

Bills of lading and cargo claims

In the era of Covid-19

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Outline

Part I

The functions of Bills of Lading

Legal implications

Part II

Specially designed C/P clauses for Covid-19

The effect on Bill of Lading claims

Contemporary bills

Charterparty bill of lading

Liner bill of lading self-contained

Conditions of Carriage

(1) All terms and conditions, liberties and exceptions of the Charter Party, dated as overleaf, including the Law and Arbitration Clause/Dispute Resolution Clause, are herewith incorporated.

(2) General Paramount Clause

Save as is otherwise provided in this Bill of Lading, the Carrier shall be liable for loss or damage occurring during Carriage to the extent set out in this clause (2).

The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25 August 1924 ("the Hague Rules") as amended by the Protocol signed at Brussels on 23 February 1968 ("the Hague-Visby Rules") and as enacted in the country of shipment shall apply to this Contract. When the Hague-Visby Rules are not enacted in the country of shipment, the corresponding legislation of the country of destination shall apply, irrespective of whether such legislation may only regulate outbound shipments. When there is no enactment of the Hague-Visby Rules in either the country of shipment or in the country of destination, the Hague-Visby Rules shall apply to this Contract save where the Hague Rules as enacted in the country of shipment or if no such enactment is in place, the Hague Rules as enacted in the country of destination apply compulsorily to this Contract.

The Protocol signed at Brussels on 21 December 1979 ("the SDR Protocol 1979") shall apply where the Hague-Visby Rules apply, whether mandatorily or by this Contract. The Carrier shall in no case be responsible for loss of or damage to cargo arising prior to loading, after discharging, or while the cargo is in the charge of another carrier, or with respect to deck cargo and live animals.

(3) General Average

General Average shall be adjusted, stated and settled according to York-Antwerp Rules 1994 in London unless another place is agreed in the Charter Party. Cargo's contribution to General Average shall be paid to the Carrier even when such average is the result of a fault, neglect or error of the Master, Pilot or Crew.

(4) New Jason Clause

In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Carrier is not responsible, by statute, contract or otherwise, the cargo, shippers, consignees or the owners of the cargo shall contribute with the Carrier in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo. If a salving vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the said salving vessel or vessels belonged to strangers. Such deposit as the Carrier, or his agents, may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the goods to the Carrier before delivery.

(5) Both-to-Blame Collision Clause

If the Vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act, neglect or default of the Master, Mariner, Pilot or the servants of the Carrier in the navigation or in the management of the Vessel, the owners of the cargo carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying vessel or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said cargo, paid or payable by the other or non-carrying vessel or her owners to the owners of said cargo and set-off, recouped or recovered by the other or non-carrying vessel or her owners as part of their claim against the carrying Vessel or the Carrier. The foregoing provisions shall also apply where the owners, operators or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect of a collision or contact.

(6) Time bar

Subject to any provisions of this bill of lading to the contrary, the Carrier shall be discharged of all liability under this Bill of Lading unless suit is brought and notice thereof given to the Carrier within nine months after delivery of the Goods or the date when the Goods should have been delivered.

LINER BILL OF LADING

(Liner terms approved by The Baltic and International Maritime Conference)

Code Name: "COINREBILL"

Amended January 1st 1950, August 1st 1952, January 1st 1973, July 1st 1974, August 1st 1976, January 1st 1978 amended 1980.

1. Definition
Wherever the term "Merchant" is used in this Bill of Lading, it shall be deemed to include the Shipper, the Receiver, the Consignee, the Holder of the Bill of Lading and the Owner of the cargo.

2. General Paramount Clause.
The Hague Rules contained in the International Convention for the Unification of certain rules relating to Bills of Lading, dated Brussels the 25th August 1924 as enacted in the country of shipment shall apply to this contract. When no such enactment is in force in the country of shipment, the corresponding legislation of the country of destination shall apply, but in respect of shipments to which no such enactments are compulsorily applicable, the terms of the said Convention shall apply.

Trades where Hague-Visby Rules apply.
In trades where the International Convention 1924 as amended by the Protocol signed at Brussels on February 23rd 1968 - The Hague-Visby Rules - apply compulsorily, the provisions of the respective legislation shall be considered incorporated in this Bill of Lading. The Carrier takes all reservations possible under such applicable legislation, relating to the period before loading and after discharging and while the goods are in the charge of another Carrier, and to deck cargo and live animals.

3. Jurisdiction.
Any dispute arising under this Bill of Lading shall be decided in the country where the Carrier has its principal place of business, and the law of such country shall apply except as provided elsewhere herein.

4. Period of Responsibility.
The Carrier or his Agent shall not be liable for loss of or damage to the goods during the period before loading and after discharge from the vessel, however such loss or damage arises.

5. The Scope of Voyage.
As the vessel is engaged in liner service the intended voyage shall not be limited to the direct route but shall be deemed to include any proceeding or returning to or stopping or slowing down at or off any port or place for any reasonable purpose connected with the service including maintenance of vessel and crew.

