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WORLD MARITIME UNIVERSITY

Shanghai, China

**REASONABLE NUMBER OF ISSUING ORIGINAL
BILL OF LADING**

By

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China

A research paper submitted to the World Maritime University in partial

Fulfillment of the requirements for the award of the degree of

MASTER OF SCIENCE

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Declaration

I certify that all the material in this research paper that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

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Abstract

The present paper intends to demonstrate, by way of illustration of the practices which are “1/3 Original B/L made out to bank, 2/3 Original B/L carried by ship” and “2/3 Original B/L made out to bank, 1/3 Original B/L sent to applicant”, that issuing three or even more original bills of lading not only cost natural resources and energy, but also lead to bill of lading fraud. Therefore, carrier and the agent on behalf of the carrier should have issued one original bill of lading. The paper proper conduct an analysis of the behavior of issuing bills of lading in sets both in legal respect and business side to provide understanding such issue. In addition, discussion of the feasibility of issuing one original bill of lading will be carried out, thereby proposing a possible form of issuing one original bill of lading: E - bill of lading.

Keywords: original bill of lading, bill of lading fraud, document of title, the principle of one property one right, E – bill of lading

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1. Introduction

1.1 Background

The Bill of Lading is one of the most significant documents in a so-called Letter of Credit Procedure. Banks introduced the Letter of Credit procedure in order to solve the following problem in international trade. Suppose we have a seller in Place A and a buyer in Place B. The agents are geographically far apart and the goods have to be transported by a carrier from the seller to the buyer (we assume by sea). On one hand, the seller does not want to ship the goods onto the carrier's vessel (and thereby lose control over them) without first receiving payment from the buyer. On the other hand, the buyer does not want to pay the seller (and thereby lose control over the money) before the goods have been shipped. In other words, the agents prefer a simultaneous exchange of the shipment of the goods in return for the money. To solve this deadlock situation, banks introduced the letter of credit; which is an agreement that the bank of the buyer will arrange the payment for the seller as soon as the seller can prove to the bank that he shipped the goods. The bill of lading is issued by the carrier in return for the goods that he received from the seller. (Tan et al., 2002) The revision of the Uniform Customs and Practice for Documentary Credits, 1994 Revision, ICC Publication NO.500 (commonly called "UCP500") Article 23a(iv) describe as follows:

If a Credit calls for a Bill of Lading covering a port-to-port shipment, banks will, unless otherwise stipulated in the Credit, accept a document, however named, which: consists of a sole original Bill of Lading, or if issued in more than one original, the full set as so issued.¹

In other words, UCP500 has no article ruling the number of issuing original bill of lading. Note that this article has a normative element. How many bills of lading have

¹ See Uniform Customs and Practice for Documentary Credits (1994) Article 23a(iv)

to be tendered does not depend on what Uniform and Customs and Practice for Documentary Credits stipulates; however, the Letter of Credit per se rules the number of original bill of lading should be tendered. The latest revision of the Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication NO.600 (commonly called “UCP600”) has no change regarding to the number of issuing original bill of lading. Instead, the latest revision not only has no article regulating the number of issuing original bill of lading, but also makes concessions for the number of original bill of lading required in exchange settlement. In this case, Letters of Credit may become very complex as more and more special terms and conditions are included in them. Some of the terms and conditions may seem unethical, or even difficult, if not impossible, to comply with. These special terms and conditions are commonly known as “soft clauses” in the industry. Some of them are the brainchild of certain creative bankers who try to help their importer customers upon request, such as “2/3 original bill of lading sent to applicant” which vastly jeopardize the interest of bank. The follow case was incubated under this scenario.

Certain amounts of cargo were shipped by Carrier B who is full carrier and double as First Carrier from Nagoya, transshipped at Hong Kong and finally to Guangzhou. Carrier B issued original bill of lading in triplicate where the consignee indicated “TO ORDER”. And the three original bills of lading were bearing the mark of “First Original”, “Second Original” and “Third Original” respectively. The box of “For Delivery of Goods Please Apply To” indicated F Company. Afterwards, the Agent C in Hong Kong on behalf of Carrier B consigned the cargo through Second Carrier D to final destination, requiring Second Carrier D to issue the straight bill of lading where the consignee indicated F Company. Then, the cargo got to Guangzhou in good order and condition. Meanwhile, the Party 1 and Party 2 appeared in the box of “Notify Party” required Agent E in Guangzhou on behalf of Second Carrier D for delivering the good, holding through bills of lading marked “First Original” and “Second Original”.

