

ACT 42
BILLS OF LADING ACT, 1961

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ACT 42
BILLS OF LADING ACT, 1961(1)

AN ACT to consolidate with minor amendments the law relating to bills of lading and to provide for related matters.

Application of Hague Rules

1. Application of Rules in Schedule

Subject to this Act, the Rules contained in articles 1 to 8 of the Convention which are set out in the Schedule shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from a port in the Republic to any other port whether in or outside the Republic.

2. Rules included in bills of lading

A bill of lading or similar document of title issued in the Republic which contains or is evidence of a

contract to which the Rules apply shall contain an express statement that it is to have effect subject to the Rules as applied by this Act, and the Rules as so applied shall be deemed to be incorporated in that bill of lading or similar document although

- (a) it does not contain the express statement required by this section, and
- (b) the contract pursuant to which that bill of lading or similar document is issued, is not governed by the Laws of Ghana.

3. No absolute warranty of seaworthiness

There shall not be implied in a contract for the carriage of goods by sea to which the Rules apply an absolute undertaking by the carrier of the goods to provide a seaworthy ship.

4. Modification of rules 4 and 5 of article 3

Where, under the custom of a trade, the weight of a bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper, and the fact that the weight as so ascertained or accepted is stated in the bill of lading then, despite anything in the Rules, the bill of lading is not prima facie evidence against the carrier of the receipt of goods of the weight that is inserted in the bill of lading, and the accuracy of the bill of lading at the time of shipment shall not be deemed to have been guaranteed by the shipper.

5. Modification of rule 5 of article 4

Rule 5 of article 4 of the Rules shall be read as though for the reference to “£100” there were substituted the equivalent amount in cedis at the current rate of exchange.

6. Modification of article 6

Article 6 of the Rules shall, in relation to the carriage of goods by sea in ships carrying goods from a port in the Republic to any other port in the Republic, have effect as though it referred to goods of a class instead of to particular goods and as though the proviso to the second paragraph of the article were omitted.

Rights and Liabilities of Consignees and Endorsees

7. Rights of consignee or endorsee of bill of lading

(1) A consignee of goods named in a bill of lading, and an endorsee of a bill of lading to whom the property in the goods mentioned in the bill passes under the contract in pursuance of which the endorsement was made, shall have transferred to and vested in that consignee the rights, and be subject to the same liabilities, in respect of the goods, as if the contract expressed in the bill of lading had been made with the consignee or endorsee.

(2) Subsection (1) does not prejudice or affect a right of stoppage in transit or a right to claim freight against the original shipper or owner, or a liability of the consignee or endorsee by reason or in consequence of being a consignee or endorsee, or of the receipt of the goods by reason or in consequence of the consignment or the endorsement.

8. Bill of lading conclusive evidence of shipment

(1) A bill of lading in the hands of a consignee or endorsee for valuable consideration representing goods to have been shipped on board a vessel, is, subject to section 4, conclusive evidence of the shipment as against the master or any other person signing the bill of lading, unless the holder of the bill of lading had actual notice at the time of receiving it that the goods or any of them had not been in fact loaded on board.

(2) A consignee or endorsee or any other holder of a bill of lading is not entitled to rely on subsection (1) if the misrepresentation in the bill of lading was caused without the fault of the person signing the bill of lading and wholly by the fraud of the shipper, or of the holder or a person under whom the holder claims.

9. Savings for dangerous goods and limitations of liability

This Act does not affect the operation of an enactment for limiting the liability of the owners of sea-going vessels, or relating to the carriage of dangerous goods by sea.

10. Repeals

Omitted.2(2)

Schedule

ARTICLES 1 TO 8 OF THE INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW RELATING TO BILLS OF LADING SIGNED AT BRUSSELS ON AUGUST 24, 1924

[Section 1]

ARTICLE 1

In this Convention the following words are employed, with the meaning set out below:

“**carrier**” means the owner or the charterer who enters into a contract of carriage with a shipper;

“**carriage of goods**” covers the period from the time when the goods are loaded on to the time they are discharged from the ship;

“**contract of carriage**” applies only to contracts of carriage covered by a bill of lading or a similar document of title, in so far as the document relates to the carriage of goods by sea, including a bill of lading or a similar document issued under or pursuant to a charterparty from the moment at which the bill of lading or similar document of title regulates the relations between a carrier and a holder of the bill or document;

“**goods**” includes goods, wares, merchandise, and articles of every kind except live animals and cargo which, by the contract of carriage, are or is stated as being carried on deck and are or is so carried;

“**ship**” means a vessel used for the carriage of goods by sea.

ARTICLE 2

Subject to the provisions of Article 6, under every contract of carriage of goods by sea the carrier, in

relation to the loading, handling, towage, carriage, custody, care and discharge of such goods shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

ARTICLE 3

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to
 - (a) make the ship seaworthy;
 - (b) properly man, equip and supply the ship; and
 - (c) 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.
2. Subject to the provisions of Article 4, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.
3. 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; and
 - (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 do not accurately represent the goods actually received, or which he had no reasonable means of checking.
4. 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 paragraph 3 (a), (b) and (c).
5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage, to any person other than the shipper.
6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss of damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

7. After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier, to the shipper shall, if the shipper so demands, be a “shipper” bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the “shipper” bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted, if it shows the particulars mentioned in paragraph 3 of Article 3, shall for the purpose of this article be deemed to constitute a “shipped” bill of lading.

8. Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in this Convention, shall be null and void and of no effect. A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

ARTICLE 4

1. 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 Article 3. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this Article.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from

- (a) an act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;
- (b) fire, unless caused by the actual fault or privity of the carrier;
- (c) perils, dangers and accidents of the sea or other navigable waters;
- (d) an act of God;
- (e) an act of war;
- (f) an act of public enemies;
- (g) arrest or restraint of princes, rulers of people, or seizure under legal process;
- (h) quarantine restrictions;
- (i) an act or omission of the shipper or owner of the goods, his agent or representative;
- (j) strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general;
- (k) riots and civil commotions;
- (l) saving or attempting to save life or property at sea;
- (m) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality

or vice of the goods;

- (n) insufficiency of packing;
- (o) insufficiency or inadequacy of marks;
- (p) latent defects not discoverable by due diligence;
- (q) any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of this Convention or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding £100 per package or 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 binding or conclusive on the carrier.

By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than that mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figure above named.

Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

ARTICLE 5

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under this Convention, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper. The provisions of this Convention shall not be applicable to charterparties, but if bills of lading are issued in the case of a ship under a charterparty they shall comply with the terms of this Convention. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

ARTICLE 6

Notwithstanding the provisions of the preceding articles, a carrier, master or agent of the carrier and a shipper shall, in regard to any particular goods, be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect:

Provided that this article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

ARTICLE 7

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with the custody and care and handling of goods prior to the loading on, and subsequent to, the discharge from the ship on which the goods are carried by sea.

ARTICLE 8

The provisions of this Convention shall not affect the rights and obligations of the carrier under any Statute for the time being in force relating to the limitation of the liability of owners of seagoing vessels.

Endnotes

1 (Popup - Footnote)

1. The Act was assented to on 16th March, 1961.

2 (Popup - Footnote)

2. The provision reads,

“(1) The Carriage of Goods by Sea Ordinance (Cap. 242) is hereby repealed.

(2) The United Kingdom Bills of Lading Act, 1855 (18 and 19 Vict., c. 111) shall cease to apply in Ghana after the commencement of this Act but shall continue to apply to bills of lading issued before the commencement of this Act.”