

# I deal with **Bills** of **Lading**..


## WHAT DO I KNOW ABOUT IT?

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PRESENTED BY

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 Shippers' Academy Colombo

 @ShippersAcademy

The image features a vertical blue gradient background on the left side. In the foreground, there are five black silhouettes of business professionals (three men and two women) standing in a line, facing right. Behind them is a faint, light blue world map. The right side of the slide is a solid red background with white text.

# Topics

Functions of the Bill of Lading

Different Types of Bs/L

Clean Bill of Lading and Claused Bill of Lading

Clausing Bs/L and why care should be taken in clausing

Handling Lost Bs/L

Releasing cargo with Bs/L

Switch Bill of Lading – Is it fraudulent?

Sri Lanka should soon go into remote B/L printing and matters of concern

Federal Maritime Commission





MAERSK SEALAND

COMBINED TRANSPORT BILL OF LADING

Bl. No. CMB193867

Shipped consignor (complete name and address)
MAST LANKA (PVT) LTD
23-25 RHEINLAD-PLACE,
COLOMBO - 03,
SRI LANKA

Booking No.
11439

Original consignee (complete name and address)
HELLWOOD COMPANY SPORTSWEAR DIVISION
208 NORTH TRENTON STREET, BOX 579,
RUTHERFORD, TN 38369,
U.S.A.

Forwarding agent - reference
Shipper memoranda
not part of
bill of Lading

Stacky Party (complete name and address)
PANALPINA INC.,
2855 BUSINESS PARK DRIVE,
MEMPHIS, TN 38118. TEL: (901) 3630501,
FAX: (901) 363494 CONTACT PERSON:
JEFF JOHNSTON/MATT HARWOOD

Port and Country of Origin
COLOMBO

Place of Receipt

Vessel
MUNKERO MAERSK

Port of Loading
COLOMBO, SRI LANKA

Place of Delivery
TRENTON, TN

CARRIER'S RECEIPT

PARTICULARS FURNISHED BY SHIPPER - CARRIER NOT RESPONSIBLE

Container No., Seal No.,
Marks and Numbers
MAEU8178207
ML-LK0111657

Kind of Packages, Description of Goods
CY / CY
x 40HC HANGER CONTAINER
16475 PCS
9,924 PCS (827.00 DZS) OF 72x
POLYESTER 25% RAYON 03x
SPANDEX MOVEN MESH FLT FRNT
ZIP FRNT PANT W/TAB STITCH
CREASE & BCK DART SEE
(LADIES PANTS)
6,581 PCS (1546.00 DZS) OF 100x
POLYESTER MOVEN MISSY 1 PLEAT
BELTED TROUSER W/SLASH PKTS &
S.B.E. UNLINED

Gross Weight
7825.620

Measurement
CBM
67.700

Freight & Charges
USD/LKR EXCH

Rate Unit Freight Collect

Excluded Value Charges
see clause 6 for
Declared Value of US \$

Tax Paid

Number of Original Bills
1/3

Tax Collected

Place of Issue
COLOMBO

Date
JUN 28 02

SHIPPED ON BOARD JUN 28 2002
SEE ATTACHED SHEET

MAERSK LANKA (PVT) LTD.
For Superintendent of Ship, Agent and
Authorized Representative in Sri Lanka only

REVERSE SIDE

ORIGINAL



# BILL OF LADING

- § Terms of the contract of carriage
- § Shipper's rights and obligations
- § Carrier's rights and obligations



# **FUNCTIONS OF BILL OF LADING**

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**Evidence of a Contract of Carriage**

**Receipt for the cargo**

**Document of Title**

## **THE ARDENNES (1951)**

**THE GOODS IN QUESTION WERE MANDARIN ORANGES TO BE SHIPPED FROM SPAIN TO ENGLAND. BEFORE THE CONTRACT OF CARRIAGE WAS CONCLUDED THE SHIPOWNERS PROMISED THE SHIPPERS ORALLY THAT THEY WOULD ARRIVE IN LONDON BY 30<sup>TH</sup> NOVEMBER, 1947 BUT DID NOT ACTUALLY ARRIVE UNTIL 5<sup>TH</sup> DECEMBER. THE ARRIVAL DATE WAS IMPORTANT TO THE SHIPPER NOT MERELY BECAUSE THE ORANGES MIGHT DETERIORATE, BUT ALSO BECAUSE IMPORT DUTY WAS IMPOSED FROM 1<sup>ST</sup> DECEMBER.**