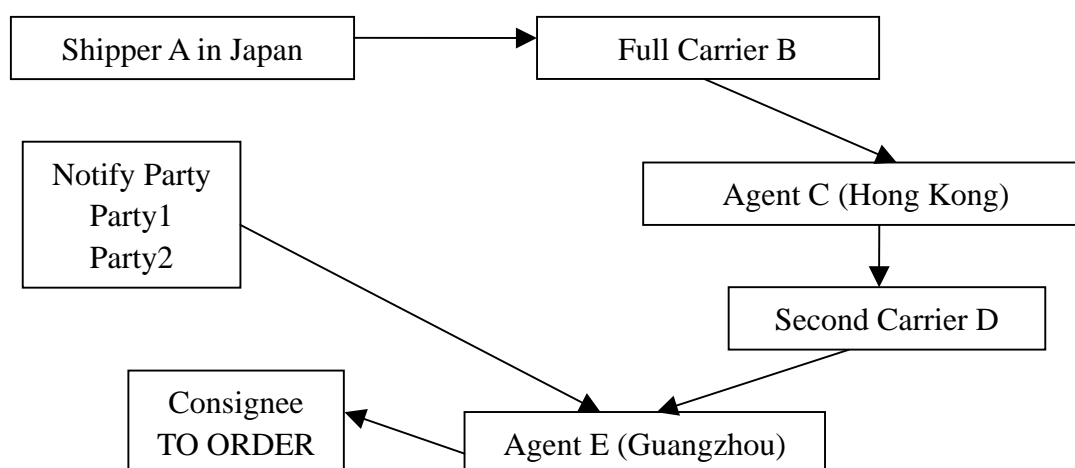


FIG 1-1 Relationship between all parties involved

Such “2/3 original bill of lading sent to applicant” makes commercial sense for the bank who all the way tries to facilitate the Letter of Credit transaction, which runs in the opposite direction of the international practice. To some extent, the bank pretermits the risk that two holders of original bills of lading would claim for delivering of the goods. Unfortunately, the bank has to swallow the consequence that the risk brought about. The precedent “*Glyn Mills & Co. v. East and West India Dock Co. (1882) 7 App. Cas. 591*” told the same story. Likewise, “1/3 Original bill of lading” will put the beneficiary at a risky position. The applicant stands a good chance of holding 1/3 original bill of lading, requiring for delivering of the goods without payment. The writer properly believes that neither the carrier nor the bank but issuing bills of lading in sets of multi-copies originals should be liable for such matter. This paper aims to provide understanding of such issue by analyzing the problem of issuing multi-copies original bills of lading which not only cost natural resources and energy, but also cause bill of lading fraud.

1.2 Literature Review

Carriers using all modes of transportation issue bills of lading when they undertake the transportation of cargo. A bill of lading is, in addition to a receipt for goods received on board and evidence of condition of goods, a contract for their carriage and

a document of title to them. Its terms describe the freight for identification purposes; state the name of the shipper and the provisions of the contract for shipment; and direct the cargo to be delivered to the order or assigns of a particular person, the consignee, at a designated location.

In practice, for the purpose of avoiding the loss, pilferage, delay of the bill of lading in the trade transaction, the whole maritime industry has come up issuing multi-copies original bills of lading (usually in triplicate) for a considerable period of time². Moreover, the maritime laws and practice of every country take acquiescence of such way of issuing bill of lading. Consequently, it gives people misconception that we should issue three original bills of lading. Nevertheless, the communication technology nowadays is so advanced that the punctuality and integrity of the bill of lading could be assured. Furthermore, it is likely to lose a full set of bills of lading at one go, while losing one copies could hardly happen. So, issuing multi-copies original bills of lading to ensure an unobstructed trade transaction become meaningless. Conversely, carrier and the agent on behalf of the carrier issuing multi-copies original bill of lading will not only cause prodigality, but also increase the commercial risk. In this case, conducting a study on number of issuing bill of lading makes practical significance to avoiding maritime risk and environmental issues in maritime industry.

As far back as the year of 1882, Lord Blackburn had already put forward such issue³. Within the perspective of the number of issuing original bill of lading, only few literatures have been conduct. Early instance in literature is *Bill of Lading and Other Shipping Documents* (Yang, L.Y., 2001), which probed the key issues of delivering of the goods with regard to multi-copies original bills of lading. *Copies of Original Bills of Lading* (Wen, Y, 2007) and *Approach to the number of issuing original bill of lading* (Jiang, Y.J., 2008) conduct a research on the essence of issuing three copies of original bills of lading, which showed that the commercial risk will be considerably

² Yang, Liangyi. (2001). Bill of Lading and Other Shipping Documents (pp. 68). *China University of Political and Law Press*.

³ See *Glyn Mills & Co. v. East and West India Dock Co.* (1882) 7 App. Cas. 591.

increased by doing so.

A certain amount of efforts have been put into addressing the problem of issuing bills of lading in set of multi-copies originals. However, the existing work put more emphasis on the problem within the day-to-day business, hardly considering the real nature behind.

2. Overview of Copies of Original Bills of Lading

A bill of lading is a type of document that issued by a carrier to a shipper, acknowledging that receipt of specified goods on board as cargo for conveyance to a named place for delivery to a named consignee. A bill of lading serves a number of purposes: It is evidence of the contract of carriage of the goods, and it may incorporate the full terms of the contract between the shipper and the carrier; It is a receipt signed by the carrier confirming whether goods matching the contract description have been received in good order and condition; It is also a document of title, being freely transferable. In accordance with the definition of bill of lading, the carrier shall deliver the said cargo to whomever hold the original bill of lading, considering the one salient function of bill of lading, namely, document of title. The holder of original bill of lading has the right to take the delivery of the goods and transfer the title of the goods freely to a third party by endorsement. Thereby whoever takes the possession of the original bill of lading holds the right to take the delivery of the goods. And the carrier has to do so.

Bill of lading could be divided into original bill of lading and copy bill of lading. The copy bill of lading, a non-negotiable instrument, differentiates from the original bill of lading. The copy bill of lading is often used in day-to-day business mostly for recording purpose, lacking of legal force. In practice, for the purpose of avoiding the loss, pilferage, delay of the bill of lading in the trade transaction, the original bill of lading is usually duplicated in several copies. Maritime practice and maritime law of

all countries allow issuing multi-copies original bill of lading. And each copy has the same enforceability.

Since the original bill of lading functions as document of title which of being transferable freely, the carrier would require as follows protecting his own interest by deploying inherent defect of issuing multi-copies bills of lading against the interest of the cargo, which I am to discuss in section 2.2.1.

- The consignee takes the delivery of the shipment at the port of destination against the full set of original bills of lading.
- Each original bill of lading states “The carrier has issued x original bills of lading, all of this tenor and date, one of the original bills of lading must be surrendered and endorsed or signed against the delivery of the shipment and whereupon any other original bills of lading shall be void”.

Providing that the number of original bill of lading stated on the bill of lading, the legal transferee of the bill of lading and the carrier could know the integrity of the bills of lading when the exchange settlement effects and the cargo to be delivered when the diversion occurs.

