between non-contractual shipper (person who transfers the goods to the carrier due to the order of the actual shipper) and the carrier. Court stated on case *Glyn Mills Currie and Co v The East and West India Dock Company*<sup>37</sup> that main purpose of using the bill of lading not only the instrument of lex mer-

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<sup>33</sup> Ibid, Rule 3.

<sup>34</sup> United Nations Convention on the Carriage of Goods by Sea of 1978 (the Hamburg Rules), Article 15.

<sup>35</sup> UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, (the Rotterdam Rules), Article.1, paragraph 14.

<sup>36</sup> *Dubovec M.*, The Problems and Possibilities for Using Electronic Bills of Lading as Collateral, „Arizona Journal of International and Comparative Law“, Vol.23, #2, 2006, 441.

<sup>37</sup> *Glyn Mills Currie and Co v The East and West India Dock Company*: CA 1880.

culatoria but also as symbol of property is to reveal the agreement between the shipper and the carrier.

According to the doctrine that dominated in Common Law for a long time, a person who is not a party to a contract cannot claim the benefit of it although the contract was entered into with the object of benefiting that third party (privity doctrine).<sup>38</sup> In the circumstances of the privity doctrine, generally, where the shipper agrees with the carrier to deliver the cargo to the third party, the latter is not entitled to claim before the carrier on the grounds of the contract he is not the party of. On the other hand, according to this doctrine, neither the shipper is entitled to claim to the consignee. Parties of a dispute, for the obligations agreed through this contract, shall be only the shipper and the carrier. It must be also mentioned that the shipper is entitled to claim for the carrier to perform his obligations but if he is already paid and the right of ownership upon the goods has been transferred to the buyer, he, according to the same doctrine, is not entitled to sue because the breach did not occur to him. Such situation is not in favor of the buyer even if he is able to find another ground for dispute, for instance, the tort.

Contracts (Rights of third parties) Act of 1999 of UK shall be considered as official end of the privity doctrine dominance. According to Article 1 of, paragraph 1 of this Act, subject to the provisions of this Act, a person who is not a party to a contract (a “third party”) may in his own right enforce a term of the contract if (a) the contract expressly provides that he may, or (b) subject to subsection (2), the term purports to confer a benefit on him.<sup>39</sup> On the other hand, according to the Article 6, paragraph 1 of the same Act, which states that Section 1 confers no rights on a third party in the case of a contract on a bill of exchange, promissory note or other negotiable instrument<sup>40</sup>, it does not apply to the contracts of carriage, as far as contract of carriage is covered by the bill of lading that is negotiable instrument itself. Accordingly, in the process of international carriage of goods, in order to indicate third parties rights, case law shall prevail.

In Common Law countries, at the beginning of 19th century, transfer of the bill of lading meant transfer of the right over the cargo but it does not include contractual rights. Accordingly, the consignee, i.e. the owner of the cargo, was not entitled to claim the carrier.<sup>41</sup> To react on this, courts accepted so-called “implied contract” doctrine.

This problem had been solved through the judgment on case *Dunlop v Lambert*<sup>42</sup>, stating that the shipper as the party of the contract concluded with the carrier but the breach did not occur to him, was still entitled to claim on behalf of the owner/buyer. This principle had been shared later on the case *The Albazero, Albacruz v Albazero*<sup>43</sup>. However, later, according to the further development of case law, these judgments had been considered as exceptional cases rather than judgements that set general rules<sup>44</sup>. If not such exceptions, if the party is not entitled to claim for

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<sup>38</sup> *Suff M.*, Essential Contract Law, Cavendish Publishing, London, 1994, 167.

<sup>39</sup> Contracts (Rights of Third Parties) Act 1999, Section 1, <<https://www.legislation.gov.uk/ukpga/1999/31/contents>> [12.06.2022].

<sup>40</sup> *Ibid*, Section 6.

<sup>41</sup> *Stevens F.*, The Bill of Lading: Holder Rights and Liabilities, Routledge, 1st ed, Abingdon, December 14, 2019, 155.

<sup>42</sup> *Dunlop v. Lambert* [1839] 6 Cl. & F. 600.

<sup>43</sup> *The Albazero, Albacruz v Albazero* [1976] 3 All ER 129.

<sup>44</sup> Compare, *Panatown Ltd v McAlpine Construction Ltd* [2000] 4 All ER 97.

the breach that did not occur to him, responsibility of carrier would be exempted in any case, even in case of non-performance of the contract of carriage.

