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FROM OWNERSHIP TO ENTITLEMENT: REPLACING THE BILLS OF LADING ACT 1855 WITH THE CARRIAGE OF GOODS BY SEA ACT 1992

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ABSTRACT

This paper explores the significance and evolution of the Bill of Lading (BoL) in maritime law. A BoL presumes the existence of a contract of carriage, either written or implied, and traditionally fulfills three key roles: serving as a receipt for cargo, providing evidence of a contract of carriage, and acting as a document of title. The Bills of Lading Act 1855 (BoLA) governed the transfer of contractual rights, linking them to the transfer of property in goods. However, the Act faced practical challenges when BoL holders did not possess ownership of the goods. The 1991 Report by the Law Commission of England and the Scottish Law Commission highlighted numerous issues with the BoLA 1855, including its limited applicability and outdated provisions. These deficiencies led to its repeal and replacement by the Carriage of Goods by Sea Act (COGSA) 1992, which addressed key problems by granting contractual rights to consignees independent of property transfer.

Keywords: Bill of Lading, Contract of Carriage, Bills of Lading Act 1855, Carriages of Goods by Sea Act 1992

1. INTRODUCTION

The existence of a Bill of Lading (BoL) presupposes the existence of a contract of carriage. This contract of carriage may be an explicit, written contract, such as a charter party, or an implicit, verbal one, the existence of which is proven indirectly by the later issuance of the BoL Treitel & Reynolds (2011). Traditionally, a BoL is perceived to serve three functions: (i) it serves as a receipt for the cargo, (ii) it serves

as evidence of the existence of a contract of carriage and may even be the contract of carriage itself, and (iii) it grants its holder an exclusive right to claim delivery of the cargo, thereby enabling the BoL to function as a document of title Stevens (2017).

The Bills of Lading Act 1855 Bills of Lading Act 1855 was enacted to address the legal gap where third parties—consignees and endorsees—had no privity of contract with the carrier and thus lacked enforceable rights under the contract of carriage. However, the Act linked the transfer of contractual rights strictly to the transfer of property in the goods. This interdependence proved increasingly unworkable in modern commercial practices, particularly with the rise of documentary credit systems, pledge arrangements, and bulk cargo shipments. In such transactions, holders of the BoL often lacked legal title to the goods during transit, rendering them unable to sue carriers for loss, damage, or misdelivery. These deficiencies created widespread uncertainty and inefficiency in international shipping and finance Zekos (1997). The Act encountered difficulties in its application due to the interdependence, where the holder of the BoL had not received the property in the goods. The 1991 Report mentioned many issues arising from the Bills of Lading Act 1855 that were either causing problems or not being adequately addressed, as assessed by the Law Commission of England and the Scottish Law Commission Great Britain, Law Commission, & Scottish Law Commission. (1991).

The Bills of Lading Act 1855 was repealed by The Carriage of Goods by Sea Act Carriage of Goods by Sea Act 1992 Ferris (1992). The Carriage of Goods by Sea Act 1992 grants contractual rights to the consignee despite the transfer of property in the goods Zekos (1997). This paper explores the necessity of that legislative shift. It is structured to first identify the core legal inadequacies of Bills of Lading Act 1855, particularly in the context of privity, pledges, and bulk goods. It then examines the doctrine of implied contracts and its judicial treatment, which attempted, though often imperfectly, to remedy the Act's failings. Subsequently, it analyzes how Carriage of Goods by Sea Act 1992 addressed each of these weaknesses through statutory reform. Finally, the paper evaluates the Act's capacity to accommodate emerging technologies such as electronic bills of lading and considers the residual legal and commercial challenges.

The research methodology employed is doctrinal in nature, involving a detailed examination of primary legislation, case law, and Law Commission reports. It is supplemented by critical analysis of secondary sources, including academic commentary and journal articles, to provide both historical context and interpretive insights. Through this method, the paper traces the evolution of carriage of goods law and assesses the legal reasoning underpinning the transition from Bills of Lading Act 1855 to Carriage of Goods by Sea Act 1992.