**A CLAUSE IN THE BILL OF LADING ALLOWED THE SHIPOWNERS TO DEVIATE ON THE VOYAGE, AND THE SHIPOWNERS PLEADED THAT IN DEFENCE**

**THEY FAILED ON THE GROUNDS THAT IT WAS THE ORAL PROMISE RATHER THAN THE DEVIATION CLAUSE IN THE BILL OF LADING ITSELF, WHICH WAS INCORPORATED IN THE CARRIAGE OF CONTRACT.**



**LORD  
GODDARD  
C.J. SAID**

*“The contract has come into existence before the bill of lading is signed; the later is signed by one party only and handed by him to the shipper usually after the goods have been put on board. No doubt that if the shipper finds that the bill of lading contains terms with which he is not content, or does not contain some of the terms for which he has stipulated, he might, if there were time, demand his goods back; but he is not, in my opinion for that reason, prevented from giving evidence that there was in fact a contract entered into before the bill of lading was signed from different from that which is found in the bill of lading or containing some additional term. He is not a party to the preparation of the bill of lading, nor does he sign it”.*

# Receipt for Cargo

The function of the b/l as a receipt for goods is twofold. It covers the quantity and the condition of the cargo and the consignee has the right to demand that he receives the same quantity in the same condition as it was when loaded.



# Strength of Evidence as a receipt

Pursuant to Hague Visby Rules art III/4 information in the bill of lading is

- prima facie evidence in the hands of the shipper; but
- conclusive evidence in the hands of a third party acting in good faith

Now a receipt is prima facie evidence of the truth of the statements which it contains. If the person who issued it claims that it is wrong, it is for him to prove the error. The carrier, therefore, who delivers to the cargo owner a smaller number of packages, or less weight of goods than was acknowledged in the bill of lading, or goods torn and dirty when he has issued a bill of lading which had made no mention of such defect on receipt, will find it very difficult to resist a claim for damages.



# As Document of Title

A B/L is a Document of Title. This means that the legal right (the title) to the goods covered by the B/L can pass from one party to another by means of endorsements.

The carrier will only release the goods at destination to a rightful holder of a duly endorsed original Bill of Lading.

At the time the B/L is issued, the shipper will advise the carrier who the B/L should be consigned to - I.e. who the Consignee on the B/L is.

# Clean Bill of Lading

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A bill of lading is considered as clean when it does not contain any clauses to the effect that the cargo or the packaging was damaged at the time when it came into the custody of the line





# Claused Bill of Lading

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This is a bill of lading which contains clausuring or wording to indicate that the goods, when received on board the vessel, were not in fact in apparent good order and condition.

# Case Study

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In *Brown Jenkinson V Percy Dalton* (1957), The Defendants wished to ship a quantity of orange juice from London to Hamburg. The Plaintiffs, who were ship owners' agents, informed the Defendants that the barrels containing the orange juice were old and frail and that some of them were leaking, They said that they would therefore, have to issue a claused bill of lading. The Defendants said that they need a clean bill of lading and asked the shipowners to issue a clean bill of lading against a LOI. The shipowners agreed to do so and they duly received a LOI from the shipper and whereby the shipper undertook unconditionally to indemnify the Master and the Owners against all losses, which might arise from the issue of clean bill of lading in respect of the goods.



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The owners therefore, issued a clean bill of lading. The Barrels when delivered at Hamburg, were found to be leaking and the ship owners were held liable to the endorsees of the bills of lading in respect of the loss of and damage to the cargo. The Plaintiffs sued the Defendants under the indemnity (the benefit of which had been assigned to them by the owners). The Defendants refused to pay under the LOI alleging that the contract of indemnity was illegal. because it had as its object the making by the ship owners of a Fraudulent misrepresentation.





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It was held by the Court of Appeal that the LOI was unenforceable against the shippers. It was said that the ship owners, by making a representation of the fact in the bill of lading which they knew to be false, and with the intention that it should be acted upon were committing the tort of deceit, and that the Defendants' promise to indemnify them against loss resulting from the making of that representation was therefore, unenforceable.