6. Substitution of Vessel, Transhipment and Forwarding.
Whether expressly arranged beforehand or otherwise, the Carrier shall be at liberty to carry the goods to their port of destination by the said or other vessel or vessels either belonging to the Carrier or others, or by other means of transport, proceeding either directly or indirectly to such port and to carry the goods or part of them beyond their port of destination, and to tranship, land and store the goods either on shore or afloat and reshipe and forward the same at the Carrier's expense but at Merchant's risk. When the ultimate destination at which the Carrier may have engaged to deliver the goods is other than the vessel's port of discharge, the Carrier acts as Forwarding Agent only.

The responsibility of the Carrier shall be limited to the part of the transport performed by him on vessels under his management and no claim will be acknowledged by the Carrier for damage or loss arising during any other part of the transport even though the freight for the whole transport has been collected by him.

7. Lighterage.
Any lighterage in or off ports of loading or ports of discharge to be for the account of the Merchant.

8. Loading, Discharging and Delivery
The cargo shall be arranged by the Carrier's Agent unless otherwise agreed.

Loading, stowage and delivery shall be for the Merchant's account. Loading and discharging may commence without previous notice.

The Merchant or his Assign shall tender the goods when the vessel is ready to load and as fast as the vessel can receive and - but only if required by the Carrier - also outside ordinary working hours notwithstanding any custom of the port. Otherwise the Carrier shall be relieved of any obligation to load such cargo and the vessel may be discharged without further notice and deadfreight is to be paid. The Merchant or his Assign shall take delivery of the goods and continue to receive the goods as fast as the vessel can deliver and - but only if required by the Carrier - also outside ordinary working hours notwithstanding any custom of the port. Otherwise the carrier shall be at liberty to discharge the goods and any discharge to be deemed a true fulfilment of the contract, or alternatively to act under Clause 16.

The Merchant shall bear all overtime charges in connection with tendering and taking delivery of the goods as above. If the goods are not applied for within a reasonable time, the Carrier may sell the same privately or by auction. The Merchant shall accept his reasonable proportion of unidentified loose cargo.

9. Live Animals and Deck Cargo
Such cargo shall be carried subject to Hague Rules as referred to in Clause 2 hereof with the exception that notwithstanding anything contained in Clause 15 the Carrier shall not be liable for any loss or damage resulting from any act, neglect or default of his servants in the management of such animals and deck cargo.

10. Options.
The port of discharge for optional cargo must be declared to the vessel's Agents at the first of the optional ports not later than 48 hours before the vessel's arrival there. In the absence of such declaration the Carrier may elect to discharge at the first or any other optional port and the contract of carriage shall then be considered as having been fulfilled. Any option can be exercised for the total quantity of the Bill of Lading only.

11. Freight and Charges.
(a) Freight, whether actually paid or not, shall be considered as fully earned upon loading and non-returnable in any event. The Carrier's claim for any charges under this contract shall be considered definitely payable in like manner as soon as the charges have been incurred.
(b) Interest at 5 per cent, shall run from the date when freight and charges are due.

(c) The Carrier shall be liable for expenses of fumigation and of gathering, sorting loose cargo and weighing onboard and expenses incurred in repairing damage to and replacing of packing due to excepted causes and for all expenses caused by extra handling of the cargo for any of the aforementioned reasons.

(d) Any dues, duties, taxes and charges which under any denomination may be levied on any basis such as amount of freight, weight of cargo or tonnage of the vessel shall be paid by the Merchant.

(e) The Carrier is entitled in case of incorrect declaration of contents, weights, measurements or value of the goods to claim double the amount of freight which would have been due if such declaration had been correctly given. For the purpose of ascertaining the actual facts, the Carrier reserves the right to obtain from the Merchant the original invoice and to have the contents inspected and the weight, measurement or value ascertained.

12. Lien.
The Carrier shall have a lien for any amount due under this contract and costs of recovering same and shall be entitled to sell the goods privately or by auction to cover any claims.

13. Delay.
The Carrier shall not be responsible for any loss sustained by the Merchant through delay of the goods unless caused by the Carrier's personal gross negligence.

14. General Average and Salvage.
General Average to be adjusted at any port or place at Carrier's option and to be settled according to the York-Antwerp Rules 1974. In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which or for the consequence of which the Carrier is not responsible by statute, contract or otherwise, the Merchant shall contribute with the Carrier in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salving vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the salving vessel or vessels belonged to strangers.

15. Both-to-Blame Collision Clause. (This clause to remain in effect even if unenforceable in the Courts of the United States of America).

If the vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act, neglect or default of the Master, Mariner, Pilot or the servants of the Carrier in the navigation or in the management of the Vessel, the Merchant will indemnify the Carrier against all loss or liability to the other or non-carrying vessel or her Owner in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owner of the said goods paid or payable by the other or non-carrying vessel or her Owner to the owner of the said cargo and set-off, recouped or recovered by the other or non-carrying vessel or her Owner as part of their claim against the carrying vessel or Carrier. The foregoing provisions shall also apply where the owners, operators or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect of a collision or contact.