2. WEAKNESS OF THE BOLA 1855

2.1. BUYERS BEAR RISKS REGARDING THE PRIVITY OF THE CONTRACT OF CARRIAGE

The Bills of Lading Act 1855 was passed basically to solve the problem concerning the position of the buyer of goods carried by sea in three particular situations: (i) the goods get damaged during shipping, (ii) there is a short delivery, or (iii) the goods are lost Humphreys & Higgs (1993). Accordingly, Section 1 lets the receiver of the cargo under a BoL sue the carrier as if they were an original party to the contract. The problem was that under international standard contracts of sale,

the buyer accepted the risk of loss from the time of shipment Humphreys & Higgs (1993). Even if he has the BoL in hand, he is not privy to the contract of carriage (which is between the seller and the carrier), and consequently, he cannot sue the carrier Bradgate & White (1993). The doctrine of privity of contract states that, in fact, only the immediate parties to the contract have rights and obligations under that contract. Accordingly, the buyer would be considered a stranger to that contract Bradgate & White (2012). In the case of The Delfini, the Court of Appeal mentioned that if a receiver ended up owning the goods during the journey or upon discharge but didn't get the BoL after unloading, they couldn't sue the carrier under Section 1 The Delfini, [1990].

This problem was not merely theoretical but had far-reaching commercial implications. In practice, it meant that buyers who bore the risk of the goods during transit — a risk often transferred at the point of shipment — could be left without any legal remedy against the carrier in the event of loss or damage. The reliance on the passage of property as a condition for transferring contractual rights under Section 1 created legal uncertainty, especially in modern trade transactions where property and possession are frequently decoupled. Bradgate & White (2012)

Additionally, bulk cargo shipments, which are common in commodities trading, posed particular difficulties under Bills of Lading Act 1855. As Section 16 of the Sale of Goods Act 1979 stipulates, property in unascertained goods does not pass until the goods are identified and appropriated. This identification typically happens at the discharge port, often after the bill of lading has been transferred. In such cases, even when the buyer holds the BoL, they would not have acquired property in the goods “upon or by reason of” the endorsement, and therefore would lack standing to sue the carrier Humphreys & Higgs (1993).

This legal structure failed to reflect the commercial reality where the bill of lading functions as a key document of title and as the buyer’s primary connection to the goods and the shipping contract. The law's insistence on the transfer of property as a prerequisite to sue was out of step with modern financing practices, such as letters of credit and security pledges, where banks or other financial institutions may hold the BoL without obtaining full ownership Treitel & Reynolds (2011).

Ultimately, these limitations in buyer protection underscored the urgent need for reform. The replacement of Bills of Lading Act 1855 by the Carriage of Goods by Sea Act 1992 was driven in part by the goal of providing a more coherent and commercially appropriate legal framework. Under the new Act, the link between property and contractual rights was severed, allowing the lawful holder of a BoL to sue the carrier regardless of whether property had passed — a change that brought English law into alignment with commercial practice and reduced the need for judicial fictions Bradgate & White (1993).

2.2. THE HOLDERS OF BOL LACK COMPLETE PROTECTION

In the case of the pledgee, following Section 1, the right to take legal action transfers when 'the property' is delivered to a consignee or indorsee. Nevertheless, Section 1 was rendered ineffective when the BoL was handed over to a pledgee, who only got a specific property rather than full ownership. For example, The House of Lords ruled in the case Sewell v Burdick that an endorsee who is only a pledgee does not acquire absolute ownership of the commodities and so cannot be held responsible in a lawsuit by the shipowner for items Sewell v Burdick, [1884]. The decision indicates that banks and other entities holding the BoL as security won't be responsible for goods and other charges. It can be concluded that if the person

holding the bill wants to get their security and the goods back, they can't legally sue the carrier under Section 1 Carver (1890). It's evident that Section 1 of the Bills of Lading Act 1855 didn't work when the BoL was given to a pledgee, as it only provided limited ownership rights instead of complete ownership. This made the BoL an unsatisfactory security document for lenders. Furthermore, Section 1 didn't apply if a document other than a BoL was used, especially in a marine waybill or ship's delivery order Great Britain et. al. (1991).

