

Bills of Lading and Related Cargo Claims

5-7 October 2020
Novotel London Paddington Hotel

Course Moderator

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Course Programme

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Monday 5 October 2020

Time	Session	Lecture
09:00-09:15		Welcoming Remarks and Course Introduction <i>Dr John M Doviak, Director, Cambridge Academy of Transport</i>
09:15-10:30	1	Introduction to English Maritime Law <i>David Martin-Clark, Moderator</i> As an introduction to the theme of this course, this session and the one following will provide a foundation for the programme through a review of the basics of English maritime law covering in turn: origins of maritime law followed by the principles of contract law. If time permits, the law of tort will get a very brief mention as it has little impact on bills of lading. The more detailed sessions which follow will develop the law as it applies to a number of bills of lading issues which are regular sources for disputes. In this, the first of the foundation lectures, the topics to be presented are: <ul style="list-style-type: none">• The Origins and Sources of English Law• The Common Law and Equity• The Civil Justice System and the Hierarchy of the Courts• The Concept of Precedence
10:30		Coffee
10:45-12:30	2	Introduction to Contract Law <i>David Martin-Clark, Moderator</i> Topics for consideration: <ul style="list-style-type: none">• Elements of a Contract• Terms of a Contract• Factors Invalidating a Contract• Termination of a Contract• Remedies for Breach of Contract
12:30-13:45		Lunch

13:45-15:15 3 **Functions and Problems of the Bill of Lading**

The Bill of Lading is the fulcrum of a complex relationship of contracts relating to the international sale and carriage of goods. During this session, the three basic functions of the B/L will be examined and its relationship with other relevant contracts such as the charter party, cargo sale contract and letter of indemnity will be explained. The advantages and disadvantages of the B/L will be considered as will the relevance of alternative documents such as seawaybills and straight bills.

15:15 *Tea***15:30-16:30 4 **The Hague, Hague-Visby Rules and the Hamburg Rules****

No consideration of the B/L is complete without a detailed consideration of the Hague, Hague-Visby and Hamburg Rules the terms of which apply compulsorily in most situations and which form the basis of P&I cover for cargo claims. The session will examine when the Rules apply, highlight the duties and rights of the carrier and the cargo owner, and compare time limits that apply in each regime. Particular issues which are problematic under the Rules will also be considered.

16:30-17:45 5 **Defences for Cargo Claims**

Whilst International Rules bring obligations, they also provide means by which cargo claims can be defended. The Carriage of Goods by Sea legislation provides two means of approach: exceptions or exclusion and limitation. How each of these works and the obligations that the carrier must fulfil in order to “qualify” for applying exclusions/limitations will be analysed.

Time Session Lecture

09:15-10:45 6 **Incorporation of Charter-Party Terms into Bills of Lading**

Virtually all tramp Bills of Lading are issued under a Charter Party but these two differing documents can often conflict. Such problems need a solution and this session offers guidance on how to resolve the more commonly encountered difficulties.

10:45-11:00 *Coffee*

11:00-12:30 7 **Identifying Problem Areas in Trade Finance**

The session will begin with a look into what trade finance is: At its very basic form, it is simply the facilitation of trade by advancing money to sellers prior to buyers having obtained the goods. The trust gap clearly present under these circumstances must somehow be bridged and the bill of lading is perhaps the most important of several documents used in bridging the gap.

After a brief introduction, the session will deal with the following agenda:

1. Identifying Problem Areas in Trade Finance
2. Governance Issues
3. Increased Banking Regulation
4. Anti-Money Laundering
5. New Capital Requirements: Impact on Trade Finance
6. Conclusion: Who do you turn to when it all goes wrong?

The session will be lead by a commercial banker whose responsibilities included the control of risk in trade finance transactions.

12:00-13:30 *Lunch*

13:30-14:30 8 **Hague-Visby Rules: A Review of the Key Clauses**

Following on from yesterday's introduction to bills of lading and the various rules which may apply to their use, this session will concentrate on one set in particular: the Hague-Visby Rules.

14:45-15:45 9 **Group work: Comparison of Carriage of Goods by Sea Regimes**

Given the sometimes lengthy process required before a new international convention is brought into force, including any amendments to existing conventions, it is not surprising that the basis for carriage of goods by sea legislation in different countries is not uniform. Some countries have ratified the 1924 Hague Rules and have not made any amendments or changes to this despite the fact that other, more up-to-date, conventions exist.

As each new convention brings with it a fresh set of Articles (or clauses), the lack of conformity worldwide presents a number of legal challenges when a claim arises. This session will examine in detail some common features to the four Carriage of Goods by Sea conventions comparing each with the others.

