

Bills of Lading

terminology



UCC § 7-102. Definitions and Index of Definitions: (a) In this article, unless the context otherwise requires:

(1) “Bailee” means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

(2) “Carrier” means a person that issues a bill of lading.

(3) “Consignee” means a person named in a bill of lading to which or to whose order the bill promises delivery.

(4) “Consignor” means a person named in a bill of lading as the person from which the goods have been received for shipment.

(5) “Delivery order” means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

(6) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) “Goods” means all things that are treated as movable for the purposes of a contract for storage or transportation.

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- 4. GOVERNING LAWS (CLAUSE PARAMOUNT).
- This bill of lading is subject to the provisions in the Carriage of Goods by Sea Act of the United States. . . . The defenses and limitations of said Act shall apply to the goods . . . *before the goods are loaded on and/or after goods are discharged from the Vessel, and throughout the entire time the goods are in the custody or are the responsibility of the Carrier, whether acting as carrier, bailee, stevedore, or terminal operator.*

COGSA

Sec. 13. Scope of chapter [note]; ‘United States’; ‘foreign trade’

This chapter [this note] shall apply to all contracts *for carriage of goods by sea to or from ports of the United States in foreign trade. . . .*

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6. PERSONS COVERED (*HIMALAYA CLAUSE*).

- All exceptions, exemptions, defenses, immunities, *limitations of liability, privileges and conditions granted or provided by this Bill of Lading, applicable tariff, or by COGSA* or by any applicable statute for the benefit of the Vessels or Carrier shall also apply to and for the benefit of . . . all parties performing services for or on behalf of the Vessel or Carrier as employees, servants, agents or contractors of Carrier.

COGSA

Sec. 1. Definitions: “When used in this chapter [this note]—

(a) The term ‘carrier’ includes the owner or the charterer who enters into a contract of carriage with a shipper.

Sec. 4. Rights and immunities of carrier and ship:

(5) Amount of liability; valuation of cargo: Neither the *carrier* nor the *ship* shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding \$500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. This declaration, if embodied in the bill of lading, shall be prima facie evidence, but shall not be conclusive on the carrier.

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Burden of Proof for recovery of damages:

- 1) The plaintiff must establish a prima facie case by demonstrating that the cargo was loaded in an undamaged condition and discharged in a damaged condition.
- 2) If the plaintiff presents a prima facie case, the burden shifts to the defendants to prove that they exercised due diligence to prevent the damage or that the damage was caused by one of the exceptions set forth in section 1304(2) of COGSA, including “[p]erils, dangers, and accidents of the sea or other navigable waters” and “[l]atent defects not discoverable by due diligence.”
- 3) If the defendants show that the loss was caused by an exceptions, the burden returns to the shipper to establish that the defendants’ negligence contributed to the damage.
- 4) Finally, if the shipper is able to establish that the defendants’ negligence was a contributory cause of the damage, the burden shifts back to the defendants to segregate the portion of the damage due to the excepted cause from that portion resulting from the carrier’s own negligence.

The Bill of Lading

Sec. 3. Responsibilities and liabilities of carrier and ship:

- **(3) Contents of bill:** After receiving the goods into his charge the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things—
 - **(a)** The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.
 - **(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.
 - **(c)** The apparent order and condition of the goods: *Provided*, That no carrier, master, or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

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The Bill of Lading

Sec. 3. Responsibilities and liabilities of carrier and ship:

(4) Bill as prima facie evidence

- Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraphs (3)(a), (b), and (c), of this section: *Provided*, That nothing in this chapter [this note] shall be construed as repealing or limiting the application of any part of chapter 801 of Title 49.

COGSA

➤ “Sec. 4. Rights and immunities of carrier and ship

➤ “(1) Unseaworthiness:

➤ “Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped, and supplied, and to make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried fit and safe for their reception, carriage, and preservation in accordance with the provisions of paragraph (1) of section 1303 of this title [section 3 of this note]. Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other persons claiming exemption under this section.

Shipping Contracts

- **Charter Party:** In private carriage, a ship will be leased in whole or in part by special arrangement. The contract of private carriage is known as a charter party. The party hiring the vessel is usually referred to as the "charterer," and the one letting the vessel is called the "owner." (*bareboat* charter: charterer operates the vessel with rights and privileges of the owner)
- **Time Charter:** A charter for a specified period, rather than for a specific task or voyage; a charter under which the shipowner continues to manage and control the vessel, but the charterer designates the ports of call and the cargo carried. (freight: the amount due for each day that the vessel is 'on hire,' regardless of how many voyages are completed)
- **Voyage charter:** A charter under which the shipowner provides a ship and crew, and places them at the disposal of the charterer for the carriage of cargo to a designated port. (freight: amount due for carriage of cargo to destination without regard to the duration of the trip)