The first legislative attempt to deal with the problems caused by the privity doctrine was Bill of Lading Act 1855, UK<sup>45</sup>, that aimed to balance the rights and obligations of the parties of contract of carriage and made third parties entitled to the rights agreed upon by the parties of contract of carriage. According to this Act, all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner, and it is expedient that such rights should pass with the property to the consignee or endorsee<sup>46</sup>.

Bill of lading Act 1855 underlined two crucial issues: First of all, transfer of contractual rights and obligations linked with the transfer of property; on the other hand, directly emphasized that, without prejudice of privity doctrine, third party to the contract might have rights and obligations according to this contract. According to the Article 1 of this Act, every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.<sup>47</sup> This Article applied only to the bill of lading to order but this rule had been recognized also in favor of the bill of lading to bearer.<sup>48</sup> If the person becomes the holder of the bill of lading, and, accordingly, all the rights over the cargo transfers to him, all of the rights and obligations through the bill of lading shall be imposed upon him.<sup>49</sup> Meanwhile, despite the fact that the bill of lading includes or evidences the contract of carriage, it shall transfer the rights and obligations given therein and not the rights and obligations agreed upon by the parties.<sup>50</sup>

According to the practice that have been developed throughout the years, Bill of Lading Act 1855 did not apply to all consignees. According to Article 17, paragraph 1 of Sale of Goods Act 1979, where there is a contract for the sale of specific or property ascertained goods the property in them is transferred to the passes when buyer at such time as the parties to the contract intend it to be intended transferred.<sup>51</sup> This regulation means that property shall be transferred without endorsement of the bill of lading. The parties of the contract of sale may agree on transfer of the property only after the payment rather than through transfer of the bill of lading; parties are also entitled to agree

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<sup>45</sup> Despite the fact that this Act had been replaced by the Carriage of Goods by Sea Act 1992, it still is considered as important step forward and are still applicable law, for instance, in Canada.

<sup>46</sup> „Every consignee of goods named in the bill of lading, and every endorsee of a bill of lading, to whom property in the goods therein mentioned shall pass upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.” Bill of Lading Act of 1855, Section 1, <<https://www.legislation.gov.uk/ukpga/Vict/18-19/111/enacted>> [22.06.2022].

<sup>47</sup> Ibid, Article 1.

<sup>48</sup> *Stevens F.*, *The Bill of Lading: Holder Rights and Liabilities*, Routledge, 1<sup>st</sup> ed., Abingdon, December 14, 2019, 156.

<sup>49</sup> Ibid.

<sup>50</sup> *Stevens F.*, *The Bill of Lading: Holder Rights and Liabilities*, Routledge, 1<sup>st</sup> ed., Abingdon, December 14, 2019, 157.

<sup>51</sup> Sale of Goods Act, 1979, <[http://www.legislation.gov.uk/ukpga/1979/54/pdfs/ukpga\\_19790054\\_-en.pdf](http://www.legislation.gov.uk/ukpga/1979/54/pdfs/ukpga_19790054_-en.pdf)> [8.06.2022].

on particular date, not related to the endorsement of the bill of lading. In such case the consignee is not supposed to have any contractual right towards the carrier even after the bill of lading had been transferred to him without being an owner of the cargo. If the right over the cargo/property transferred through the bill of lading shall be dealt differently than the same right transferred on the other grounds, the party shall not be entitled to claim for performance, that would not be the best option for the owner. Case law tried to solve this problem, in particular, judgment on the case “The Delfini” states that it is not necessary property to be transferred through delivery or endorsement of the bill of lading for application of the Article 1 of the Bill of Lading Act 1855<sup>52</sup>. This judgment declined the approach according to which endorsement of the bill of lading and transfer of property should take place simultaneously. Before this judgment that was not clearly recognized the link between exercising the property right and contractual rights transferred through the bill of lading.

Endorsement of the bill of lading symbolizes possession of the goods but not necessarily transfer of property as far as this latter is the result of contract rather than transfer of any kind of document. Transfer of property might need any precondition such as payment.<sup>53</sup> Bill of lading is document of title only in case of transfer to the bona fide holder. Exception from this rule might be the case when the goods arrive to the port of destination earlier than the documents.<sup>54</sup> In this case the carrier is entitled to deliver the cargo in exchange of the letter of indemnity, issued by the bank and introduced by the consignee.<sup>55</sup> In such case document of title transforms into the evidence of the contract of carriage and rights and obligations determines through it.