2.1 Legislation on the Number of Issuing Original Bill of Lading

ICC (International Chamber of Commerce) has its primary objective facilitating the flow of international trade at a time when nationalism and protectionism posed serious threats to the global trading system. It was in that spirit that the UCP were first introduced – to alleviate the confusion caused by individual countries’ promoting their own national rules on letter of credit practice. Nowadays, the Letter of Credit is most prevailing mean of exchange settlement in the global trade transaction. The UCP is utilized by bankers and commercial bodies in more than 175 countries in trade finance. Some 11-15% of international trade utilized letters of credit, totaling over a trillion

dollars each year.⁴

The latest revision of the Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication NO.600 (commonly called “UCP600”) has no stipulation regarding to the number of issuing original bill of lading. Article 17d, e state as follows:

If a credit requires presentation of copies of documents, presentation of either originals or copies is permitted.⁵

If a credit requires presentation of multiple documents by using terms such as “in duplicate”, “in two fold” or “in two copies”, this will be satisfied by the presentation of at least one original and the remaining number in copies, except when the document itself indicates otherwise.⁶

UCP600 has no change compared with UCP500 as regards to the number of issuing original bill of lading. Furthermore, UCP600 calls for even lower requirement at some level for the document when the payment effects. Even if the UCP govern the number of issuing original bill of lading, the parties will not legally bound to stipulations. Note that the Uniform Customs and Practice for Documentary Credits, acknowledged as custom and practice, is not mandatory. Since the UCP are not laws, parties involved have the option whether to incorporate the articles into their arrangement or not. In other words, it is the Letter of Credit which gives the order how many original bills of lading are needed in a specified trade transaction, which is occasionally initiated by the parties who facilitated the contract of sale with free will.

In addition, regulations such as the Maritime Code of the People’s Republic of China,

⁴ http://en.wikipedia.org/wiki/Uniform_Customs_and_Practice_for_Documentary_Credits

⁵ See Uniform Customs and Practice for Documentary Credits (2007) Article 17d

⁶ See Uniform Customs and Practice for Documentary Credits (2007) Article 17e

the Bills of Lading Act 1855, the Pomerene Bills of Lading Act 1916 and the Carriage of the Goods by Sea Act 1924 which later on replaced the Bills of Lading Act 1855 do not prescribe the number of original bill of lading issued by carrier, while some other countries do have some relevant regulations. The Italian Code of Navigation published in 1958 Article 463 provides that the receipt for shipment and the bill of lading are issued in two originals. Article 37 of the French Carriage of Goods by Sea Act 1966 holds the number more than two. Besides that, there is no stipulations of any kind provides plain requirement for the number of issuing original bill of lading.

2.2 Feasibility of Issuing One Original Bill of Lading

2.2.1 Business Side

If we are to understand the real nature behind, we must start with the basics. For a long period, maritime industry has evolved a practice of issuing original bills of lading in set, which gives the whole industry misunderstanding that the original bill of lading should be issued in multiple copies. In practice, we often could see two, three or five copies of original bills of lading. In the precedent *The "Nai Matkeini"* (1988) 1 Lloyd's Rep.452, original bill of lading was issued in four copies.

The "Multi-copies original bill of lading" Practice could be traced back to a long time ago, which I might as well repeat. A great while ago, the quality of letter was not that satisfactory and the mail services back there was not as reliable as today. So any measure to avoid the damage, loss, pilferage, delay of the Bill of lading will be helpful and valuable. However, the only international communications at that time were by letter, so little was heard of a ship until she returned. Accordingly, it is impossible to request the captain to reissue one original bill of lading during the voyage. Thereby, it is not reasonable and logical for the consignee to tender a full set of original bill of lading for taking the delivery of shipments. Conversely, why multi-copies original bills of lading should be issued, if a full set of original bills of lading are needed for the delivery of the goods.

❖ *Two centuries of communications in shipping*⁷

- *Letter*: One hundred and forty-eight years ago when Clarksons was set up, communication was by personal contact (e.g. at the Baltic), by letter, or by personal visit.
- *Telegram*: With the introduction of a global network of submarine cables from 1866 onwards, instantaneous communication between countries became possible. Initially sending cables was very expensive, costing \$1.25 per word.
- *Telephone*: From the early 1900s the telephone became available, though to begin with there were few users, the cost was high and the service was unreliable. Until the 1950s international calls had to be booked.
- *Boecode*: In the 1930s a system for sending coded cable messages was developed. Common messages could be transmitted as a single code word. Since cables were charged by the word this was cheaper.
- *Telex*: In the 1950s office telex machines became more widely available, allowing brokers to send lengthy messages much more cheaply from their own equipment. This was a great improvement over telegrams, but was still cumbersome. The broker would write his message and pass it to the telex operator who typed it onto a paper tape. The recipient was dialed up, and the tape passed through the machine.
- *Improved public network*: During the 1960s the telephone system improved, but operations were still cumbersome. Brokers placed calls through switchboard operators. There was often a delay of several hours before a connection could be made.
- *Automatic switchboards*: In the mid-1970s computerized telex switching systems allowed brokers to type and dispatch telex messages from their desks. The telephone system improved dramatically with direct dialing to most countries.
- *Computer workstations*: In the early 1980s computerized workstations were

⁷ Stopford, M. (2002). E-commerce-implications, opportunities and threats for the shipping business. *International Journal of Transport Management*, 1 (2002), 55-67

- installed. This allowed Brokers to type and dispatch telex or fax messages using word processors. In the same systems they had access to databases containing ship details, voyage estimating programs and other useful computer software.
- *Computer modems:* As communications got faster the time zone problem had become acute. Brokers spent long hours in the office waiting for calls from different parts of the world. This problem was solved by computer modems that enabled brokers to use the office workstation from home. More recently the introduction of cellular telephones has been a tremendous advantage.
 - *Fax machines:* As more offices installed fax machines this became a quick and practical means of transmitting documents.
 - *Mobile phones:* Calls can be taken anywhere – lunch is back on the agenda!
 - *Company networks and network driven applications:* In the 1980s it became possible to arrange groups of PCs in such a way that it allowed everyone in the company to access the same files and software. These are used for brokering information systems and procurement and ship management.
 - *E-mail:* In the late 1980s e-mail became available. This provided the same messaging facilities as telex at zero marginal cost and added the ability to attach files. Some security issues remain.
 - *World Wide Web:* In 1992 the first modern browser opened the way to company web sites and specialist web hosted applications. Free access to database driven sites offers the chance of self-service information.

