# The Three Important Functions of Bills of Lading

**1.** The bill of lading is one of the oldest documents used in international trade and therefore in shipping. It is often described as the most important document in international trade, mostly due to its multiple roles. It is a document which is vital for contracts of international sale because it proves shipment on board a vessel and therefore proves export from a country (which may or may not be the country of origin of the goods).

It is a document which can be sold to many other buyers – which we therefore call a "*negotiable instrument*".

Its date of signature proves – or at least is apparent evidence – when the cargo was laden on board, which will trigger a whole series of activities, including the crucial link in the process of a bank's Letter of Credit opened by the buyer in favour of the seller.

The bill of lading also acts as proof of export within a certain time frame, which may be necessary for the shipper to comply with export quota regulations from certain countries.

The bill of lading also acts as proof – or apparent proof – of the condition of the cargo on board and also the condition of the cargo which the buyer or other recipient or consignee should be able to expect upon delivery of the cargo at the discharge port.

Although the format may have changed recently, here are two examples of old bills of lading: one is a transcript of a Roman bill of lading dated 28th October 15 AD, the other explains a bill of lading dated 18th July 1770 and hangs on a wall in the ICS Head Office.

You will see that they are in essence the same format and style and wording as we find in Bills of Lading of recent times – that is, until the advent of the modern "*box form*".

**2. THE ROMAN BILL OF LADING**

This is a translation of a Roman bill of lading which has been calculated as being dated 28th October 15 AD.

"*From Arctus Bibulus, pilot of a public vessel of 2000 artabas burthen, whose figure head is an ibis, acting through Sextus Atinius of the 22nd legion, second maniple, to Acusilaus, public collector of corn for the two villages of Lysimachus, deputy of Lucius Marius, freedman of Augustus, greeting:*

*I acknowledge that you have embarked into my vessel at the harbour of Ptolemais in the Arsinoite name at Eboreis to the address of Dionysus and Philologus, first Syrian corn, pure, genuine, unadulterated and winnowed, measured in a public brazen measure of Alexandria, one thousand seven hundred and eighteen and a half artabas…. Which I will convey to Alexandria and deliver to Dionysus and Philologus or to whomsoever they shall order it to be given, and I have no claim against you.*

*(signed) J. H…. in the second year of Tiberius Caesar Augustus*." (AD 15)

So reads one of the earliest known examples of a bill of lading.

We have the shipping company's logo ("*an ibis*"), the carrier ("*Arctus Bibulus*"), the vessel and her cargo carrying weight capacity ("*a public vessel of 2000 artabas burthen*"), the agent ("*Sextus Atinius*"), the shipper ("*Acusilaus*"), the port of loading ("*Ptolemais*"), the port of discharge

("*Alexandria*"), the consignees ("*Dionysus and Philologus*"), the commodity ("*first Syrian corn*"), the weight ("*one thousand seven hundred and eighteen and a half artabas*"), the bill of lading date ("*second year of Tiberius Caesar Augustus*") and the clauses to the bill of lading comprising the cargo's description and state ("*pure, genuine, unadulterated and winnowed*"). There is even a disclaimer given before the cargo has been discharged ("*…. and I have no claim against you.*") which would certainly not be given in these litigious times!

It is also interesting to note that such early bills of lading were also able to be endorsed as part of the transaction ("*I will deliver ….. to whomsoever they shall order it to be given*"). This shows that the original consignees were able to "*negotiate*" these documents. In fact the word "*negotiate*" has its origin in Latin – "*neg otium*" means "*not pleasure*", i.e. business. So the Romans were astute enough to make a single word which we still use today and for which we have a whole sentence: "*do not mix business with pleasure*"!

## 3. THE 1770 BILL OF LADING

The other bill of lading is a Shipped Bill of Lading, showing that Henry Brown, William Patrick Brown and Thomas Walker Esquires (i.e. gentlemen) were the shippers on the vessel "*Rose May*", the Master of which vessel was John Basnard and which was lying at anchor in the Bay of Old Harbour Jamaica and bound for Bristol with a cargo of 20 hogshead of sugar on account of consignee ("*assignee*") of the Honourable Peter Brown Kelly Esquire.