16. Governmental directions, Epidemics, Ice Strikes etc.
a) The Master and crew shall have liberty to comply with any order or directions or recommendations in connection with the transport under this contract given by any Government or Authority, or anybody acting or purporting to act on behalf of such Government or Authority, or having under the terms of the insurance on the vessel the right to give such orders or directions or recommendations.

b) Should it appear that the performance of the transport would expose the vessel or any goods on board to risk of seizure or damage or delay resulting from war, warlike operations, blockade, riots, civil commotions or piracy, or any such risk or other risk of loss of life or freedom, or that any such risk or other risk is increased, the Master may discharge the cargo at port of loading or at any other safe and convenient port.

c) Should it appear that epidemics, quarantine, ice - labour troubles, labour obstructions, strikes, lockouts, any of which on board or on shore - difficulties in loading or discharging would prevent the vessel from leaving the port of loading or reaching or entering the port of discharge or on discharging in the usual manner and leaving again, all of which safely without delay, the Master may discharge the cargo at port of loading or at any other safe and convenient port.

17. Identity of the Carrier.
The contract evidenced by the Bill of Lading is between the Merchant and the Owner of the vessel named herein (or substitute) and it is therefore agreed that that Shipowner (or substitute) shall be liable for any damage or loss due to any breach or non-performance of any obligation arising out of the contract of carriage, whether or not relating to the vessel's seaworthiness. It is agreed that the Merchant shall be liable to the Carrier and/or bailee of the goods shipped hereunder, all limitations of, and exonerations from, liability provided for by law or by this Bill of Lading shall be available to such other.

It is further understood and agreed that as the Line Company or Agents who have executed this Bill of Lading for and on behalf of the Master is not a principal in the transaction, said Line Company or Agents shall not be under any liability arising out of the contract of carriage, nor as Carrier nor bailee of the goods.

18. Exemptions and immunities of all servants and agents of the Carrier.
It is hereby expressly agreed that no servant or agent of the Carrier (including every independent contractor from time to time employed by the Carrier) shall in any circumstances whatsoever be under any liability whatsoever to the Merchant for any loss, damage or delay arising or resulting directly or indirectly from any act, neglect or default on the part of any such person acting in the course of his employment and, but without prejudice to the generality of the foregoing provisions in this clause, every exemption, limitation, condition and liability herein contained shall, in connection with his employment and, but without prejudice to the generality of the foregoing provisions in this clause, every exemption, limitation, condition and liability herein contained shall extend to protect every such servant or agent of the Carrier acting as aforesaid and for the purpose of all the foregoing provisions of this clause the Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all person who are or might be his servants or agents from time to time (including independent contractors as aforesaid) and all such persons shall to this extent be deemed to be parties to the contract evidenced by this Bill of Lading.

The Carrier shall be entitled to be paid by the Merchant on demand any sum recovered or recoverable by the Merchant or any other from such servant or agent of the Carrier for any such loss, damage or delay or otherwise.

19. Optional Stowage, Unitization.
a) Goods may be stowed by the Carrier as received, or, at Carrier's option, by means of containers, or similar articles of transport used to consolidated goods.

b) Containers, trailers and transportable tanks, whether stowed by the Carrier or received by him in a stowed condition from the Merchant, may be carried on or under deck without notice to the Merchant.

c) The Carrier's liability for cargo stowed as aforesaid shall be governed by the "Hague Rules" as defined above notwithstanding the fact that the goods are being carried on the deck and the goods shall contribute to general average and shall receive compensation in general average.

ADDITIONAL CLAUSES
(To be added if required in the contemplated trade).

A. Demurrage.
The Merchant shall be paid demurrage at the daily rate per ton of the vessel's gross register tonnage as indicated on Page 2 if the vessel is not loaded or discharged with the dispatch set out in Clause 8, and delay in loading or discharging at wharf or at port or to count, provided that if the delay is due to causes beyond the control of the Merchant, 24 hours shall be deducted from the time on demurrage.

B. Merchant shall be liable to the Carrier for a proportionate part of the total demurrage due based upon the total freight on the goods to be loaded or discharged at the port in question.
No Merchant shall be liable in demurrage for any delay incurred in connection with goods belonging to other Merchants.

The demurrage in respect of each parcel shall not exceed its freight. (This clause shall only apply if the Demurrage Box on Page 2 is filled in.)

B. U.S. Trade. Period of Responsibility
In case the Contract evidenced by this Bill of Lading is subject to the U.S. Carriage of Goods by Sea Act, then the provisions stated in said Act shall govern before loading and after discharge and throughout the entire time the goods are in the Carrier's custody.



The functions of a typical bill of lading

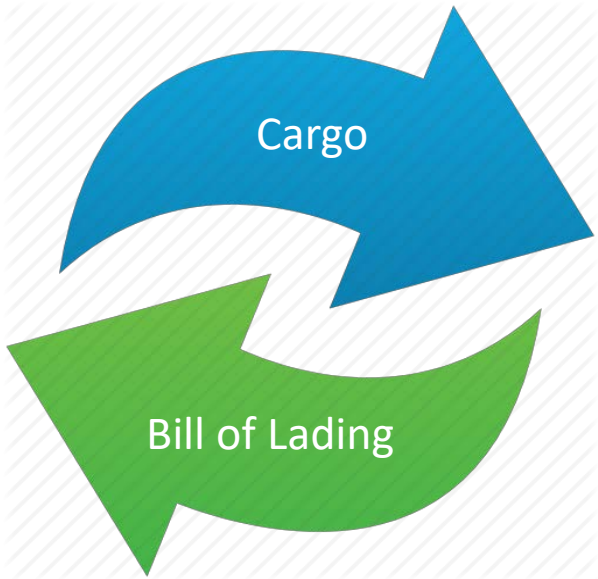
- Receipt of the goods shipped
- Document of title
 - entitlement to delivery at the port of discharge
- Evidence of the terms of the contract of carriage

transferability



The functions of the bill of lading-shipment

Contractual Shipper
(who is not a charterer
e.g. liner carriage)



