





Carlo Corcione

The Electronic Bill of Lading

The Key of the Warehouse
in the Digital Era

Foreword by
Francesca Salerno





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to Pasquale Corcione



A key which in the hands of a right-
ful owner
is intended to unlock the door of
the warehouse,
floating or fixed, in which the
goods may chance to be.

BOWEN L.J.



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Abstract

Every year million tonnes of cargo are transported by sea around the globe. Trade is nowadays essentially international and 90 per cent of international trade is by sea.

The bill of lading is still the main document of transport. It matches the interests of several parties in the international trade scenario — not only carrier and cargo owners but also banks and insurance companies.

The bill of lading is not a new electronic tool and it is facing the progress of technology but it remains the essential document in international carriage of goods by sea. What has started as clay tokens, then transformed in paper form now appears on a phone message.

Although the shipping industry's tendency to resist change and adopt information technology, it cannot be denied that technology could solve some disadvantages of the paper system.

This book is the result of a doctrinal research on the above factual context and in particular on the bill of lading in the digital era examining the main advantages and disadvantages of the electronic bill of lading.

The book does not aim to detail every domestic's perspective of the bill of lading but will focus instead on achieving an understanding at the international ground.



Foreword

Francesca SALERNO*

The bill of lading has indeed been one of the most disputed topics in the shipping industry for a long time now since the dramatic evolution of digitalization. In light of Covid-19, the topic has become ever more relevant with the use of paper documents likely to become a distant memory in the not-too-distant future.

It has been some time now that the traditional key of the warehouse, (i.e., the bill of lading), as it has been defined, has presented some issues in modern competitive commerce.

An example is delays caused when the paper bill of lading does not arrive on time. Vessels are becoming faster and faster and it is not unusual these days for the vessel to arrive before the bill of lading, perhaps because there has been a problem with the bank. Additionally, there is still the cost involved in using paper bills of lading.

Conversely, the costs involved in using an electronic bill of lading, (as with all other electronic documentation compared to papers ones), is negligible.

Other transport industries are are much further advanced with a complete electronic documentation process, when compared to the maritime industry.

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It is encouraging to note, however, that the big container companies are moving in the direction of electronic bills of lading. As a matter of fact, the Digital Container Shipping Association (among the other MSC, Maersk, CMA CGM, Hapag-Lloyd, ONE, Evergreen) has recently published a document containing the standard for the electronic bill of lading.

The Association has stated that this standard is compliant with the multimodal transport reference to the United Nations to enable the facilitation of global trade. The aim of the Association is to push for a global acceptance of the electronic bill of lading, not only by shipping companies and shipping operators but also by banks and insurance companies.

Dr Corcione's view on this subject concurs with others that answers cannot always be obtained at the time of the research, however, the question that the trade and shipping has been asking and which remains unanswered is whether there is a future for the bill of lading.

The real issue here is whether the bill of lading is going to complete its transformation into the electronic bill of lading or it will be replaced by something else.

Undoubtedly, what could considerably change the picture is the acceptance of the Rotterdam Rules. This body of rules, at their present stage of process, is directed more at the domestic level, not having received a wider welcoming response as had been expected.

Shipowners and merchants still feel safe in physically touching a paper bill of lading. However, if they will not replace its functions with an electronic form it could become inefficient, resulting in favouring other forms of documentation being introduced.

Having stated the above, the doctrinal analysis of Dr Corcione's book aptly examines the pros and cons in this

digital age of moving towards the use of an electronic bill of lading in the maritime industry, as compared to the present issues with paper bills of lading, as well as examining some attempts to facilitate its use in modern trade.

The scope of Dr Corcione's book is to outline and examine the present and future state of the bill of lading and its dematerialization in the context of international trade thus providing an international understanding of this topic, and in doing that, it aptly achieves its scope.



Introduction

Covid-19 has Pushed Companies over the Technology Tipping Point — and Transformed Business Forever

McKINSEY & CO¹

Digital transformation received an incredible boost during the traumatic year of 2020. As a result of the Covid-19 pandemic, there can be no doubt that contactless technology is the way forward.

Comparing to other industries, the growth of maritime trade is less affected by the pandemic situation. Indeed, the United Nation Conference on Trade and Development (UNCTAD) recently anticipated that over 10 billion tons of cargo was maritime traded in 2020².

Regardless of whether goods are bought physically or online, they often need to be transported by sea, and whether

1. MCKINSEY & CO, *Survey on How Covid-19 has pushed companies over the technology tipping point—and transformed business forever* (2020), <https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/how-covid-19-has-pushed-companies-over-the-technology-tipping-point-and-transformed-business-forever#>, accessed 18 November 2020.

2. Review of Maritime Transport 2020 (UNCTAD, Geneva) https://unctad.org/system/files/official-document/rmt2020_en.pdf, accessed 18 November 2020.

paperless or physical, there is still one main document regulating this monstrous amount of trade: the bill of lading.

Despite the above, it must be noted that the bill of lading is not a digital phenomenon. It was born long before the digital and e-commerce revolution. Bowen LJ famously described the bill of lading as «a key which in the hands of a rightful owner is intended to unlock the door of the warehouse, floating or fixed, in which the goods may chance to be»³. However, nowadays this “key” faces remodeling as a result of both e-commerce and digital transformation.

The bill of lading has been one of the most contentious topics in the shipping industry for a long time since it concerns trade, national and international legislation, and the task of matching several different interests: carriers, shippers, banks, and insurance companies.

Currently, the plug-in product leading the field is ESS shipping solutions, which is experiencing substantial success nowadays, after nearly 40 years of attempting to break into the market by other companies.

Considering the above context, this book is the result of research on the legal obstacles regarding the use of electronic bills of lading. The book examines some attempts to facilitate the use of electronic bills of lading and the author makes recommendations for what might be a more straightforward framework for the bill of lading.

The author is aware that what could substantially change the future of the bill of lading is the blockchain technology. However for delimitations purposes the scope of this paper is narrowed to the pros and cons of the legal framework of the digitalization of the bill of lading and not on the

3. *Sanders Bros v Maclean & Co* (1883) 11 QBD.

applicability of a specific technology (e.g. blockchain) on the electronic bill of lading.

It is the author's view that perfect answers cannot always be obtained at the time of the research. However, the main point is to contribute to knowledge in the field, however negligible that may be given some of the prestigious names published in the area, or to facilitate a simpler evolution of the debate.