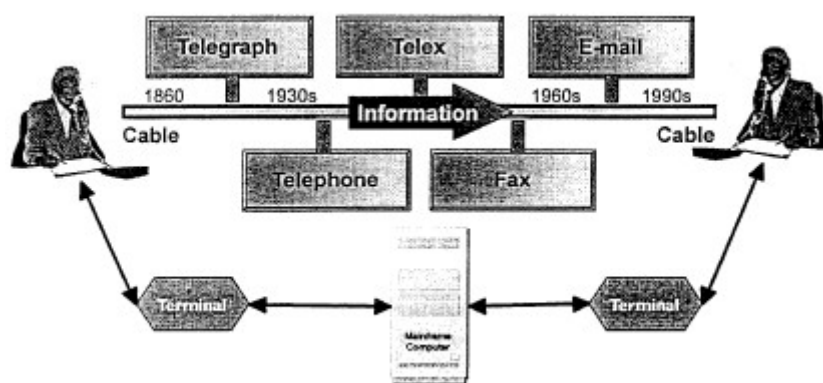


FIG 2-1 Evolution of shipping information system

After two centuries evolution of the communication technology in shipping, it is obvious that issuing multi-copies original bills of lading is even meaningless. On the one hand, the communication technology, mail service would be more precisely, can guarantee the mailed original bills of lading a safe and rapid journey towards the consignee or whomever it may concern. On the other hand, the advanced communication technologies allow free contacts between the parties involved for which some practice such as “soft clause” appeared in order to catch convenience and quickness and which unexpectedly provides a perfect environment for the bill of lading fraud.

❖ *Sanders v. Ma Clean (1983) 11 Q. B. D. 327*

Since each original bill of lading issued against one shipment is a document of title, the CIF buyer definitely would request the vendor to tender a full set of original bill of lading. Notwithstanding, there will be a confusion if such request is not incorporated into the contract of sale. For instance, the CIF vendor in *Sanders v. Ma Clean (1983) 11 Q. B. D. 327* kept one original and sent two to the buyer. The Court of Appeal had no objection to this behavior only on the ground that the vendor had not endorsed the original bill of lading to a third party. But how could it be possible for the buyer to find out such thing when he purchased the bill of lading? Judge Bowen put it:

The bill of lading... may be regarded as a key of the warehouse where the goods are. Can a person who has contracted to pay on delivery of the keys of the warehouse refuse to accept the keys tendered to him on the ground that there is still a third key in the hands of the vendor which, if fraudulently used, might defeat the vendee's power of taking possession? I think business could not be and is not carried on upon any such principle.

Apparently, the buyer must put “tender a full set of bills of lading” into the contract of sale to ensure his interest which is also told in *Donald H. Scott & Co. Ltd. v. Barclays Bank Ltd. (1923) 2 K. B. 1.*

❖ *Glyn Mills & Co. v. East and West India Dock Co. (1882) 7 App. Cas. 591*

Obviously, the carrier could have a chance to deliver the goods to a wrong person only against one out of three or even more original bills of lading. For instance, a third party who holds the same original bill of lading comes out of nowhere and claims the delivery of the specified goods. In the famous precedent *Glyn Mills & Co. v. East and West India Dock Co. (1882) 7 App. Cas. 591*, the vendor pledged one out of three original bill of lading while demanded delivery of the goods against another remained original bill of lading. In the end, he did not even pay the debt.

The “*Glyn Mills*” case put that the carrier or the owner of the ship who is in good faith do not hold liable for the after holder of another original bill of lading (the genuine consignee) who demands the delivery of the goods. This case set a precedent for that the carrier or the owner of the ship is not liable for his wrong delivery of the goods against one original bill of lading and since then provide safeguard for the carrier or the ship owner doing so.

Besides the “*Glyn Mills*” case’s safeguard, a conception called “volenti⁸” provides an extra shield for the carrier and the ship owner. One terminology like “the one of which bills of lading being accomplished the others to stand void” is incorporated into the bill of lading which gives the buyer or pledgee or whoever it may concern a warning that it is not secure enough if you hold one out of multiple

⁸ Volenti non fit injuria (to a will person, no injury is done) is a common law doctrine which means that if someone willingly places themselves in a position where harm might result, knowing that some degree of harm might result, they cannot then sue if harm actually results. Volenti has two main ingredients: (1) The claimant was fully aware of all the risks involved. (2) The claimant expressly or impliedly consented to waive all claims for damages.

copies original bills of lading which would be void some day. From the perspective of contract law, the carrier and ship owner will not be in breach the contract if the contract per se says so. Well, that makes a lot of sense. However, while the cleverness of the carrier and ship owner compels our admiration, it reflects the inherent defect of the bill of lading system.

There are other conditions that a full set of bills of lading are request to tender. But this article will not conduct such discussions.