This case did not solve the problem for the case when property has been already transferred through the contract, independently from endorsement of the bill of lading, usually, in case of bulk cargo. According to Article 16 of the Sale of Goods Act 1979, where there is a contract for the sale of unascertained goods is transferred to the buyer unless and until the goods are ascertained<sup>56</sup>. Bulk cargo shall be ascertained only at the port of destination, in order to deliver to the different consignees. Such case had been considered on the case *Brandt v Liverpool*<sup>57</sup> and the court considered presumption of contract and implied rights.<sup>58</sup> Since this case “Brandt and Liverpool doctrine” had been recognized widely.

In 1985 the Court of Rotterdam, using English Law as applicable law, took decision on the case (The Gosforth), as a result of which the buyer was found responsible before the seller; on the other hands, trading associations applied to Law Commission<sup>59</sup> asking for legal reforms to protect

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<sup>52</sup> *Enichem Anic S.p.A. and Others v. Ampelos Shipping Co. Ltd. (The “Delfini”)* [1990] 1 Lloyd's Rep. 252.

<sup>53</sup> *Dubovec M.*, The Problems and Possibilities for Using Electronic Bills of Lading as Collateral, *Arizona Journal of International and Comparative Law*, Vol. 23, #2, 2006, 442.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*, *Kerashvili S.*, Liability of the Carrier for Delivery of the Goods without Representation of the Bill of Lading, *Journal of Law*, №1, 2015, 264.

<sup>56</sup> *Stevens F.*, *The Bill of Lading: Holder Rights and Liabilities*, Routledge, 1<sup>st</sup> ed., Abingdon, December 14, 2019, 157.

<sup>57</sup> *Brandt v Liverpool*, *Brazil & River Plate Navigation Co Ltd* [1924] SJV. Co.35.

<sup>58</sup> *Dockray M.*, *Cases and Materials on Carriage of Goods by Sea*, 3<sup>rd</sup> ed., Cavendish Publishing Limited, Great Britain, 2004, 122.

<sup>59</sup> *Stevens F.*, *The Bill of Lading: Holder Rights and Liabilities*, Routledge, 1<sup>st</sup> ed., Abingdon, December 14, 2019, 157.

the rights of the bulk cargo buyers. During the process of this reform it became clear that the problem was much broader and drafting of new sale of goods act had beginning. Finally, in 1992, Carriage of Goods by Sea Act had been adopted. This act clearly distinguished transfer of rights through the bill of lading and transfer of property. According to Section 2, paragraph 1, lawful holder of bill of lading has right on cargo;<sup>60</sup> lawful holder is defined through Section 5, paragraph 2;<sup>61</sup> Section 2, paragraph 5 of this Act makes difference between the rights of shipper and previous holders of the bill of lading and rights of the current lawful holder<sup>62</sup>; Section 3, paragraph 1 states that after claiming on cargo lawful holder of the bill of lading becomes the subject of the contract of carriage and rights and obligations determined through it<sup>63</sup>.

In order to compare Bill of Lading Act of 1855 and Carriage of Goods by Sea Act 1992, it must be mentioned that Bill of Lading Act of 1855 referred to the contract of carriage contained in the bill of lading; Carriage of Goods by Sea Act 1992 mentions the contract that makes the lawful holder its party. According to some scholars, such difference makes sense only in case of avoidance of the contract of carriage,<sup>64</sup> according to which if the contract of carriage had been found null and void, lawful holder of the bill of lading has not legal grounds for claimant. According to Section 5, paragraph 1 of Carriage of Goods by Sea Act 1992, in relation to a bill of lading or sea waybill, means the contract contained in or evidenced by that bill or waybill<sup>65</sup>. In this case it is debatable whether bill of lading is still in force if the contract, on the grounds of which it had been issued, is void. According to the principle established in German Law, bill of lading remains in force even after annulment of the contract of carriage.

It must be taken into consideration that Brandt and Liverpool Doctrine, widely used while the Bill of Lading Act 1855 was in force, has lost its relevance since Carriage of Goods by Sea Act 1992 had been entered into force.<sup>66</sup> According to this latter Act, on the case *The Aramis*<sup>67</sup> court clearly stated that “implied contract” shall be only in compliance with the will of the parties if they intended to conclude exactly this contract.