 Contractual Carrier

TRANSPORTES INTERNACIONALES		BILL OF LADING	
ISSUING COMPANY MAGENTA CORPORATION MAGENTA, JAPAN		ISSUING OFFICE MAGENTA MAGENTA, JAPAN	
SHIPPER AMERICA AGRIKOLA S.A. CARTAGO, Costa Rica		TO ORDER OF Tegoni Logistics Services SUITE 101 75 Street Bulevar Miami FL 33178	
CONSIGNEE COMERCIAL LINDERA SP SAN JOSE, Costa Rica		YARD ARICETA AGRIKOLA S.A. CALLE 5 SUR 102270 APO. 8091-1000 SAN JOSE, COSTA RICA TEL. 506 2222-7908	
COUNTRY OF ORIGIN COUNTRIES VY 2 Yakutsk, Japan		COUNTRY OF DESTINATION Yakutsk, Japan	
PLACE OF ORIGIN Toluca, Costa Rica		PLACE OF DESTINATION Toluca, Costa Rica	
NO. OF PACKS 2000		GROSS WEIGHT 1000.000 KGS	
NET WEIGHT 3000000		NET WEIGHT 1000.000 KGS	
CARGO DESCRIPTION RICE (PADDY) BULK		CARGO DESCRIPTION RICE (PADDY) BULK	
OCEAN FREIGHT \$ 200,000.00		OCEAN FREIGHT \$ 200,000.00	
TOTAL FREIGHT \$15,000.00		TOTAL FREIGHT \$15,000.00	

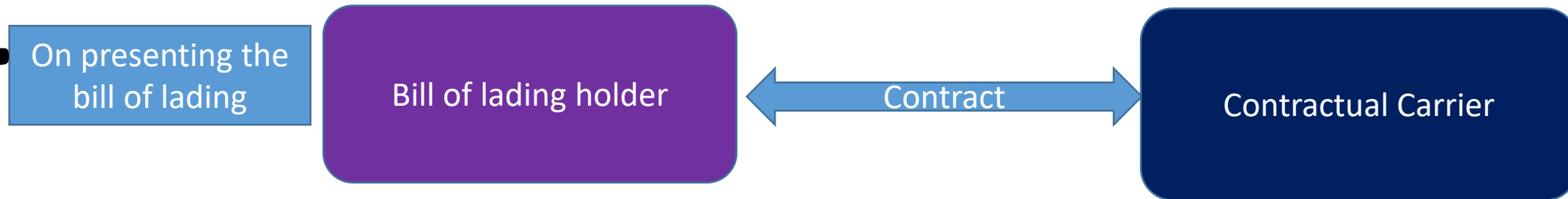
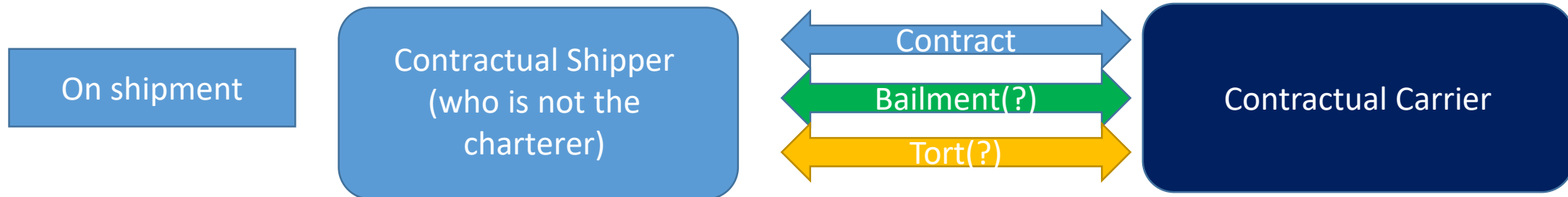
Receipt: Prima facie evidence of what was shipped

Document of title

Prima facie evidence of the contract of carriage



The parties to the contract of carriage



COGSA 1992



Incorporation of charterparty clauses into bills of lading

Clauses germane to the carriage of goods can be incorporated by general words of incorporation :
“e.g. all terms and conditions”

Other clauses require notification of the bill of lading holder so express wording must be included:
“e.g. all terms and conditions including the applicable law and dispute resolution clause

Incorporated terms may be made null and void if they reduce the carrier’s liability below the Hague-Visby Rules’ standards

If the clause refers only to “charterers” then it is a question whether the charterparty differentiates between charterers/consignees or not

If the clause refers to “charterers/consignees” then obligations are most likely transferred

Incorporated terms may not transfer obligations on the bill of lading holder

Would Covid-19/Infectious disease clauses:
-be incorporated by general words of incorporation?
-be null and void under HVR Art. III r.8?