Another challenge that arises is the subordination of the third-party cargo receiver's right to sue to the vesting of property, which results in significant unfairness, particularly with bulk cargoes Chamberlain & Colaço (2023). According to Section 16 of the Sale of Goods Act 1979, property in goods that are part of a bulk can only be transferred once and when the property is ascertained. In the context of sea carriage, the ascertainment typically occurs when the goods are separated at the discharge port. However, this determination would only occur after the shipment or endorsement of the BoL Humphreys & Higgs (1993). In such cases, the property transfer would not be caused by the consignment or endorsement of the BoL. Consequently, the third-party cargo receiver would not have the right to make a suit against the carrier for any damage to the products, including short delivery or non-delivery. For example, in the case The Aramis, where the property was unable to be transferred due to the absence of delivery in respect of one of the BoL The Aramis, (1989), and in the case Filiatra Legacy, a letter of indemnity was used to make a short delivery of oil to the cargo receiver prior to the receipt of a BoL The Filiatra Legacy, [1991].

These limitations highlighted how Section 1 of the Bills of Lading Act 1855 failed to align with commercial practices and the evolving role of the bill of lading as a security instrument. In financing arrangements involving banks or financial institutions, the BoL is frequently pledged as collateral, yet under the BoLA framework, such pledgees could neither enforce contractual rights nor be held liable as contracting parties. As a result, the bill's status as a "document of title" was more symbolic than functional in these contexts Zekos (1997).

The rigidity of Section 1 was further exacerbated in complex transactions involving documents other than traditional BoLs, such as sea waybills and ship's delivery orders. These documents, while essential in commercial logistics, did not qualify under the BoLA's scope, leaving their holders entirely outside the statutory protection scheme. This exclusion left cargo interests vulnerable and created unnecessary distinctions in legal entitlements based purely on document classification Bradgate & White (1993).

Additionally, judicial efforts to provide relief through Brandt v Liverpool implied contracts were inconsistently applied and criticized for relying on artificial constructs of offer and acceptance. These implied contracts were only recognized under narrow conditions, such as where the BoL holder paid freight or physically took delivery, which excluded many stakeholders, like pledgees or indirect consignees, who might still suffer losses as issued in the case The Aramis.

The position of bulk cargo receivers was particularly unjust. As highlighted in The Aramis, where the cargo was undelivered and therefore unascertained, the holder of the BoL could neither be said to possess the property nor to have rights of suit under Section 1. Similarly, Filiatra Legacy illustrated that practical shipping solutions, such as using letters of indemnity to facilitate early discharge, rendered the BoL ineffective as a basis for contractual claims. These practices exposed receivers to legal uncertainty despite their commercial role as the intended recipients of the goods Bradgate & White (1993).

In essence, Section 1 of the Bills of Lading Act 1855 created a narrow and outdated regime of protection, excluding significant categories of BoL holders—pledgees, waybill holders, receivers of bulk goods, and others—from enforcing rights. This legislative deficiency prompted the Law Commission and Scottish Law Commission to conclude that reform was not only necessary but urgent. The subsequent enactment of the Carriage of Goods by Sea Act 1992 thus served to remove the outdated dependence on property transfer and to create a more inclusive and commercially responsive legal framework.

3. IMPLIED CONTRACT

It is long established that where a consignee obtains delivery of goods from the carrier by presenting the BoL, a contract on the terms of the bill can be implied between the carrier and the consignee, specified in the case Allen v Coltart Allen v Coltart, [1883]. This so-called 'Brandt contracts' after the leading case of Brandt v Liverpool, Brazil and River Steam Navigation Co Ltd in 1924. Here, the plaintiff was a pledgee and therefore had no cause of action under Section 1. To alleviate the position of pledgees, especially banks, the court implied a contract on the same terms as those evidenced in the bill, based on the fact that the pledgee presented the bill, paid freight, and took delivery of the goods. The preconditions for finding an implied contract seem to include that the holder of the bill must have some interest in the property, the actions of the parties must in some way be construed as offer and acceptance, and sufficient consideration must be provided. However, despite the relative ease with which these requirements may be satisfied, for example, in assessing the use of implied contracts, one cannot but help notice the judicial fiction employed in the construction of such contracts in finding offer, acceptance, and consideration and hence the amount of judicial discretion which exists in this area. Indeed, Bingham LJ states that: ‘Once an intention to contract is found, no problem on consideration arises since there would be ample consideration in the bundle of rights and duties that the parties would respectively obtain and accept.' The Aramis (1989), in some cases, it may still be impossible to establish an implied contract.