#### **4.5. Contractual Nature of the Bill of Lading**

As mentioned above, bill of lading evidences contract of carriage concluded by the parties and also, might contain clauses of this contract.<sup>68</sup> According to the traditional analysis, contract of carriage shall be concluded prior of issuance of the bill of lading.<sup>69</sup> Currently, when organizing

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<sup>60</sup> Carriage of Goods By Sea Act 1992, Section 2, paragraph 1, <<https://www.legislation.gov.uk/ukpga/1992/50/contents>> [12.06.2022].

<sup>61</sup> Ibid, Section 5, paragraph 2.

<sup>62</sup> Ibid, Section 2, paragraph 5.

<sup>63</sup> Ibid, Section 3, paragraph 1.

<sup>64</sup> *Stevens F.*, *The Bill of Lading: Holder Rights and Liabilities*, Routledge, 1<sup>st</sup> ed., Abingdon, December 14, 2019, 160.

<sup>65</sup> Ibid.

<sup>66</sup> *Aikens R. S.*, *Bills of Lading*, Informa Law from Routledge, Abingdon, December 24, 2020, 173.

<sup>67</sup> *The Aramis* [1989] 1 Lloyd’s Rep 213.

<sup>68</sup> *Stevens F.*, *The Bill of Lading: Holder Rights and Liabilities*, Routledge, 1st ed, Abingdon, December 14, 2019, 14; *Compare*: United Nations Convention on the Carriage of Goods by Sea of 1978 (hereinafter – the Hamburg Rules), Article 15.

<sup>69</sup> *Aikens R. S.*, *Bills of Lading*, Informa Law from Routledge, Abingdon, December 24, 2020, 166.

international carriage of goods is provided by more than two parties and, similarly, contract of carriage might be performed by several parties, prior issuance of the bill of lading might be concluded/issued not only the contract of carriage but also charterparty, booking note or other kind of contract/document, in order to book space on board.<sup>70</sup>

Book of lading (predecessor of the bill of lading)<sup>71</sup> which contained information regarding the cargo on board, did evidence only receipt of the goods by the carrier/loading on board. In the beginning bill of lading shared the same function but later, due to the development, additional functions of the bill of lading had been recognized by the merchants and other parties, involved in international carriage of goods. However, the bill of lading was not considered as contract of carriage for a long time, unlike the charter that was definitely considered as the contract of carriage.<sup>72</sup> Due to development of international trading, as far as booking the part of the ship rather than whole capacity of it had become common practice, carriage of goods shall be performed only through bill of lading rather than contract of carriage. However, bill of lading does not represent itself the contract of carriage concluded between the shipper and the carrier.<sup>73</sup>

Bill of lading evidence not only receipt of goods by the carrier but also rights and obligations of the parties according to the contract of carriage. Accordingly, bill of lading has to comply with the contract of carriage. As court stated through the judgment on the case *Pyrene v Scyndia*<sup>74</sup> it would be nonsense to suppose that the parties intended to change the contract of carriage through bill of lading. This approach is more important in case of verbal contract of carriage that might take place also today, like it was in case of *Mayhew Foods Limited v Overseas Containers Ltd*<sup>75</sup>. It must be also noted that the consignee is not aware about the content of the contract of carriage, accordingly, bill of lading is the only document he is able to indicate the carrier and claim to him for delivery.

In order to conclude the contract, intention and agreement of the parties shall be clear. This issue was discussed through the judgment on *The "Barranduna" and "Tarrago"*<sup>76</sup> where the parties discussed only conditions of carriage and freight through the telex communication, accordingly, court did not recognized such communication as a contract.<sup>77</sup> Accordingly, bill of lading shall contain the will of the parties similarly to the contract of carriage. If the predecessor contract is only operational contract, like charterparty, the bill of lading shall not be dealt like a contract of carriage.<sup>78</sup>

The court may indicate all the contracts that had been concluded prior to issuance of the bill of lading and figure out which of them is contained in/evidenced by the bill of lading. For

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<sup>70</sup> *Aikens R. S.*, Bills of Lading, Informa Law from Routledge, Abingdon, December 24, 2020, 167.

<sup>71</sup> *Stevens F.*, The Bill of Lading: Holder Rights and Liabilities, Routledge, 1st ed, Abingdon, December 14, 2019, 9.