❖ Soft clauses

Generally, vendor and buyer conclude a sales contract, with method of payment by letter of credit. Buyer applies to his issuing bank, usually in buyer's country, for letter of credit in favor of vendor. Then, the issuing bank requests a correspondent bank in vendor's country, to advise and usually to confirm the credit. And the advising bank forwards letter of credit to vendor informing of the terms and conditions of credit. If credit terms and conditions conform to sales contract, the vendor prepares goods and documentation, and arranges delivery of the goods to carrier. After that, the vendor presents documents evidencing the shipment to paying and negotiating bank named in the credit (usually the advising bank), or any bank willing to negotiate under the terms and condition of the credit. The bank examines the documents for compliance with credit terms. If complied with, bank will pay, accept or negotiate and send the documents to the issuing bank. Next, the issuing bank examines the documents for compliance with credit terms. If also complied with, vendor's documents are honored. Subsequently, documents are released to the buyer after payment. Finally, buyer surrenders original bill of lading to the carrier for the delivery of the goods.

In such letter of credit procedure, apparently there is no mandatory requirement for issuing bill of lading in sets legally (which was discussed in section 2.1). Notwithstanding, there are still convincing commercial reasons for issuing bills of

lading in sets of multiple originals. And this behavior generates no difficulties if bills of lading were always treated as no more than receipts for goods. However, the original bills of lading are often to be transferable between banks or merchants under back-to-back contracts of sale, which could have a good chance for the bills of lading to reach the port of discharging long after the ship's arrival. Due to the bills of lading treated as documents of title, some "soft clauses" such as "1/3 original bill of lading sent to applicant" may be confronted with practitioner. In this case, the vendor exposes himself under a huge risk. The buyer could represent one out of three original bills of lading for the delivery of the goods without payment, which indeed harms the international trade finance transaction and provides a substantial scope for the bill of lading fraud.

Apparently, the confusions stated above has created a plenty of problems which is originated by the multi-copies original bill of lading. As issuing one single original bill of lading takes over, the whole problem will be simplified. Imagine that after vendor receives the one original bill of lading issued by carrier, he definitely would tender the only bill of lading to the advising bank evidencing the shipment. Because no other originals would be sent to applicant, there is no possibility for the applicant to demand the delivery of the goods in advance without payment. Thereby, the vendor and the bank will see a considerable reduction in risk. Moreover, issuing one original bill of lading puts an end to the probability of fact that several people are holding an original bill of lading simultaneously, which simplifies the operation of correct endorsement. Furthermore, one of the major problems which I would provide in next section will be disappear.

2.2.2 Legal respect

At the very beginning, we need to discuss the function of bill of loading as the document of title. Whether the bill of loading is document of title or not? This big question mark has been discussed on many occasions. Still, there is no consistent

answer. The purpose of discussing the nature of bill of lading is to determine which jurisdiction is applicable. Benjamin's Sale of Goods provides:

There is no authoritative definition of 'document of title to goods' at common law, but it is submitted that it means a document relating to goods the transfer of which operates as a transfer of the constructive possession of the goods, and may operate to transfer the property in them.

Factors Act 1889 Article 1 considers document of title a representative and or a proof of possession of cargo.

The expression 'document of title' shall include any bill of lading, dock warrant, warehouse-keeper's certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented. (Yang, L.Y., 2001)

Apart from common law legal system, civil law system has set up stringent premise for the negotiable instrument, which strictly obeys Numerus Clausus⁹ principle. Black's Law Dictionary states that "bill of lading is a documentary evidence of title" while Longman Law Dictionary puts that "it acts as a document of title to the goods. In both cases, "document of title" in bill of lading is constructive possession, which must stand with bill of lading per se. Hold the bill of lading, then have such possession and vice versa.

⁹ Numerus Clausus is the basic and most important doctrine of the property law, which mainly means the real right must be stipulated by law.

❖ Bill of lading represents direct possession?

From the perspective of bill of lading representing direct possession, it is easy to think of the holder of the bill of lading who obtain the right from doing so regardless of the influence of which will bring to the actual direct possessor. Under this theory, the holder of the bill of lading directly possesses the goods. As for the actual direct possessor of the goods such as carrier or warehouse keeper or illegal possessor of any kind, there are two possible explanations: one is the actual direct possessor's direct possession is coexisting with the holder of the bill of lading's direct possession, namely, there are two direct possessions within the same cargo. The other is the actual direct possessor has no direct possession legally. Only the holder of the bill of lading has such right.

In terms of the first explanation, it allows two or more than two direct possessions upon one piece of cargo. Thereby, these direct possessions have their legal validity according to the law. However, while the holder of the bill of lading transfers the bill of lading by endorsement to Party A, the actual direct possessor (for example the carrier) deliver the goods to Party B. Finally, it is to appear that the Party A and Party B own the same property at one time, which cannot explain "the one of which bills of lading being accomplished the others to stand void".

In terms of the second explanation, it is leading to the behavior of actual direct possession is not endowed with direct possession and its validity. For instance, the acquirer in good faith who actually takes the direct possession of the goods will not acquire the property right based on the principle of acquisition in good faith, because such actual direct possession does not constitute direct possession. And the actual direct possessor does not acquire the property right based on usucapio system. Thereby the actual direct possessor forfeits the effect in chattel publicity.

From this, it can be seen that both cases does not accord with the existing doctrine in property law.

❖ Bill of Lading represents indirect possession?

As stated above, the bill of lading does not and should not represent direct possession of the goods. Whether the bill of lading represents indirect possession or not will be determined by essence of indirect possession. The essence of indirect possession has three ingredients:

- The direct possessor is somehow related to the indirect possessor (for example leasehold relation).
- The direct possessor has the will to take possession for the indirect possessor.
- The direct possessor has the right to return the chose in possession to the indirect possessor when he loses the first ingredient which gives the power to obtain the ownership of the goods.

In the view of the above, when the direct possessor, namely, the carrier lose the media linking himself to possession, the holder of the bill of lading, namely, the indirect possessor loses the property right simultaneously, which obviously shows no protection of the holder of the bill of lading.