"*The goods being marked and numbered as in the Margin*" - and indeed the marks are in the margin, just as in modern bills of lading - are to be delivered in the same condition at Bristol "*to Mr Samuel Monkley or to his assigns*" - again the idea of negotiability - "*he or they paying freight …. of three shillings six pence per hundredweight*".

Three original bills of lading were issued and - just as nowadays – one of which being accomplished, the other two to "*stand void*" – i.e. to become of no commercial value. The only major difference from a modern bill of lading are the words "*and so God send the good ship to her desired port in safety. Amen*"!

The bill of lading is dated 18th July 1770 and signed by the Master, John Basnard.

## 4. THREE MAIN FUNCTIONS

The Bills of Lading Act of 1855 is full of very long-winded, old-fashioned and cumbersome language and nowadays is often paraphrased as follows:

The three main functions of a Bill of Lading are:

1. as a receipt for the goods placed on board the carrying vessel;

2. as a document of title to the goods, so that the holder of an original Bill of Lading has the right of access to the goods described therein;

3. as evidence of a contract of carriage.

It is worth noting that the 1855 Act does not actually define a "*Bill of Lading*". The 1855 Act was repealed (replaced) by the Carriage of Goods by Sea Act 1992, which came into force on 16th

September of that year. This "*COGSA 1992*" also does not define a bill of lading, although its numerous references include its functions.

There is, however, a legal definition which became internationally accepted in November 1992, since the 1978 Hamburg Rules (amending the Hague-Visby Rules in certain respects) were only ratified by the necessary 20th country in October of 1991. It is therefore coincidence that these two major sets of rules became effective in the same year. Although the Hamburg Rules are accepted internationally, its acceptance is certainly not universal. In other words, there are still only very few countries which have ratified these Hamburg Rules - currently only 26 countries, although not all of them have clearly and unambiguously ratified this convention.

Thus we have to look to these Hamburg Rules for a "*proper*" modern definition:

"*Bill of Lading means a document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier and by which the carrier undertakes to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the order of a named person, or 'to order', or 'to bearer', constitutes such an undertaking*."

Let us take a look at each of these three functions in turn:

## 4.1 A RECEIPT FOR THE GOODS PLACED ON BOARD

In fact what happens in practice is that the goods are brought to the load port and may be placed in a warehouse or on the quayside. In liner shipping, that warehouse or that wharf could well be owned by - or at least under the control of - the shipping line, in which case it has been held in the Courts that those goods will have been placed in an "*extension of the ship's hold*".

The wharfinger or port operator or warehouse-keeper will then issue what is known as a "*RECEIVED FOR SHIPMENT*" Bill of Lading. Such a document is not valid for the purposes of receiving money from a bank under the terms of a Letter of Credit and is therefore not for sale, i.e. it is not "*negotiable*". It is merely a record that the goods have been received in advance of shipment into the care of those who will effect that shipment, i.e. the carrier (or his servants or agents).

In tramp shipping, it is most unlikely that a "*received for shipment*" Bill of Lading would be issued, for two main reasons:

1. partly because there is no practical need for it, since the goods may be loaded in bulk from lorries or railway wagons or a silo or a stockpile which may have been in the port for some time; and

2. partly because this "*received for shipment*" document is usually only needed by liner companies to ascertain how much cargo has been "*brought forward*" to the scheduled carrying vessel, so that the agents and loading brokers and forwarding agents can calculate how much more cargo needs to be brought into the port before the vessel becomes theoretically full and can then start her loading operations.

Thus tramp shipping usually only deals with a "*SHIPPED ON BOARD*" Bill of Lading, which shows that the goods have in fact been loaded on the vessel. The date at the foot of such a Bill of Lading must accurately reflect the date when all the goods have been loaded on board the vessel. It is irrelevant whether the vessel actually sails from the loadport or even sinks in that port: the goods covered by such a Bill of Lading are deemed to have been "*shipped*" – i.e. loaded - and freight is therefore due to be paid by the charterers to the shipowners.

The most usual word which accompanies a "*Shipped on Board*" B/L is "*clean*". This simply means that, prior to signing the 3 originals, there are no remarks written on the B/L by the Master which would indicate that the goods are in any way other than they should be: in other words, the Master could note on the Bills of Lading that the goods are rusty, bent, dented, broken, torn, weevil infested, too full of moisture or any such similar remark concerning the state of the goods as they were presented to the ship.

This will be discussed in greater detail in the later session on Letters of Indemnity.