<sup>72</sup> *Ibid.*, 17.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Pyrene Company, Ltd v. Scindia Steam Navigation Company, Ltd.* [1954] 1 Lloyd's Rep. 321.

<sup>75</sup> *Mayhew Foods Limited v Overseas Containers Ltd.* [1984] 1 Lloyd's Rep. 317.

<sup>76</sup> *Scancarriers A/S v. Aotearoa International Ltd. (The "Barranduna" and "Tarrago")* [1985] 2 Lloyd's Rep. 419.

<sup>77</sup> *Aikens R. S.*, Bills of Lading, Informa Law from Routledge, Abingdon, December 24, 2020, 167.

<sup>78</sup> *Ibid.*

instance, on case *Electrosteel Castings Ltd v Scan-Trans Shipping & Chartering Sdn Bhd*<sup>79</sup> the court stated that three independent contract were on face. On the other hand, there might be no grounds for indication any prior contract.<sup>80</sup> If the party accepts bill of lading, it is supposed that the contract has been concluded even without clear offer and acceptance.<sup>81</sup> This approach had been confirmed on the case *Watkins v. Rymill*<sup>82</sup>.

Case law has established approach to allocate rights and obligations that are determined through bill of lading and contract of carriage as well as general rules of their interpretation, including the cases when bill of lading does not comply to the contract of carriage. UK case law is especially important from this point of view as far as it has put an equal sign between bill of lading and the contract of carriage in some cases. In 1888 on the case *Leduc v Ward*<sup>83</sup> the court stated that the clauses determined through bill of lading are conclusive and deviation from them is inadmissible. The court applied the parol evidence rule ("extrinsic evidence is inadmissible to vary a written contract") and stated that if the carrier deviated from the route agreed through the bill of lading, he is responsible for damage or loss occurred as a result of such deviation.

However, about one century later, outcome of non-compliance between the bill of lading and the contract of carriage had been interpreted differently. According to the facts of *The Ardennes*<sup>84</sup>, shipper and the shipowner concluded verbal contract on carriage of goods to London, without deviation from the agreed route; on the other hand, the bill of lading contained approval of such deviation. The court stated that if contract of carriage, even the verbal one, precedes issuance of the bill of lading, bill of lading shall not be considered as a contract. In the given case, the shipper relied upon the information provided by the carrier, according to which he was certain that his cargo (Spanish oranges) would be carried from London to Cartagena without deviation. Bill of lading had been delivered to him only after loading the cargo on board. Accordingly, the court state that the bill of lading did not prevail over the substantive provision of the contract of carriage. The shipper, having sufficient time, would inevitably demand to switch the bill of lading in order to exempt deviation. On the other hand, he was not obliged to do so, because he was not involved in formation of the bill of lading and did not even sign it. Accordingly, the court clearly established that the bill of lading is not a contract itself but only evidence of it and in case of non-compliance, contract of carriage shall prevail. Similar approach had been used on the case *Evans v Andrea Merzario*<sup>85</sup>, where the court refused the carrier o reliance upon written agreement (not the bill of lading) that contradicted to the verbal agreement on carriage below deck<sup>86</sup>. Also, in *The Green Island* the court stated that contract of carriage that was evidenced through the booking note and was concluded before issuance of the bill of lading, containing agreement on carriage below deck, prohibited the carrier to rely upon the clauses of the bill of lading allowing carriage

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<sup>79</sup> *Electrosteel Castings Ltd v Scan-Trans Shipping & Chartering Sdn Bhd*, 2002] EWHC 1993.

<sup>80</sup> *Aikens R. S.*, Bills of Lading, Informa Law from Routledge, Abingdon, December 24, 2020, 170.

<sup>81</sup> *Ibid.*

<sup>82</sup> *Watkins v. Rymill* (1883) 10 Q.B.D. 178, 183, 189.

<sup>83</sup> *Leduc & Co v Ward*, [1888] 20 QBD 475.

<sup>84</sup> *The Ardennes (Cargo Owners) vs Ardennes (Owners)* [1951] 1 KB 55; *Dockray M.*, Cases and Materials on Carriage of Goods by Sea, 3<sup>rd</sup> ed., Cavendish Publishing Limited, Great Britain, 2004, 77.

<sup>85</sup> *Evans v Andrea Merzario Ltd* 1976.