Apparently, the concept of “bill of lading is document of title” is quite fuzzy, lacking of scientific thinking and logic deduction. In practice, the bill of lading as document of title is seldom paid attention on in international trade. The Merchants value the trade transaction the most. The nature of document of title would not show her face within the transaction between the buyer and vendor. Only on the premise that the bill of lading is endorsed to a third party can the nature “document of title” reflect her significance.

As we all know, each bill of lading represents property right of the cargo thereon

states, which cannot explain “the one of which bills of lading being accomplished the others to stand void”. Therefore, it is inadequate for one out of multi-copies original bill of lading claims the integrity of document of title without the contract.

The truth is that bill of lading functioning as document of title, original bill of lading issued in multiple copies such practices have evolved from the trade and shipping business. Practice only pay attention to the convenience and safety, regardless of real nature behind, which results in existing jurisprudence cannot explain some practices. And some innovative theories which could interpret such practices will in return shake the foundation of existing theories. Holder of one original bill of lading could demand delivery of the goods. Nevertheless, someone who also holds the original bill of lading claims the delivery of the goods. What does that imply for his holding of original bill of lading? The second holder also acquires the property right in the goods, which deviates from the principle of one property one right in property law. So, under the circumstance of issuing multi-copies original bill of lading, it is inadequate for one original bill of lading to claim the property right.

Such legal complexity will not exist if only one original bill of lading issued. Issuing one original bill of lading not only obeys the basic principle of one property one right, but also logically claims the property right under the bill of lading.

Hague-Visby Rules Article 3(3) which indicates as follow which clears the responsibility for issuing bill of lading.

After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things...

This Article does not give a plain requirement of number of issuing original bill of

lading. In other words, carrier produces one original bill of lading could be deemed as fulfilling the obligation of issuing documents. Considering the entire trade transaction, one original bill of lading is adequate enough to play its role in international trade. Moreover, the social benefits from doing so which will be discussed in section 3 goes without saying.

3. Benefits of Issuing One Original Bill of Lading

3.1 Reduce the Possibility of Bill of Lading Fraud

Bill of lading, as a major trade document as well as an important transport document, plays a significant role in the process of international trade. It is a genius tool to facilitate the mode of international trade change from barter to documentary transaction. The international trade is no longer about “money-cargo” exchange while it is a “money-document” deal. Under such scenario, such document is susceptible to the deception and fraud. Nowadays, bill of lading fraud becomes the major form of maritime fraud.

Generally, the carrier, who has involvement neither in sales nor in any delivery or endorsement and delivery of the bills of lading covering such cargo, will be concerned on arrival at the discharge port to deliver the cargo to the proper person without being put to undue enquiry or delay. If there were only one original bill of lading issued, those commercial concerns could readily be met by a rule that simply required delivery to be made only against production of that single original bill of lading. However, bills of lading are normally issued in sets of multi-copies originals. This mercantile practice enable the bill of lading to be sent to the consignee by different modes of dispatch and ensures that the consignee gets at least one of the originals on time to take delivery of the goods at the destination. Treating each bill of lading as an original leaves it open to misuse. The carrier delivers the goods against presentation of the bill of lading and it is not necessary for the holder of a bill of lading to present the entire set to the carrier. Presentation of part of a set is enough. Delivery of the

cargo against one of a set would cause no problems if the consignee or endorsee had the entire set. However, it is normal for the endorser to transfer only part of a set to the endorsee, which means that both the endorsee and endorser possess part of a set, where part of the set is endorsed to the endorsee, and the others remain unendorsed or may be endorsed, in cases of fraud, to other third parties. Since each bill of lading in the set is treated as an original, the endorser, the endorsee and the third party can claim the delivery of the goods. The dangers inherent in issuing multi-copies original bill of lading were spotted by Lord Blackburn in “*Glyn Mills & Co. v. East and West India Dock Co. (1882) 7 App. Cas. 591*”, when he puts:

...the very object of making a bill of lading in parts would be baffled unless the delivery of one part of the bill of lading, duly assigned, had the same effect as the delivery of all the parts would have had. And the consequence of making a document of title in parts is that it is possible that one part may come into the hands of one person who bona fide¹⁰ gave value for it under the belief that he thereby acquired an interest in the goods, either as purchaser, mortgagee or pawnee, and another may come into the hands of another person, who, with equal bona fides, gave value for it under the belief that he thereby acquired a similar interest. This cannot well happen unless there is fraud on the part of those who pass the two parts to different persons.

Despite their proneness to fraud and developments in communication technology, merchants continue to issue bills of lading in sets. Why this practice continues to today is unknown. (I mentioned in section 2.2) Lord Blackburn said:

¹⁰ Bona fide, or in good faith, is good, honest intention (even if producing unfortunate results) or belief. In law, it is the mental and moral state of honesty, conviction as to the truth or falsehood of a proposition or body of opinion, or as to the rectitude or depravity of a line of conduct.

I have never been able to learn why merchants and shipowners continue the practice of making out a bill of lading in parts. I would have thought that, at least since the introduction of quick and regular communications by steamers, and still more since the establishment of electric telegraph, every purpose would be answered by making one bill of lading only which should be the sole document of title, and taking as many copies, certified by the master to be true copies, as it thought convenient: those copies would suffice for every legitimate purpose for which the other parts of the bill can now be applied, but could not be used for the purpose of pretending to be holder of one bill of lading already parted with. However, whether because there is some practical benefit of which I am not aware, or because, as I suspect, merchants dislike to depart from an old custom for fear that the novelty may produce some unforeseen effect, bills of lading are still made out in parts, and probably will continue to be so made out. (Carr et al., 2005)

What Lord Blackburn implied is constructive and innovative at that time. It is all the more true in today's technology environment. Issuing only one original bill of lading would largely reduce the possibility of bill of lading fraud and play a positive role in standardizing the bill of lading system and abandoning traditional bad custom.