In the case The Aliakmon, the bill was indorsed to the buyer, to whom risk passed, and the seller retained property in the goods The Aliakmon (1986). The buyer presented the bill as an agent for the seller, thereby negating the possibility of a contract between himself and the carrier. In The Aramis, freight had been prepaid and so the Court of Appeal refused to imply a contract on the mere basis that the buyer presented the bills and took delivery. The actions of the parties could be explained by reference to their existing obligations under the contracts of sale and carriage: 'It must be fatal to the implication of a contract if the parties would or might have acted exactly as they did in the absence of a contract.' Furthermore, it seems unlikely that a contract could be implied where there is no delivery, as, for example, where the ship sinks The Aramis (1989). Although criticized in some quarters, The Aramis appeared to sound the death knell for Brandt contracts, and the United Kingdom Law Commission Working Paper No 112, at page 34, regarded them as 'very limited in operation'.

4. SOLUTIONS UNDER COGSA 1992

4.1. REMEDIES FOR THE PRIVITY ISSUE

Carriage of Goods by Sea Act 1992 solves the privity issue of Section 1 of the Bills of Lading Act 1855 by separating the link between the transfer of contract rights and the transfer of property. It provides that the lawful holder of a BoL, a sea

waybill, or delivery order shall "have transferred to and vested in him all rights of suit under the contract of carriage as if he had been a party to that contract." In other words, the consignee is given a general statutory right of action, free from any linkage to the passing of property.

Pursuant to Section 5(4) Carriage of Goods by Sea Act 1992, if the goods were part of a bulk or no longer existed when the shipping document was issued, it won't stop legal action. If the BoL no longer allows the demand for delivery of the goods from the carrier, for example, if the goods have already been delivered, then the holder of the BoL can only take action if they obtained the BoL through a prior agreement, such as a contract or a gift, before the document became non-transferrable, as noted in Section 2(2)(a) Carriage of Goods by Sea Act 1992. The provision is based on sound public policy reasoning, aiming to prevent people from trading in claims rather than goods Beatson & Cooper (1991). This effect on banks holding BoL in pledge as security is that they will only have a right to sue the carrier if the BoL was transferred to them while still being a transferable title. Therefore, banks should ensure that they are either recipients of the transfer or are explicitly mentioned as consignees on the BoL Humphreys & Higgs (1993).

By severing the dependency on the passage of property, Carriage of Goods by Sea Act 1992 fundamentally modernised the law to reflect commercial realities. Under Section 2(1) of the Act, the lawful holder of the BoL is granted statutory rights of suit 'as if they had been a party to the contract of carriage'. This inclusive language embraces not just consignees and endorsees but also holders under other contractual or fiduciary arrangements, such as banks or agents.

This reform had a direct impact on resolving the inadequacies faced by pledgees and receivers of bulk cargo, both of whom were disadvantaged under Bills of Lading Act 1855. For pledgees, whose rights were previously rejected due to their lack of full ownership as noted in Sewell v Burdick, the new legislation no longer requires ownership to trigger rights of suit. As long as the BoL is lawfully transferred, regardless of whether the transferor retained a right of disposal, the pledgee may now enforce the terms of the contract of carriage.

Moreover, the legislation directly addresses the problem of bulk goods, which posed a major obstacle under the combined reading of Section 1 Bills of Lading Act 1855 and Section 16 of the Sale of Goods Act 1979. Carriage of Goods by Sea Act 1992 Section 2(2) removes the requirement that goods must be ascertained or that property must pass before contractual rights are transferred. This is especially important in shipping contracts involving fungible goods such as oil, grain, or coal, where property may not pass until after unloading, as issued in The Aramis and The Filiatra Legacy.

In addition, Section 2(4) of Carriage of Goods by Sea Act 1992 provides safeguards to prevent speculative litigation. A person cannot obtain rights of suit merely by acquiring the BoL after the goods have been delivered and the document has become "spent." However, if the BoL was received under a contractual or equivalent arrangement before the goods were delivered, the holder retains the right to bring an action, even if they have not yet received the goods themselves. This balances the need for commercial flexibility with the deterrence of claim-trading Humphreys & Higgs (1993).