## 4.2 A DOCUMENT OF TITLE

The goods may have been sold by the charterer to a receiver at the discharge port. It is therefore necessary for that receiver to pay for the cargo (usually through the medium of a bank's Letter of Credit) before he can gain access to it. When the charterer (seller) sells the cargo to the receiver (buyer), he is in fact selling title to that cargo.

"*Title*" in this sense means the right to ownership of goods. Thus armed with an original negotiable Bill of Lading, the receiver can then present himself at the ship's side upon her arrival at the discharge port and so lay claim to the cargo on board. What the charterer or seller has in fact done is assign his title to that cargo over to the buyer. Such "*assigning*" is called endorsement, since he endorses (or signs on the reverse of) the 3 original Bills of Lading. The new holder of the bill of lading is therefore called an "*endorsee*".

There is, of course, nothing to prevent that endorsee from selling his newly acquired title to that cargo to a third party either before or during the vessel's loading operation, or even whilst she is on the high seas, steaming towards the discharge port. In fact, this trading pattern happens every day and it is often the case that many of the traders who buy and then sell such rights to cargoes never see those cargoes, nor would they ever want to, since they are what is known as "*paper traders*". The nature of the goods almost becomes immaterial. Nevertheless, many of them are experts in their field and could take physical delivery of a cargo if they so chose.

In case all of this seems confusing, think of a Bill of Lading as a cheque which has been endorsed to someone else. The same reasons and regulations apply, since a cheque is, after all, also a document of title with a certain specified worth or value as issued through a bank.

Thus the holder of an original bill of lading has the right to ownership of the goods which are represented on it. If it is an original "*Shipped on board*" bill of lading, it becomes a "*negotiable instrument*" and can be sold and resold for value. The bill of lading is therefore also proof of entitlement to sue for the right of possession of those goods. See also § 2 of COGSA 1992 in the appendix at the back of this folder.

Not all transactions are as smooth as that - otherwise life would be too simple! Sometimes the goods described in the Bill of lading are consigned to no-one in particular: this is known as consigning to "*Blank - to order*" and such Bills of Lading are then known as "*Blank to order Bills*" or even "*blank Bills*" (which simple words can cause immense confusion!). This would be done if, for example, the original seller does not know the identity of the final buyer, nor could he, since he is knowingly selling the title to that cargo to a paper trader, who will certainly be selling the cargo on to a third party.

Title to the cargo is only effective as long as the cargo has not yet been handed over to a Bill of Lading holder. If such a B/L holder presents himself to the Master upon the vessel's arrival at the discharge port and can prove his identity to the Master's satisfaction, the cargo will be handed into the care of that B/L holder.

Imagine, however, what would happen if that Bill of Lading holder had found or otherwise acquired an original Bill of Lading. After the vessel has discharged the cargo to him, the genuine B/L holder arrives - he has just paid a considerable amount of money for the cargo through a bank's Letter of Credit and would be understandably upset to find that his cargo had been handed over to someone else. Hence the need for the Master's extreme vigilance in determining and approving the identity of the holder of a named consignee B/L.

This problem of course does not arise when the Master is presented with a "*Blank To Order B/L*", since that is as good as a blank cheque: the message of both is quite simply "*pay x thousand pounds to the bearer of this piece of paper*". It is for this reason that Original Bs/L are usually issued in sets of three: the wording printed at the foot of them states that once one of the original set has been "*accomplished*" (that is, exchanged for goods), the other two to become null and void.

This is to prevent the acute embarrassment and financial hardship which the shipowner could well encounter when sued for the value of the cargo by the true cargo receivers, who are the rightful holders of the Bill of Lading, which is the document of title to the very goods which the Master has just relinquished to another party.

There is no limit set on the number of copies of a Bill of lading issued by the Master, or by the port agent on his behalf. These copies are all NON NEGOTIABLE and are in fact known as CNN (Copies non-negotiable). A common number is twelve copies but there could be 6 or 20 instead. They are purely a record, for filing purposes only and can therefore not be confused with an Original.

The description of the condition of the loaded cargo will be conclusive proof in the hands of a bona fide holder of an original bill of lading - see § 3 of the Bills of Lading Act 1855 and also § 4 of the Carriage of Goods by Sea Act 1992.