3.2 Environmentally-friendly and Energy-saving

Additionally, it is environmentally-friendly and energy-saving to issuing one original bill of lading upon one single consignment. Let us have a simple calculation.

Table 3.2.1 Resources cost per ton paper

	Wood (t)	Water (t)	Electricity (kwh)	Coal (kg)
1 ton of paper	0.875	80 ¹¹	800kwh	300

Source: Collected by Ren Zhongming from various sources

One piece of paper which has an area of 1m² weighs about 52g. And one A4 paper (29.7cm*21cm) is 623.7cm². According to the following:

$$\text{The weight of one A4 paper} = 52 \div (10000 \div 623.7) = 3.25g$$

Bills of lading are normally issued in sets of two, three, five originals. Let us take three copies or original bills of lading, the most common practice, as the standard for our calculation. Thus, issuing one original bill of lading saves two pieces of paper at a time. Accordingly, the amount of resources and energy saved could be formulized as follows:

$$T_S = T_P N_P = (T_{TP} / N_{TP}) N_P = 0.875 / (10 * 10^6 / 3.25) * 2 = 5.6875 * 10^{-6} \text{ ton}$$

$$W_S = W_P N_P = (W_{TP} / N_{TP}) N_P = 80 / (10 * 10^6 / 3.25) * 2 = 5.2 * 10^{-4} \text{ ton}$$

$$E_S = E_P N_P = (E_{TP} / N_{TP}) N_P = 800 / (10 * 10^6 / 3.25) * 2 = 5.2 * 10^{-3} \text{ kwh}$$

$$C_S = C_P N_P = (C_{TP} / N_{TP}) N_P = 300 / (10 * 10^6 / 3.25) * 2 = 1.95 * 10^{-3} \text{ kg}$$

T_S = the amount of timber saved in each issuing bill of lading in one original.

T_P = the amount of timber consumed per piece of paper.

T_{TP} = the amount of timber consumed per ton paper.

N_P = number of paper saved in each issuing bill of lading in one original.

N_{TP} = the amount of paper per ton paper.

W_S = the amount of water saved in each issuing bill of lading in one original.

W_P = the amount of water consumed per piece of paper.

¹¹ The average level of water consuming paper industry, considering the different technology levels in various countries.

W_{TP} = the amount of water consumed per ton paper.

E_S = the amount of electricity saved in each issuing bill of lading in one original.

E_P = the amount of electricity consumed per piece of paper.

E_{TP} = the amount of electricity consumed per ton paper.

C_S = the amount of coal saved in each issuing bill of lading in one original.

C_P = the amount of coal consumed per piece of paper.

C_{TP} = the amount of coal consumed per ton paper.

In other words, issuing bills of lading in sets of three originals costs 5.6875×10^{-6} tons of timber, 5.2×10^{-4} tons of water, 5.2×10^{-3} kwh of electricity and 1.95×10^{-3} kg of coal compared to issuing one bill of lading.

Then, how many times are the bills of lading issued per annum around the globe? According to Martin Stopford, one bulk vessel complete about 6 voyages a year (this number does not tell the truth. Take Chinese coastal and river transport as an example. One bulk vessel handles about 15 voyages in Chinese domestic transport. So, the number provided by Martin Stopford should be adjusted which should be multiple by an adjustment premium of 0.15); one containership handles 50,000 transactions each year; one chemical tanker carries 600 parcels a year.

Table 3.2.2 World fleet 2010

	Jan 2010	Feb 2010	Mar 2010	Apr 2010
	No.	No.	No.	No.
Dry Bulk	7,129	7,146	7,173	7,317
LNG	337	337	339	340
Tanker	n/a	3,208	3,204	3,183
Chemical Tanker	3,792	3,802	3,832	3,839
Container	4,709	4,686	4,691	4,708

Source: Drewry

Thus, we can easily find out bills of lading are issued about 240 million times around globe, which additionally costs 1365 tons of timber, 124800 tons of water, 1248000 kwh of electricity and 468 tons of coal compared to only one bill of lading issued at a time. If we interpret it in terms of carbon footprint¹², it equals to 2400 tons of carbon footprints. What a considerable degree of pollution!

4. Implementation of Issuing One Original Bill of Lading: E - Bill of Lading

Bill of lading has facilitated international trade for hundreds of years. The system allows goods to be traded, while in transit, many times before they reach their destination. Merchant transfers the bill of lading as a document of title so that the document transfers also transfer the right to demand the cargo from the ship at discharge. However, the traditional paper bill of lading system brings problems that if cargoes arrived at the discharge before the bills of lading. The buyer cannot demand the delivery of the goods, which slow down and even obstruct the trade. It will cause the inventory cost at the port of discharge and total tied-up capital within the whole supply chain. The shipping industry is looking for substitutes for traditional paper bills of lading. E – bill of lading are regarded by many practitioner as a improvement from traditional paper bill of lading, since they will see a reduction in not only problems created by late arrival of bill of lading at discharging port but also fraud because bill of lading will no longer be produced in sets. Electronic bill of lading becomes a feasible form of implementing issuing one original bill of lading.

4.1 Core issue in E – bill of lading: Negotiability

The UNCITRAL Model Law on Electronic Commerce, 1996 adopted by the General Assembly Resolution, the Rules for Electronic Bills of Lading in 1990 adopted by CMI, the Electronic Communications Act 2000 adopted in the United Kingdom and

¹² A carbon footprint is the total set of greenhouse gases (GHG) emissions caused by an organization, event or product.

the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, namely, the Rotterdam Rules have all attempted to facilitate electronic bills of lading. Apart from that, there are also supporting rules such as Electronic Data Interchange for Administration, Commerce and Transport and the provision related to the use of electronic bills of lading in INCOTERMS 2000, UCP500 and UCP600.