The new framework thus resolves prior uncertainties while encouraging documentary clarity. Financial institutions and commercial actors must ensure that BoLs are lawfully transferred in time and properly endorsed. As a result, banks holding bills as security are now better protected—but only if the document was transferred while still "live," and not post-delivery. This incentivizes banks to insist

on being named consignees or ensure prompt documentation of title transfer Zekos (1997).

Overall, the Carriage of Goods by Sea Act 1992 reflects a shift from an outdated property-based test toward a document-based system rooted in possession and intention. This provides a more practical and commercially viable solution to the privity problem, ensuring that rightful holders of the bill, regardless of ownership status, can enforce their rights under the contract of carriage.

4.2. MEASURES TO PROTECT HOLDERS OF BOL

Carriage of Goods by Sea Act 1992 resolves the issues associated with Section 1 by breaking the connection between the transfer of contract rights and property transfer. Section 2(2)(b) of this Act enables the holder of a BoL that's no longer transferrable to have the rights of suit as against the carrier, where such person has become the holder as a result of a re-endorsement of the BoL following the rejection of goods or documents Bradgate & White (1993). From the moment a BoL is transferred, the shipper no longer holds any contractual rights under that document, pursuant to Section 2(5)(a) Carriage of Goods by Sea Act 1992.

It follows from the above that the question of seeking the shipper's cooperation in the context of an implied contract or an assignment Beatson & Cooper (1991) is no longer of prime importance under the new law. From the moment a bill of lading is transferred, the shipper ceases to have any contractual rights under that document, pursuant to Section 2(5)(a) Carriage of Goods by Sea Act 1992. However, the corollary of this transfer of rights is that where a person entitled to contractual rights takes or demands delivery against the carrier, he becomes subject to any contractual liabilities as if he had been a party to the contract of carriage, as clarified in Section 3(1) Carriage of Goods by Sea Act 1992. Clearly, where a bulk shipment is concerned, the consignee will only have potential exposure for liabilities arising from his part of the bulk, noted in Section 3(2) Carriage of Goods by Sea Act 1992.

However, this measure leads to its own set of difficulties. It results in the carrier's inability to suit a bank as a consignee under Carriage of Goods by Sea Act 1992, as was possible under the Bills of Lading Act 1855, unless the bank requests the goods Bassindale (1992). This is due to the fact that the carrier is only able to sue cargo interests where the provisions of section 2(1) of the Act are satisfied and, more particularly, the cargo interests must either take or demand delivery of any of the goods covered by the document or make a claim under the contract of carriage Ferris (1992). Nevertheless, this scheme enables a bank to acquire its security in accordance with the provisions of section 2(1).

This reallocation of rights and liabilities was a deliberate attempt to create a balance between contractual freedom and commercial risk management. Under Section 3 of COGSA 1992, the transfer of liabilities occurs automatically when the holder takes or demands delivery or makes a claim under the contract of carriage. This ensures that carriers are not left exposed to claims without a reciprocal right to pursue liabilities from the party asserting them Bradgate & White (1993). At the same time, it prevents passive document holders, such as banks that neither claim the goods nor initiate litigation, from being automatically burdened with liabilities they never agreed to assume.

However, this also reveals a latent vulnerability: banks and pledgees holding the BoL purely for security purposes enjoy protection from liability but may also find themselves barred from enforcing rights unless they meet the statutory conditions. For instance, if they have not taken or demanded delivery of the goods,

they will lack standing under Section 2(1), despite potentially suffering commercial loss if the cargo is damaged or misdelivered Zekos (1997). This places a practical burden on lenders to structure their security agreements with precision and to monitor the status of the BoL closely, especially in the period leading up to discharge.

The non-recoverability of liabilities from non-claiming BoL holders also means that carriers may face gaps in legal recourse. In Sewell v Burdick, the House of Lords had previously allowed a shipowner to pursue a pledgee under the Bills of Lading Act 1855 framework. Under the 1992 Act, this is no longer permissible unless the pledgee acts affirmatively in relation to the goods. This reflects a shift in public policy towards protecting the financial system from undue exposure while simultaneously tying liability to commercial engagement with the cargo.