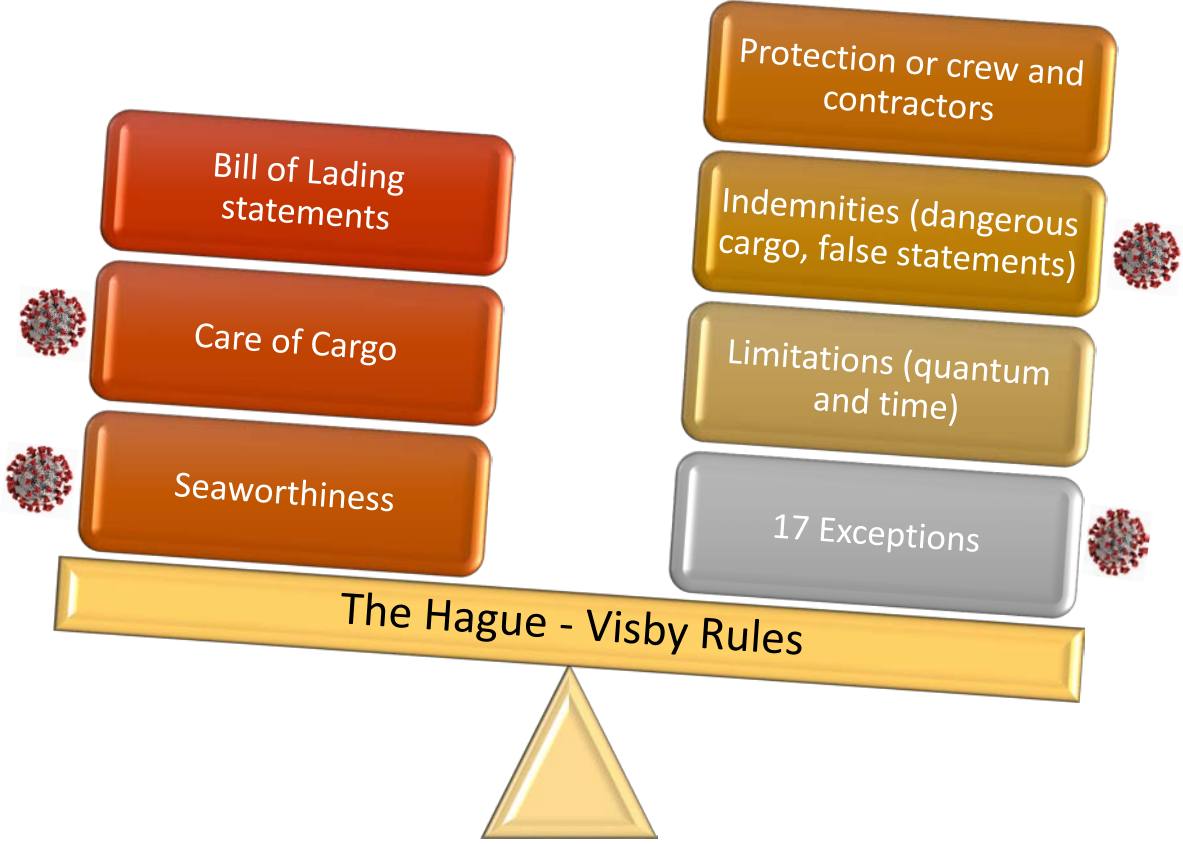
Would Covid-19/Infectious disease clauses be incorporated by general words of incorporation?

- The clauses have several parts:
 - Liberty for the carrier to perform the contract in a different way if the clause is triggered
 - An expressly included clause in *Caspiana* was not found in breach of the Hague Rules.
 - Not unlikely to be considered incorporated as it does provide for performance when there are risks for the adventure
 - More so if it is introduced after the Covid-19 has become part of the contractual matrix.
 - Owner's costs and expenditure for the alternative performance on the Charterer
 - The wording is too broad to permit an argument of transferring all such expenditure on the Bill of Lading holder
 - An argument of costs and expenditure with respect to cargo handling, storage and transshipment may be more likely to succeed
 - Indemnity owed by the charterer the shipowner for claims etc. including against bill of lading claims- even after the end of the charterparty.
 - This is unlikely to be incorporated, an issue not germane to the cargo carriage and does not make sense in a bill of lading context
 - Likely to be in violation of the HVR standards

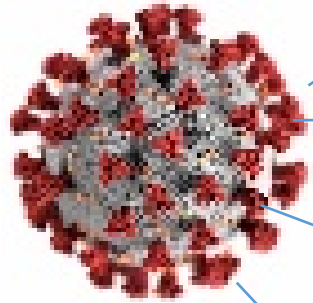
Due despatch
No deviation 

Carrier's
Obligations

Carrier's
protection



Covid -19 Risks



Delays in cargo operations

Delays in port operations

Redirection

Crew infection risks



Cargo damage

Economic loss to cargo interests

Increased demurrage

Economic losses to cargo interests

- Loss arising from breach of the b/l contract
 - due despatch
 - deviation
- Loss arising from inability to fulfil other contract
 - Not recoverable in general
- Covid-19 clauses (if incorporated) deem changes in the port as contractual performance and remove the basis of any such claim.



Breach of Art. III r. 1 causing cargo damage

- Due diligence obligation
 - Limited in time
 - Non-delegable
- Crew illness (Covid-19) affects ship's seaworthiness:
 - Crew numbers
 - Compliance of ship with Covid-19 measures
- IF causative
- THEN it could lead to liability
 - Hague-Visby Rules standard (Art. III r. 1)
 - What would the due diligence standard be?