<sup>86</sup> *Aikens R. S.*, Bills of Lading, Informa Law from Routledge, Abingdon, December 24, 2020, 175.

on deck.<sup>87</sup> Same approach had been shared by the commercial arbitration, recognizing prevalence of the verbal agreement, which preceded issuance of the bill of lading.<sup>88</sup>

In some cases, bill of lading might be the only document on face, which determines right and obligations of the parties. However, it is important to distinguish it from the contract of carriage. Mostly, bill of lading does not contain all the clause of the contract of carriage but does evidence all the substantive provisions of the contract of carriage. In case of verbal contract of carriage, the bill of lading shall be the most important evidence for the purposes of the commercial dispute; accordingly, in the framework of this particular dispute, the bill of lading might be fictionally considered as contract of carriage. Such approach is in favor of the consignee, as far as rights and obligations of the consignee are revealed through the bill of lading. The courts, according to particular conditions and facts, try to assess the contract of carriage beyond the bill of lading, at least, in case where the dispute are risen between the carrier and the shipper.<sup>89</sup> For the purpose of such assessment the bill of lading shall be considered not as concluded contract of carriage but just evidence of it and this approach is clearly illustrated in the judgment of *The Ardennes*. This approach seems more logical taking into account that the buyer/consignee is not involved in formation of the contract of carriage and determination of its provisions.

To sum up, taking into consideration that the parties – the shipper and the carrier, concluded contract of carriage through which the substantive provisions of carriage had been agreed, contract of carriage prevails over the bill of lading, if this latter does not comply to contract of carriage. However, other provisions of the bill of lading shall be still in force.<sup>90</sup> On the other hand, taking into considering judgement on *Leduc v Ward*, it is becoming clear that in some cases, especially towards the consignee, bill of lading may also prevail. In this judgment the court clearly stated that the consignee shall in any case get his goods in terms given in the bill of lading and different agreement between the shipper and the carrier does not matter for the consignee. On the other hand, it must be noted that currently parol evidence rule is rarely used in development of commercial documents; verbal agreement and “factual matrix” that changes or replaces written agreement, are more widely recognized.<sup>91</sup> In order to assess relevance of *Leduc v Ward* for current commercial transactions it must be noted that before Bill of Lading Act 1855, due to privity doctrine, there did not exist any legal grounds for transfer any right to the consignee.<sup>92</sup> The doctrine established on this case had been modified through Carriage of Goods by Sea Act 1924, which refers to contract of carriage as the contract which is evidenced or approved through bill of lading.<sup>93</sup>

For the purposes of assessment interrelation between the agreement preceding issuance of the bill of lading and the agreement evidenced by the bill of lading (bill of lading contract), it is important to indicate, which obligations had been agreed upon by the parties and which of them had been evidenced by the bill of lading. Subject of the contract evidenced by the bill of lading is

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<sup>87</sup> Ibid, *The Green Island*, [2010] 2 Lloyd’s Rep, 1.

<sup>88</sup> Ibid.

<sup>89</sup> *Aikens R. S.*, Bills of Lading, Informa Law from Routledge, Abingdon, December 24, 2020, 175.

<sup>90</sup> *Murray C.*, Schmitthoff’s Export Trade, The Law and Practice of International Export Trade, London, 2008, 289.

<sup>91</sup> *Aikens R. S.*, Bills of Lading, Informa Law from Routledge, Abingdon, December 24, 2020, 177.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

carriage of loaded goods. If the carrier received defective cargo under his custody, commercial dispute may be arisen on the grounds of predecessor contract through which the conditions of the goods had been agreed rather than bill of lading contract. If the parties agree on carriage of 20 containers but the carrier received only 19 of them, the obligation determined in the bill of lading is carriage of these 19 containers, despite the fact that the bill of lading indicates 20 containers.<sup>94</sup>

Unlike the general approach of the Common Law, German Law does not recognize the bill of lading as instrument of performance of the contract of carriage and considers it as an agreement between the carrier and the person that delivered the goods for carriage. This person may also be the carrier or even the consignee, if the bill of lading is delivered directly to him. Accordingly, bill of lading issued in such case is neither contract of carriage nor evidence of it, not being issued on the grounds of this contract of carriage.<sup>95</sup>