Moreover, while Carriage of Goods by Sea Act 1992 extends protection to holders of waybills and ship delivery orders, these documents do not function as documents of title in the traditional sense. As a result, their holders do not benefit from the same negotiability as BoL holders and cannot transfer the right to delivery or suit by mere endorsement. This limits flexibility in certain supply chain contexts and may place non-BoL holders at a commercial disadvantage

Another issue that persists is electronic documentation. While Carriage of Goods by Sea Act 1992 does not explicitly address electronic bills of lading, its language is flexible enough to potentially accommodate them if used in accordance with contractual and industry practice. However, the absence of direct statutory recognition continues to create uncertainty in legal proceedings involving digital trade instruments.

In summary, Carriage of Goods by Sea Act 1992 offers a far more sophisticated and commercially sensitive framework than its predecessor, yet certain limitations remain. The Act protects active BoL holders by vesting rights and liabilities consistent with their commercial role, but passive holders, such as pledgees or banks, must be vigilant in ensuring compliance with the Act's requirements to avoid falling outside its protective scope. Furthermore, as trade continues to modernise, especially through digital platforms, further reform or clarification may be needed to keep pace with evolving commercial realities Du Toit (2005).

5. TRANSFER OF LIABILITIES

Where rights under the contract of carriage were transferred by the 1855 Act, the consignee or indorsee to whom rights were transferred was subject to 'the same liabilities in respect of the goods' as if the contract of carriage had been made with him. However, since the Carriage of Goods by Sea Act 1992 extends the category of persons entitled to enforce rights under the contract of carriage, it was felt that simply linking the transfer of liabilities to the transfer of rights in this way was unacceptable. For instance, such a link would mean that a bank to whom a bill was endorsed as a pledge under a documentary credit transaction would become subject to liabilities under the contract of carriage as holder of the bill. This possibility was particularly unattractive: the bank would make a tempting target for the carrier but, as the United Kingdom Law Commission Working Paper No 112, at p.48 observed, 'It is not part of the commercial risks undertaken by a bank, when it merely holds a bill of lading as security, to undertake to perform the substantive obligations contained in the bill.' Some commentators argued that there was no need for a transfer of liabilities at all Treitel (1990). The carrier may enforce the contract against the original shipper and has a possessory lien over the goods, valid against

the holder of the bill, for certain charges. Release of that lien by delivery of the goods to the consignee without payment of those charges would give rise to a Brandt contract.

To address these concerns, Section 3 of the Carriage of Goods by Sea Act 1992 significantly refined the mechanism for transferring liabilities. Under this provision, a person does not become subject to the contractual liabilities under the contract of carriage merely by becoming the holder of the bill. Instead, liabilities are only transferred when the holder takes or demands delivery of the goods or makes a claim against the carrier under the contract, as noted in Section 3(1) Carriage of Goods by Sea Act 1992. This approach introduces a functional test based on conduct rather than mere possession, aligning liability more closely with active participation in the carriage transaction.

This distinction is particularly important in protecting passive holders, such as banks and pledgees, who may hold the bill for security purposes but have no intention of taking delivery. As the Law Commission correctly observed, imposing strict contractual liabilities on such parties would distort the commercial expectations of secured lending and disincentivise the use of BoLs as collateral. This safeguard ensures that parties only assume obligations under the contract of carriage when they exercise associated rights, preserving the balance between carrier protection and commercial practicality.

However, while this reform reduced the unfair exposure to liability, it did not fully close all loopholes. One complication arises when a holder makes a claim under the contract but does not take physical delivery—arguably a rational step for a pledgee seeking compensation for cargo loss. In doing so, the holder may inadvertently trigger Section 3(1), thereby assuming liabilities under the contract of carriage. This scenario has prompted debate among legal scholars as to whether making a claim should be treated equally with actual delivery Zekos (1997).