Covid-19 clauses do not affect this duty directly



Carriage of Goods by Sea Act 1971

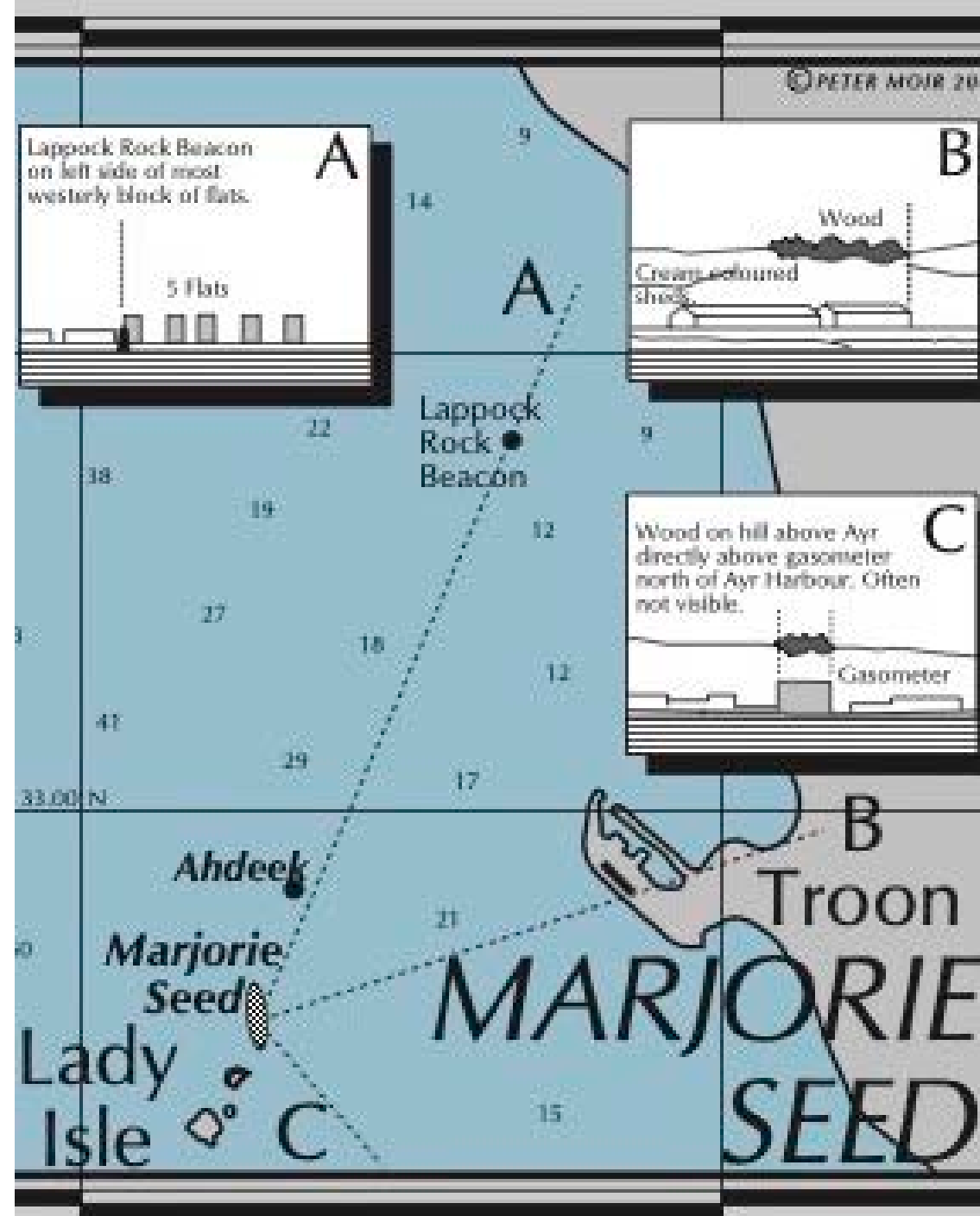
CHAPTER 19

ARTICLE III

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.
 - (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 IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

RIO TINTO COMPANY, LTD. v. THE SEED SHIPPING COMPANY, LTD, Mr. Justice Roche

"I ask myself, as I asked one of the doctors, assuming that the state of this man's health as regards indigestion had been more adequately appreciated by him, or by the doctor, what they would have done; and I reply, as the doctor replied, that he would have been told to take some medicine and to carry on with his work. That is to say, no one of ordinary knowledge and of ordinary diligence in these matters, and with ordinary care, would have thought it necessary to stop the master from going as master on this voyage in command of this ship; and while attaching some importance to his indigestion I do not attach supreme importance to it; I do not attach any more importance to it than I do to the fact that he had had a disturbed night the night before."



Breach of Art. III r. 2 causing cargo damage

- Strict obligation
 - can be delegated
 - subject to exceptions
 - exceptions can not operate if there is a breach of Art. III r.1
- Exceptions
 - “restraint of princes ...”
 - “quarantine”



Covid-19 clauses (if incorporated) can be viewed as providing alternative performance of Art. III r.2



Carriage of Goods by Sea Act 1971 CHAPTER 19

ARTICLE III

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to—
 - (a) Make the ship seaworthy.
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 - (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 IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

COGSA 1971

- Art IV r(2)(g) Arrest or restraint of princes, rulers or people, or seizure under legal process.
- Art IV r(2)(h) Quarantine restrictions.