15:45-16:00 **Tea**

16:00-16:30 **10** **Special Problems in the Tanker Trades**

Many Bill of Lading problems are peculiar to specific trades and this lecture considers those applicable to the carriage of oil. The nature of oil and its products and the characteristic of tankers result in a number of major problem areas including: shortages, contamination and “paper” claims which will be considered during this session.

Other issues arise in connection with the relationship between Sellers and Buyers for which letters of indemnity are entered into. These LoIs are different from the Marine LoIs which will be dealt with in a separate session later in the course.

16:30-17:15 **11** **Risk Allocation between Owners and Charterers: The Inter-Club Agreement**

Protection and Indemnity Clubs play a key role in maritime trade, both through the insurance provided to shipowners for their liabilities and the advice they offer to members in operational and contractual matters. Two areas in particular are relevant when considering how P&I Clubs assist with bills of lading: the Inter-Club Agreement and “Club” letters of indemnity (LoIs).

Under a time charter, Owners and Charterers have differing responsibilities in the settlement of cargo claims which led a number of years ago to the introduction of the Inter-Club Agreement by the P&I Clubs. The background to the ICA and its key provisions will be explained here.

Letters of Indemnity will be covered fully in the session following.

Time Session Lecture

09:00-10:00 12 Letters of Indemnity in Shipping, Trade and Bill of Lading Transactions

P&I Clubs involvement in cargo claims was explained in the preceding session in so far as some charter parties leave open how risks are shared between the parties. This session will go further into the role of P&I in shipping generally by focussing specifically on the Letters of Indemnity commonly encountered in shipping and trade on a day-to-day basis.

P&I Club suggested wordings for letters of indemnity are most often encountered in the context of delivering cargo without presentation of an original bill of lading. How these LoIs work and their limitations will be examined in this session. Other applications of LoIs will also be considered as without these, many shipments would be delayed while the parties performed a Mexican Standoff. The definition of a Mexican Standoff is: “*A confrontation amongst two or more parties in which no participant can proceed or retreat without being exposed to danger. As a result, all participants need to maintain the strategic tension, which remains unresolved until some outside event makes it possible to resolve it*”. The outside event in the shipping context is the use of the Letter of Indemnity.

10:00-10:15 *Coffee*

10:15-11:15 13 The Electronic Bill of Lading

This session will examine developments in electronic bills of lading and whether they will replace the traditional form. It will provide an up-date on current initiatives, in particular CargoDocs from ESS, and look at the interface with other trade documents, including the Letter of Credit which is central to international commerce. In addition, the factors which make the “Financial Supply Chain” more challenging to harness than the Physical equivalent will be considered.

11:15:11:30 **Group Photograph**

11:30-12:45 14 Maritime Fraud

The main thrust of this session will be to examine the modus operandi of frauds and other documentary crimes encountered in maritime commerce with particular reference to bills of lading. Understanding how clever criminal minds - be they of individuals or syndicates - can exploit the lack of transparency in shipping to perpetrate cross-border crimes is the first step in building a protective shield.

Should time permit piracy will be considered with particular reference to the position of cargo. In this context, cargo is the bill of lading holder. Piracy is an ancient practice which has enjoyed a period of resurgence in the modern era.

Though fairly quiet recently, Somalian pirates, however, behaved differently from the “skull and cross-bone” practitioners of old. For the Somalian pirate, the seizing of crew, ship, cargo or passengers is a business opportunity. None-the-less, for the crew or passengers on board a pirated vessel the fears and concerns remain. Shipowners and cargo interests (bill of lading holders and their banks) also suffer loss of money and / or time.

12:45-13:45 **Lunch**

13:45-15:00 **15** **Workshop: A Typical Bill of Lading Transaction**

This session highlights events that could occur on a voyage where the vessel is chartered to carry a cargo which is the subject of an international sales contract and a Bill of Lading is issued. This is intended as a practical exercise with the objective of illustrating how the everyday activity of issuing bills of lading can lead to a claim whose validity is dependent on a range of related contractual obligations. Issues to be discussed include:

- international sales contracts and UCP500
- contract validity (must a contract be in writing)
- obligations under the charter party
- master’s obligations regarding issuing of bills of lading
- evidence required to support any subsequent claim or counter-claim
- which charter party terms are incorporated into the bill
- un-seaworthiness as a valid claim: Hague, Hague-Visby Rules
- position
- security for a claim

15:00-15:15 **Tea**

15:15-16:15 **16** **Workshop: A Typical Bill of Lading Transaction - *continued***

16:15-16:30 **Conclusion**

Programme subject to change