## 4.3. EVIDENCE OF A CONTRACT

It is important to establish that a bill of lading is NOT a contract – neither a contract of commercial sale nor a maritime contract of carriage. However, it is frequently the only link between the holder of a bill of lading and the beneficial (or actual) shipowner. It is also the best available (and often the only available) evidence that there is a separate contract of carriage between the cargo owner - who may also be the exporter or "*shipper*" - and the carrier - who may be a tramp "*beneficial*" shipowner or a "*disponent*" owner (i.e. a time charterer) or an operator or a liner shipping company. Thus the actual contract of carriage would be either a Charter Party (C/P) or a Liner Booking Note (LBN).

The contract is in fact in place as soon as an arrangement is made to carry cargo. Such an arrangement may of course be verbal - in fact, between tramp shipbrokers on behalf of their respective principals it frequently is a verbal agreement and commitment. So it is always a good idea to commit to paper the main terms (and if possible also all the details) of this agreement, so that there can be (theoretically, at least) no dispute at a later stage as to its content.

This is of course important for you lawyers, since it is often you who have to pick up the pieces of any dispute which results from a lack of memory as to what was originally agreed. (It is of course open to dispute as to the true extent of that amnesia!) The subsequent issuance of a Bill of Lading merely confirms this agreement. The same is of course true whether the goods are to be shipped on a liner or a tramp vessel.

The terms of the contract of carriage between the carrier and the shipper show the conditions under which the carrier accepts the goods for shipment. If the shipper has entered into a Charter Party agreement with the carrier, the general conditions which are normally to be found on the back of a Bill of Lading may well be overridden by the terms of the Charter Party agreement.

The original shipper - the seller - may perhaps also be the charterer of the vessel. Thus a clause on the front of the Bill of Lading might read: "*Freight payable as per Charter Party*". This would have the effect of referring the holder of an Original Bill of Lading to a Charter Party, even though that "*assigned*" holder (see above) is not in any way contractually linked with the shipowner. Thus it is the Bill of Lading which becomes contractually linked with the Charter Party.

A bill of lading does not conform to the usual definitions or precepts of a contract – i.e. offer, acceptance, consideration and an agreement by both parties to be legally bound to each other. A bill of lading is not signed by both parties and therefore does not constitute a contract between them. It is only signed unilaterally by a representative of the carrier. However, when a bill of lading is sold to an ultimate third party, it may be said to contain the contract of carriage. So a bill of lading CAN become a contract of carriage by endorsement.

## 5. NEGOTIATION

A bill of lading is only "*negotiable*" for value (frequently via a bank's letter of credit) if it is an Original, of which there are usually three. There are many Copies which are Non-Negotiable (CNN) but these are only issued for information purposes for the benefit of port agents, port authorities, customs officers, stevedores, freight forwarders, shipbrokers, the operations departments of ship owners or operators, insurance underwriters and/or their brokers, government departments, traders, financiers and any other party involved in the international trade of the cargo.

## 6. GOVERNING RULES

Shipowners and charterers are at liberty to insert any agreed clause in their C/P contract but a Bill of Lading is governed by whichever Rules are stated in its Clause Paramount, which is usually Clause 2. This clause often gives a choice of Hague-Visby Rules (as enacted by COGSA 1971) or the Hamburg Rules but only one of these may apply for any one bill of lading and carriage. These Rules closely regulate the rights, liabilities, responsibilities and immunities of the carrier of the cargo. It follows that any clause in the Bill of Lading which is at variance with these Rules is therefore null and void.

## 7. IDENTITY OF CARRIER

Whereas a bill of lading has the effect of creating a contractual relationship between the carrier and the cargo shipper, one of the big questions which is tackled by disputes in court or in arbitration is to decide who is the carrier when the vessel is on time charter. One of the usual ways of resolving this question is to establish whether the bill of lading incorporates an "*identity of carrier*" clause. One of the biggest cases under English law which have recently addressed this matter is "*The Hector*" (1998) (2 Lloyds Rep 287) in which Rix J. (as he then was) observed (*obiter*) that an owner who puts his vessel and master under the directions of a time charterer with respect to employment of the vessel thereby confers ostensible authority on the time charterer to issue bills of lading binding the owner.