- orders applicable to all ships (i.e. a general requirement to quarantine), or
- orders only applicable to ships registered in a specific state (for example a prohibition of all ships flying the flag of state X), or,
- orders applicable to the particular ship (for example because it has visited a Covid-19 infected port), or
- orders constraining the carrier, who may be under the jurisdiction of the ordering state, even if the ship is not.

What if the orders are a permanent feature?
What if they existed at the beginning of the voyage?

Ciampa And Others V. British India Steam Navigation Company, Limited. [1915]

- Cargo of lemons shipped in Naples
- Compulsory spraying of sulphur gases in the holds in Genoa in order to kill the rats onboard the ship
 - Ship had been to Mombassa which was plague infected
- Cargo discharged in England and found damaged due to the use of sulphur gases
- Process compulsory for ships which have visited plague infected ports
- Held:
 - the ship was unseaworthy as it was expected that this process would have been imposed on the ship because of its previous schedule
 - exception did not apply



Charterparty risks for the bill of lading holder

- Bills of Lading frequently incorporate a charterparty
- Covid-19 clauses:
 - permit alternative performance by the shipowner
 - transfer risk and costs on charterers
 - Provide indemnity to shipowners
- Charterers have to incorporate the clause into shipping documents
 - possible transfer of payment liabilities, in particular freight and demurrage to Bill of Lading holders
 - possible transfer of carrier's entitlement to perform the contract differently with costs on charterer

Conditions of Carriage

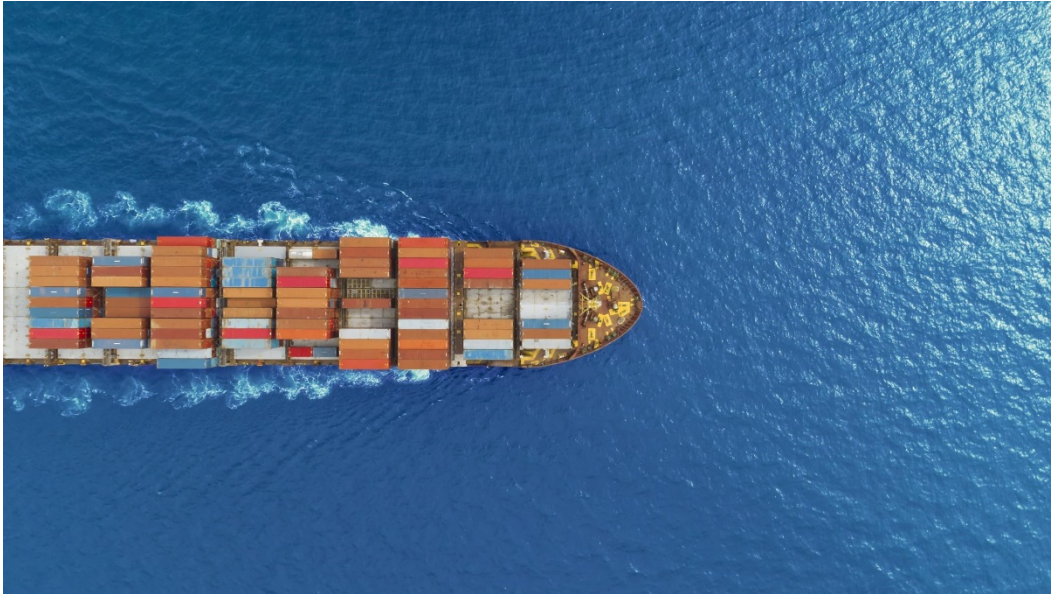
(1) All terms and conditions, liberties and exceptions of the Charter Party, dated as overleaf, including the Law and Arbitration Clause/Dispute Resolution Clause, are herewith incorporated.

- **BIMCO Infectious or Contagious Diseases Clause for Voyage Charter Parties 2015**
- (f) *If, notwithstanding Sub-clauses (b) to (e), the Vessel does proceed to or continue to or remain at an Affected Area:*
- (i) *The Owners shall notify the Charterers of their decision but the Owners shall not be deemed to have waived any of their rights under this Charter Party.*
- (ii) *The Owners shall endeavour to take such reasonable measures in relation to the Disease as may from time to time be recommended by the World Health Organisation.*
- (iii) *Any additional costs, expenses or liabilities whatsoever arising out of the Vessel visiting or having visited an Affected Area, including but not limited to screening, cleaning, fumigating and/or quarantining the Vessel and its crew, shall be for the Charterers' account and any time lost shall count as laytime or time on demurrage.*
- (g)...
- (h) *If in compliance with this Clause anything is done or not done, such shall not be deemed a deviation but shall be considered as due fulfilment of this Charter Party. In the event of a conflict between the provisions of this Clause and any implied or express provision of this Charter Party, this Clause shall prevail to the extent of such conflict, but no further.*
- (i)...
- (j) *The Charterers shall procure that this Clause shall be incorporated into all bills of lading, waybills or other documents evidencing contracts of carriage issued pursuant to this Charter Party.*



The carrier would arguably have an obligation to take the cargo back if port becomes impossible. But the clause moves this right earlier in time.

Do liner bills need additional clauses?