However, there are a few barriers to adopting Electronic bill of lading, such as accompany business process change. Existing business processes built around slow paper handling may not be suited for EDI and would require changes to accommodate automated processing of business documents; the cost in time and money in the initial set-up. The most challenging barrier, and also the most important function of the bill of lading, to replicate in electronic form, is its function as the document of title. We will put our emphasis on the significant barrier: negotiability as document of title.

Negotiability has been recognized as the perhaps most challenging issue of implementing electronic bill of lading in international trade. Right in goods represented by documents of title is based on the physical possession of an original paper bill of lading. Analysis of the legal basis of the negotiability of documents of title puts “there is generally no statutory means in place by which parties, through the exchange of electronic messages, can validly transfer legal rights in the same manner possible with paper documents” (Bernauv, K., 1995). In other words, currently, negotiability of electronic bill of lading cannot be realized in the same way as the paper instrument.

The UNCITRAL Working Group on Electronic Commerce has not finished its study on this problem. Initial steps towards electronic equivalents of paper documents of title were made with articles 16 and 17 of the UNCITRAL Model Law on Electronic Commerce, 1996. Article 16 identifies key actions in connection with a contract of carriage of goods that might be performed by the transmission of electronic messages.

Article 17(3) provides that:

If a right is to be granted to, or an obligation is to be acquired by, one person and no other person, and if the law requires that, in order to effect this, the right or obligation must be conveyed to that person by the transfer, or use of, a paper document, that requirement is met if the right or obligation is conveyed by using one or more data messages, provided that a reliable method is used to render such data message or messages unique.

Create a unique electronic document is challenging. This difficulty may explain why, with the exception of Canada and Colombia, most jurisdictions that have so far enacted the Model Law has chosen not to adopt provisions modeled after its articles 16 and 17. To develop a legal foundation for negotiable electronic documents, the Working Group on Electronic Commerce has submitted a report on “Possible Future work on Electronic Commerce: Transfer of Rights in Tangible goods and other Rights”. It is understandable that the future work will take time. (Hamid, A.G., 2004)

Note that confidence in a new thing is needed before it coming through. Paper money doesn't have any value but an abstract representation of the monetary unit it describes. It is simply pieces of paper or numbers in a ledger. A car has value because it can help you get where you need to go. Water has a value because it has a use. If you don't drink enough of it you will die. Unless you enjoy looking at pictures of deceased national heroes, money has no more use than any other piece of paper. But why are we using it to exchange commodities? Besides bunches of monetary system supporting it theoretically, it is the confidence in such paper instrument makes the deed a worthy instrument. For a transaction as important as the transfer of paper instruments, an independent third-party registry is necessary, which pump the confidence into such instruments. As Professor Chandler rightly put:

Neither paper itself nor the mere printing and embellishments on that paper are the key to negotiability. If we wish to develop EDI, then we need only devise a process that will instill confidence. However, any process used must be verifiable. Since the most secure means of verification is with a trustworthy registry, logic dictates that verification be built into each transfer through some type of registry – either a centralized registry or a registry operated by the issuing party. (Hamid, A.G., 2004)

According to Professor Chandler, a third-party registry is needed for the negotiability of document of title under electronic commerce. Such registry systems may be divided into three main categories:

- *Government registries:* An agency of the State records transfers as public records, and may authenticate or certify such transfers, as in the case of electronic registration of real estate in Canada. For public policy reasons, the State usually takes no responsibility for any errors.
- *Central registries:* Central registries are established where a commercial group conducts its transactions over a private network (such as SWIFT), accessible only to its members. This type of registry has been found necessary where security and speed are critical. Its limited access permits party verification to be done quickly thereby facilitating speed and enhancing security. Access to the actual records of the transactions is usually limited to the users.
- *Private registries:* These registries are conducted over open or semi-open networks, where the user of the document, its agents (as in the systems of electronic warehouse receipts in the United States) or a trusted third party (as in the Bolero System) administers the transfer or negotiation process. Such systems

may be based exclusively or primarily on contractual arrangements (as in the Bolero System) or be derived from enabling legislation (as in the systems of electronic warehouse receipts in the United States). (Hamid, A.G., 2004)

The implementation of E – bill of lading will simplified and even avoid the problems brought about by issuing bills of lading in sets, which also accelerates and streamlines the trade transaction at a large extent. And the sooner we widespread employ it, the better.

5. Conclusion

This subject has been slightly difficult to understand due to the complexity of some principle of jurisprudence and practice formed in day-to-day operations. Besides, the interest of this work is essentially theoretical. Analysis of the behavior of issuing bills of lading in sets and the implication of issuing one original bill of lading are considered to tend to reduce when it comes to practical issues.

Indeed of the practice of issuing bills of lading in sets is a quite slippery subject, since this practice is not identifiable in any jurisdiction. The confidence in such practice comes from transactions for several centuries, which is leading to merchants and shipowners continue the practice of making out a bill of lading in parts.

However, developments in communication technology nowadays have already eliminated the main reason of issuing bills of lading in sets back there, which I mentioned in section 2.2. There is no need to issuing multi-copies original bills of lading any more. Otherwise, is will vastly cost natural resources and energy and leave the bill of lading open to misuse thereby provide a comfortable environment for maritime fraud.

E - bill of lading, in my view, is a possible form of implication of issuing one original

bill of lading, which performs as a reformer and savior of the existing system of bill of lading. However, lacking of confidence and its attribute of negotiability hedge the widespread implementation of the E - bill of lading.

My final conclusion is limited to the reiteration of the well-known advice to consider the logic of a legal principle accurately before taking some of its institutions.

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