Another limitation stems from the lack of symmetrical protection for carriers. Under Carriage of Goods by Sea Act 1992, carriers can pursue liabilities only from holders who trigger Section 3(1), whereas consignees who suffer loss can sue the carrier under Section 2(1) as long as they qualify as lawful holders. This asymmetry may leave carriers exposed to losses when consignees or endorsees refuse to accept delivery or disappear after raising claims, thereby avoiding liability altogether.

Furthermore, while Carriage of Goods by Sea Act 1992 abolished the automatic transfer of liabilities tied to property transfer, it retained the Brandt contract mechanism as a fallback where the formal statutory requirements are not satisfied. A Brandt contract, which arises when the carrier delivers goods to a party who was not a party to the original contract but has paid freight or accepted delivery, continues to serve as a judicial workaround to bridge legal gaps. However, the use of Brandt contracts remains controversial due to its reliance on implied contractual terms and judicial discretion as issued in The Aramis [1989].

In conclusion, the Carriage of Goods by Sea Act 1992 significantly improved the fairness and commercial logic of liability transfer in shipping law. By ensuring that liabilities only follow affirmative action, such as claiming or taking delivery, it protects non-trading BoL holders while preserving the rights of carriers against those who actively engage with the goods. Nonetheless, edge cases and asymmetries persist, suggesting that the framework, while vastly superior to its predecessor, still leaves some holders of BoL without complete protection, particularly those whose status changes mid-transaction or whose intentions fall into a grey area of enforcement Burrows (2015).

6. FUTURE TECHNOLOGY

According to Section 2(1) of the Carriage of Goods by Sea Act 1992, the Act applies not only to BoL but also to waybills and ship delivery orders. Section 1(5) states that the Secretary of State can regulate the use of telecommunications or information technology for transactions related to issuing, endorsing, delivering, or transferring documents under the Act. Essentially, the Act includes provisions for electronic BoL. However, it may not cover many documents. Section 1(1) specifies that the Act applies to BoLs, sea waybills, and ship delivery orders, potentially excluding some multimodal transport documents. It is also unclear if the Act covers bills issued under a charter party, as Section 5(1) requires the "contract of carriage" to be "contained in or evidenced" by the BoL or waybill. The Act does not include merchants' delivery orders and excludes ship's delivery orders issued by the BoL holder, as Section 4(1) requires these to include an undertaking "by the carrier to a person identified in the document."

7. CONCLUSION

The replacement of the Bills of Lading Act 1855 by the Carriage of Goods by Sea Act 1992 was driven by the need to address several critical shortcomings of the former. The Bills of Lading Act 1855, although instrumental in its era, became inadequate in managing the complexities of modern maritime trade, particularly in the transfer of contractual rights and responsibilities.

A significant issue with the Bills of Lading Act 1855 was its dependence on the transfer of property to confer contractual rights, which created problems for consignees and endorsees who had not received property in the goods. This left them without legal recourse against carriers for loss or damage. Additionally, the Act failed to address the needs of bulk cargo receivers and banks holding BoL as security, often leaving these parties unable to claim damages or enforce rights effectively.

The Carriage of Goods by Sea Act 1992 resolved these issues by decoupling the transfer of contractual rights from the transfer of property. This ensured that the lawful holder of a BoL, sea waybill, or delivery order could exercise rights of suit under the contract of carriage, irrespective of property status. This change provided consignees and endorsees greater protection and legal clarity, enabling them to hold carriers accountable.

Moreover, the Carriage of Goods by Sea Act 1992 addressed the implications of false BoL and extended its provisions to cover electronic documentation, reflecting the advancements in technology and modern commercial practices. This adaptability ensured that the Act remained relevant and effective in a rapidly evolving trade environment.

While the Carriage of Goods by Sea Act 1992 introduced improvements, it also brought new challenges, such as the limited ability of carriers to sue banks holding BoL as security unless they had taken delivery or made claims under the contract. Nevertheless, the Act significantly enhanced the legal framework for maritime trade, offering a more robust and fair system than its predecessor.

In conclusion, the transition from the Bills of Lading Act 1855 to the Carriage of Goods by Sea Act 1992 was essential for addressing the former's deficiencies and

aligning the legal framework with contemporary maritime commerce, thus ensuring greater stability and predictability in international shipping.

CONFLICT OF INTERESTS

None.

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