<https://www.msc.com/zh/carrier-terms>

- **9. METHODS AND ROUTES OF CARRIAGE**
- 9.1 The Carrier may at any time and without notice to the Merchant:
 - (a) use any means of transport or storage whatsoever;
 - (b) transfer the Goods from one conveyance to another including transhipping or carrying the Goods on a Vessel other than the Vessel named on the front hereof or by any other means of transport whatsoever, even though transhipment or forwarding of the Goods by such means may not have been contemplated or provided for herein;
 - (c) sail without pilots, proceed via any route (whether or not the nearest or most direct or customary or advertised route) at any speed and proceed to, return to and stay at any port or place whatsoever (including the Port of Loading herein provided) once or more often, and in any order in or out of the route or in a contrary direction to or beyond the Port of Discharge once or more often;
 - (d) load and unload the Goods at any place or port (whether or not any such port is named on the front hereof as the Port of Loading or Port of Discharge) and store the Goods at any such port or place, including but not limited to the use of off-dock storage at any port;
 - (e) comply with any orders or recommendations given by any government or authority or any Person or body purporting to act as or on behalf of such government or authority or having under the terms of the insurance on any conveyance employed by the Carrier the right to give orders or directions.
- 9.2 The liberties set out in clause 9.1 may be invoked by the Carrier for any purpose whatsoever whether or not connected with the carriage of the Goods, including but not limited to loading or unloading other goods, bunkering or embarking or disembarking any Person(s), undergoing repairs and/or drydocking, towing or being towed, assisting other vessels, making trial trips and adjusting instruments. Anything done or not done in accordance with clause 9.1 or any delay arising therefrom shall be deemed to be within the contractual carriage and shall not be a deviation.

Do liner bills need additional clauses?



<https://www.msc.com/zh/carrier-terms>

- **19. MATTERS ADVERSELY AFFECTING CARRIER'S PERFORMANCE**
- 19.1 If at any time the carriage is or is likely to be affected by any hindrance, risk, danger, delay, **difficulty or disadvantage of whatsoever kind and howsoever arising which cannot be avoided by the Carrier by the exercise of reasonable endeavours, (even though the circumstances giving rise to such hindrance, risk, danger, delay, difficulty or disadvantage existed at the time this contract was entered into or the Goods were received for the carriage)** the Carrier may at its sole discretion and without notice to the Merchant and whether or not the carriage is commenced either:
 - (a) **carry the Goods** to the contracted Port of Discharge or Place of Delivery, whichever is applicable, **by an alternative route** to that indicated in this Bill of Lading or that which is usual for Goods consigned to that Port of Discharge or Place of Delivery; or
 - (b) **suspend the carriage** of the Goods and store them ashore or afloat upon the terms and conditions of this Bill of Lading and endeavour to forward them as soon as possible, but the Carrier makes **no representations as to the maximum period of suspension**; or
 - (c) **abandon the carriage** of the Goods and **place them at the Merchant's disposal** at any place or port which the Carrier may deem safe and convenient, or from which the Carrier is unable by the exercise of reasonable endeavours to continue the carriage, **whereupon the responsibility of the Carrier in respect of such Goods shall cease**. The Carrier shall nevertheless be **entitled to full Freight** on the Goods received for the carriage, and **the Merchant shall pay any additional costs incurred by reason of the abandonment of the Goods**. If the Carrier elects to use an alternative route under clause 19.1 (a) or to suspend the carriage under clause 19.1 (b) this shall not prejudice its right subsequently to abandon the carriage.
- 19.2 If the Carrier elects to invoke the terms of this clause 19, then notwithstanding the provisions of clause 9, **the Carrier shall be entitled to such additional Freight and costs as the Carrier may determine**.

Container demurrage

- containers provided by the carrier are to be returned within an agreed “free time”
- After that liability for demurrage arises
- Delays due to Covid-19 increase the demurrage
- Such liability is normally on the shipper but can be acquired by the bill of lading holder
- Limited in time by frustration
 - MSC MEDITERRANEAN SHIPPING CO SA V COTTONEX ANSTALT [2016] EWCA Civ 789



Conclusions

- Covid-19 infections and protective measures can cause delays in the performance of the carriage of goods under bills of lading
- The exact cause of the delays will determine whether they may be considered as breaches of the carrier's obligations
- Deficiency in the crew before and at the beginning of the voyage due, for example, to illness making one or more crew members unable to work and this is causative to cargo damage or to a breach of the due despatch obligation then this could be recoverable by the bill of lading holder
- The same outcome is suggested if Covid-19 infections make the ship vulnerable to physical or administrative procedures in the various ports of call which may affect the condition of the cargo.
- In the absence of a breach of HVR Art. III r.1, liability for cargo damage due to Covid-19 caused by delays from restrictions imposed by authorities is likely to be exempted under Art. IV r.2(2).
- For bills of lading issued under a charterparty the inclusion of clauses for Covid-19 or infectious diseases put all expenses and delays (except for crew changes) on the charterer and may transfer them to the bill of lading holder who may find itself liable for such delays and have its cargo detained under the contractual lien.
- The effects of the incorporation of Covid-19 clauses into a bill of lading are difficult to predict and will depend on the specifics of the issues.
- The strict nature of demurrage payment for containers is likely to lead to increased liability for shippers and bills of lading holders.