The much more recent case of "*The Starsin*" has finally established full guidelines – very full, the judgment covered 110 pages! - and has overruled the previous judgment of the Court of Appeal in 2001. In fact the same judge, Rix LJ, had dissented in that Court of Appeal judgment, so the Law Lords have effectively upheld his reasons. On 13th March 2003, the House of Lords held that the identity of the carrier clause printed on the reverse of bills of lading did not mean that those bills of lading were "*Owners' Bills*".

On the contrary, where a typed entry on the "*face*" (or front) of a bill of lading is inconsistent or in conflict with the printed conditions on the "*reverse*" (or back) of the bill of lading, the typed entry shall prevail in determining whether the bill of lading were Owners' Bills or Charterers' Bills of Lading. So in this case, the Charterers were held to have issued the bills of lading and were therefore bound towards the relevant cargo claims. The beneficial owners in this case were therefore not responsible for damage to goods being carried.

There would be real confusion if an agent were to sign a bill of lading for and on behalf of the Master AND for the carriers, if those carriers are time charterer disponent owners! Since this does indeed occur, the Master would have to seek guidance from his beneficial owners – i.e. his employers – whether his authority to agents to sign on his behalf is being given on behalf of his employers (i.e. the beneficial owners) or on behalf of the carriers. In the light of this most recent judgment from the HL in "*The Starsin*", many beneficial owners will be more relieved of their original responsibilities towards merchant holders of bills of lading than carriers are.

## 8. STRAIGHT BILLS – TITLE TO GOODS ?

The "*Rafaela S*" [2003] EWCA Civ 556, April 16, 2003

This is an even newer case which addresses the question of title to goods. It is taken from Lloyd's List dated 23rd April 2003, with permission of the author, Charles Debattista, with whom I – Jeffrey Blum - have worked on several occasions. Charles is Professor of Commercial Law at the University of Southampton

**'Straight' bills come in from the cold – or do they?** *By Charles Debattista* **Wednesday April 23 2003**

Is a "straight" bill of lading a document of title? Can you have a non-transferable document of title? Is a document a document of title if it does not have to be presented for delivery? In any event, what exactly is a document of title?

Although these questions may seem somewhat metaphysical, money does actually turn on them when a cargo claim is brought by a consignee named as such on a bill of lading which is not made out to order.

Does he have a right to ask the carrier for the goods in the first place? Does he have title to sue in contract? Is the carrier liable for mis-delivery if he delivers the goods without presentation?

Is a cargo claim covering goods carried under such a document subject to the time-bar and the package and unit limitation in the Hague-Visby Rules?

These and other questions have troubled maritime and international trade lawyers for some time, and the Court of Appeal's decision in *The Rafaela S* [2003] EWCA Civ 556, April 16, 2003, goes some way towards completing a somewhat complex jigsaw puzzle and to that extent is most welcome. The puzzle, however, remains not only incomplete: it now contains pieces which do not fit happily together.

The facts were relatively unremarkable: a cargo claim was brought against a demise charterer by the buyer of goods under a straight consigned bill of lading, the goods having been originally shipped in Durban but then transhipped in Felixstowe and eventually discharged in a damaged state in Boston.

A number of predictable issues arose: did the claimants have title to sue at all and, if they did, was there one contract or two and where was the port of shipment, Durban or Felixstowe?

Doubtless influenced by the fact that the bottom line of limitation is frequently more significant than interesting questions which logically precede it, the parties and the courts chose to expend most of their efforts on the question whether the Hague-Visby Rules measure of limitation applied.

That question depended on whether the UK Carriage of Goods by Sea Act 1971 applied, which brings into effect in this country the Hague-Visby Rules, and that in turn depended in large part on whether the goods were covered by "a bill of lading or any similar document of title" within article I(b) of the Hague-Visby Rules.

Hoping for the more generous Hague-Visby measure of limitation, the claimants argued that the straight consigned bill was covered by article I(b) of the rules. The demise-charterer, anxious to take the benefit of the lower limitation applicable under the counterpart US legislation which applied the

Hague Rules, argued that the straight consigned bill was not a document of title for the purposes of the UK Act.

A strong arbitral panel and Langley J ([2002] 2 Lloyd's Rep 403) had held for the demise-charterer, following the well-worn track that a straight consigned bill was not a document of title. A powerful Court of Appeal held unanimously for the claimants, deciding that a straight consigned bill of lading expressly requiring presentation for delivery was a "similar document of title" for the purposes of the rules.