#### **4.6. Implied Contract**

If carriage of goods is organized not as independent transaction but as part of more broad international transaction, it shall be supposed that carriage of good shall be performed according to standard provisions of the carrier that are agreed by the shipper through signing the bill of lading issued by the carrier. This practice complies with common merchant practice and common understandings<sup>96</sup> of regulation commercial relations between the parties of this commercial transactions unless the parties clearly agree otherwise or the standard provisions of the carrier does not contain any “extreme” clause.<sup>97</sup> In such implied contract this “extreme” clause shall be in force if, according to the “red hand” principle, the party had been aware of it.<sup>98</sup>

#### **7. Conclusion**

Commercial transaction depends on accuracy of the transport documents that are used in international carriage of goods. Bill of lading evidences provisions of contract of carriage and also, does include some of them. Despite the contractual provisions included in it, the bill of lading does not itself represent the contract of carriage, concluded on free will of the parties, according to their agreement, On the other hand, the bill of lading evidences and adopts substantial provisions of the contract of carriage which precedes issuance of it. Contracts preceding the bill of lading might be concluded in verbal form, through electronic communications or by conduct, without clear acceptance and signature. In such cases the court shall indicate, what kind of agreement precedes the bill of lading and accordingly, does bill of lading have contractual nature or not.

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<sup>94</sup> *Aikens R. S.*, Bills of Lading, Informa Law from Routledge, Abingdon, December 24, 2020, 168.

<sup>95</sup> *Stevens F.*, The Bill of Lading: Holder Rights and Liabilities, Routledge, 1<sup>st</sup> ed., Abingdon, December 14, 2019, 18.

<sup>96</sup> On such “common understanding” English court referred in the judgment on case *British Crane Hire Corporation Ltd v Ipswich Plant Hire Ltd* [1973] EWCA Civ 6.

<sup>97</sup> *Aikens R. S.*, Bills of Lading, Informa Law from Routledge, Abingdon, December 24, 2020, 174.

<sup>98</sup> *Ibid*, 175.

Reference on „bill of lading contract”, in some sources, mean not the bill of lading as a contract but the contract of carriage, evidenced or revealed by the bill of lading.<sup>99</sup> If the bill of lading is discussed as a contract, it means that issue of discussion is contractual provisions included in the bill of lading, that had been agreed before its issuance between the parties of the contract of carriage.

Bill of lading, as the document of title, transfers contractual rights to the third party – the consignee, that creates grounds for legal relationship between the consignee and the carrier. If contract of carriage is not concluded between the shipper and the carrier, bill of lading is the only document that includes rights and obligations of the mentioned parties.

When several documents are used in legal relationship, even linked ones, risk of non-compliance shall always exist. In this case any institution that resolves the dispute, shall indicate the provisions of the agreement preceding the bill of lading. For such cases indication of the parties will is the issue of crucial importance. According to the case law, in case of non-compliance between the contract of carriage and bill of lading, the contract of carriage shall prevail, with some exceptions. One of such exceptions is determination of rights of the consignee. Also, obligations due the contract of carriage shall be clearly distinguished from the obligations due to the bill of lading: if the seller provided the defective goods, the buyer has the right of claim towards the seller; if the carrier delivered defective goods, as provided by the seller, neither seller nor the buyer have the right to claim towards the carrier, without prejudice of content of the bill of lading. If the carrier did not act due diligence for development of the bill of lading and did not indicate defects of the goods or about not having the opportunity to check that, he shall argue that the seller provided defective goods.

Also, the bill of lading indicates the contract concluded before issuance of it. If the carrier provided the goods to the consignee as agreed through the contract of carriage, on time, at agreed destination, etc., this means that both the seller and the carrier performed their obligations, if the contract of carriage complies with the contract on sale of goods.

All of the abovementioned issues make clear functional diversity of the bill of lading that are beyond being only receipt of goods and prima facie evidence of the contract of carriage. Accordingly, accuracy of the information contained in bill of lading shall be provided, especially during the development of it as far as this is the main source to indicate the following: will of the parties involved in commercial transaction, provisions of contract of carriage, agreement of the parties on allocation of the rights and obligations between them, liable parties and liability/li-mitigation of liability.

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<sup>99</sup> *Aikens R. S.*, Bills of Lading, Informa Law from Routledge, Abingdon, December 24, 2020, Chapter 7.

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33. *Leduc & Co v Ward*, [1888] 20 QBD 475.
34. *Watkins v. Rymill* (1883) 10 Q.B.D. 178, 183, 189.
35. *Glyn Mills Currie and Co v The East and West India Dock Company*: CA 1880.
36. *Dunlop v. Lambert* [1839] 6 Cl. & F. 600.