At first sight, this decision may be surprising. It is clear that it was the Defendants who requested owners to issue clean bills of lading, and that they expressly agreed that they would indemnify the ship owners in respect of any liability arising. The Defendants therefore, took an unmeritorious point in the sense that they were simply trying to get out of their bargain with the ship owners

The court was not prepared to enforce the LOI, the clear intention of which was to commit a fraud on a consignee or endorsee of a bill of lading. The decision is, however, to be justified on the basis that a consignee must be entitled to take a statement in the bill of lading at face value, in the sense that if a bill of lading states that the goods were received in apparent good order and condition he should be entitled to take the statement as being true.

The general rule to be derived from the Brown Jenkinson case is that an LOI given by a shipper will be unenforceable if its intention is to commit a fraud on a consignee. A further example of this may arise in circumstances where a shipper is required to provide, say September bills of lading, but the cargo is not shipped until early October. In such cases, it is common for an Owner to be requested to provide a backdated bill of lading against an LOI. If the ship owner agrees to do this, the LOI will be unenforceable. This is because, applying the reasoning in the Brown Jenkinson case, the owner is making a fraudulent misrepresentation in the bill of lading, the intention of which is a fraud on the consignee. Naturally, the same principles will apply in circumstances where the bill of lading shows that a larger quantity of cargo has been shipped than is in fact the case.



# Handling Lost Bills of Lading

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Remember, the carrier is not obliged to release a second set of b/l.

Check with the shipper due to some reason whether he is holding on to the B/L

Request for a BG for unlimited time and value.

Be guided as per your Principal's guide lines.

# Releasing cargo without the B/L

All conventions says cargo should be released to the person holding the duly endorsed Original Bill of Lading.

Breaking the Rule will be at your own risk.

Remember, releasing cargo on Bank Guarantee is a only a commercial decision.

# Switch Bill of Lading

## Is It Fraudulent?



# What is a Switch Bill of Lading?

“Switching” bills of lading means issuing a second set of bills of lading, showing different shipper and/or consignee details.



**Switch bills are** normally requested by a trader, who does not wish his ultimate buyer (consignee) to know the identity of the initial seller (shipper). Usually, the shipper's name and address is updated with that of the trader, and the consignee replaced with "To order" or the name of the ultimate buyer of the goods. The "switch" takes place before the cargo has been released, whilst it is still in transit or storage.

# Receive written request from customer to issue switch bills of lading.

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Verify that there is a valid commercial purpose (i.e. no suspicion of fraud) by confirming that the party requesting the change is entitled to the bill of lading, and has a valid trade purpose for the request. The request should preferably be made by a full form shipping instruction, showing the new details required. Clarify any unusual or unclear request with the customer.

# Take utmost care with the amendments to the bill.

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**Normally**, the only amendments should be to the name and address of the shipper, consignee and/or notify party.

**You may also change** the place and date of issue of the new bills.

**Do NOT accept** any requested changes to (a) original date and place of shipment (b) cargo information (e.g. quantity, description etc) (c) special clausings on the original b/l, or (d) special instructions given by the original shipper (e.g. temperature requirements).

**Remember the Carrier is not obliged to say 'Yes' to a 'Switch' Bill of Lading.**

**Sri Lanka should soon go  
into remote B/L printing  
and matters of concern**

**Why was Sri Lanka so slow  
in getting into the web Bill of  
Lading?**



**Do you know that the bill was passed in Sri Lanka Parliament in the year 2004 accepting the e-signature?**



# **Federal Maritime Commission**

**(FMC)**

# **Founding of FMC was on the 12<sup>th</sup> August, 1961.**

The Federal Maritime Commission (FMC) is the independent federal agency responsible for regulating the U.S. international ocean transportation system for the benefit of U.S. exporters, importers, and the U.S. consumer.

# Mission and Vision Statements

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## The FMC's Mission Statement is:

To foster a fair, efficient and reliable international ocean transportation system and to protect the public from unfair and deceptive practices.

## The FMC's Vision Statement is:

Fairness and Efficiency in the U.S. Maritime Commerce.



# Questions

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