In the leading judgment, Rix LJ reviewed many authorities, judicial and otherwise, from this country and abroad; declaring himself "not unhappy" to reach the conclusions he reached, Rix LJ saw "no reason why a document which has to be produced to obtain possession of the goods should not be regarded in an international convention as a document of title".

The effect of the judgment is that a bill of lading calling itself a bill of lading, made out to a named consignee without the words "to order" added to that name, (or — which presumably would amount to the same thing — the printed words "to order" deleted) and which expressly requires the bill to be presented for delivery of the goods, is covered by the Hague-Visby Rules in any of the situations described in article X of those rules, ie if the bill of lading is issued in a contracting state, if the carriage was from a port in a contracting state or if the bill of lading incorporates the rules.

It is commercially virtually intuitive that a document which, as the judgment put it, "looks and smells" like a bill of lading should not be considered any the less a bill of lading for the purposes of the main international regime governing such documents simply because, when issued, the shipper and the carrier know that one party — and one alone — will collect them on discharge. It seems incredible that the more certain we were about the identity of a singular named consignee, the less certain we were as English lawyers whether or not to apply an international convention intended to protect consignees in general. To the extent that the common law has robustly come up to commercial expectations, the decision of the Court of Appeal in this case is therefore overdue and welcome.

It would be premature, however, to say that the story is over. First and at the narrowest level, the point remains moot whether the decision would have gone the same way had the bill of lading not expressly required presentation for delivery. Rix LJ makes it clear that in his view this would have made little difference, but it was not necessary to decide the point, which must therefore remain open.

Secondly and more broadly across the field of international trade law, it should be emphasised that the judgment does not decide that a straight consigned bill of lading is a document of title for all purposes.

Thus, for example, a cif seller should not feel that he can, without express stipulation in his sale contract, tender a straight consigned bill of lading on the basis that *The Rafaela S* sanctions such a document as a document of title.

Neither should a bank extending credit under a letter of credit feel that it has effective security over goods covered by a straight consigned bill unless it is itself named as the consignee, despite the Court of Appeal's acceptance of such a document. Again, the question whether a straight consigned bill is a document of title for the purposes of the Sale of Goods Act 1979 and the Factors Act 1889 remains unanswered — and money might turn on that issue where a straight consigned bill of lading is fraudulently misused.

Finally, and perhaps most worryingly, straight consigned bills of lading now sit somewhat uncomfortably across two English statutes relating to the carriage of goods by sea. COGSA 1992 considers straight consigned bills to be sea waybills, with two results. First, the consignee has

contractual rights under the contract of carriage, including a right to delivery at discharge, without being the holder "in possession" of the bill, ie without presenting the document at the discharge port. Secondly, the consignee does not enjoy the benefit of the estoppel granted by section 4 of COGSA 1992 to lawful holders of order bills of lading binding the carrier to statements about the goods on the bill of lading.

After *The Rafaela S*, on the other hand, a straight consigned bill of lading is to be considered as a bill of lading for the purposes of COGSA 1971, again with two results. First, at any rate where the bill expressly requires presentation, the consignee must present the document for delivery — and, according to Rix LJ, this is likely to be the case even where the straight consigned bill does not expressly so require. Secondly, the consignee now takes the benefit of the estoppel created by the second sentence of article III.4 of the Hague-Visby Rules binding the carrier to statements about the goods on the bill of lading. But which is it to be: is a straight consigned bill of lading to be regarded as a sea waybill, in which case the consequences of COGSA 1992 ensue; or simply as a bill of lading, in which case the different consequences of COGSA 1971 ensue?

To present or not to present? Estoppel or none?

To be fair, the problem lies not with the judgment in *The Rafaela S*, but with two decisions taken in 1992: first, the decision to exclude straight consigned bills of lading from the definition of bills of lading in COGSA 1992 and then, bizarrely, to characterise as sea waybills documents calling themselves bills of lading; and secondly, the decision to include section 4, dealing with the evidential force of bills of lading, in the 1992 Act, an Act focusing on another matter entirely, namely the buyer's title to sue the carrier in contract.

*The Rafaela S* is welcome not only in terms of the sensible answer it gives to the narrow question before the court but also, perhaps, in terms of the questions it provokes about the somewhat piecemeal way in which we develop our law on carriage and international trade.