

**The Bill of Lading Contract
and the
Transfer of Property
Under Greek, English
and
United States Law**

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1. Introduction

The courts have developed rules for determining the exact point in time at which the ownership of the goods or in the term which came into us the property in the goods passed from seller to buyer. From this point on the goods were held at the buyer's risk if they were accidentally damaged or destroyed he still had to pay for them at the agreed contract price. The terms property and title were used interchangeably. The term property adopted with respect to rights of third parties.

Under the laws of England and the United States of America the property in the goods sold passes when the parties intend it to pass whether the delivery of the goods did or did not take place. On the other hand under the Greek law the property passes, as a rule, only if the intention of the parties that property should pass is supported by the actual delivery of the goods. This very considerable difference in the national sales law is not helpful for the international trade.

The distinguishing feature of property rights is that they bind not merely the immediate parties to the transaction, but also all third parties. The mere fact that the property in the goods has passed to the buyer does not confer on him a good title against third parties, nor does it confer on him the right to possession as against the seller. What precisely are the consequences which flow from the passing of property? A bill of lading is firstly an acknowledgement by a carrier that it has received goods for shipment. Secondly the bill of lading is the contract of carriage and thirdly if it is negotiable it controls possession of the goods¹. It must be considered that the prime function of a bill of lading as a document of title is in relation to the contract of carriage. Aim of the analysis will not be a detailed investigation of the transfer of property under a sales contract, but the investigation of the role of bills of lading in the transfer of property.

2. English Law

Conflict of Laws and Passage of Property

English conflict of law rules determining the law applicable to an export contract are now contained in the Rome Convention on the Law Applicable to Contractual Obligations 1980, which was implemented in England in the Contracts (Applicable Law) Act 1990². Property rights are not covered by the provisions of the Convention because it covers only contractual obligations. However, a distinction should be drawn between the proprietary effects of a contract of sale and the cause of that effect, namely the contractual duty to pass property.

Proprietary Effects

The established principle in English law is that <the validity of a transfer of a tangible and its effect on the proprietary rights of the parties thereto and of those claiming under them in respect thereof are governed by the law of the country where the movable is at the time of the transfer (lex situs)>³. The Rome Convention has no bearing on this basic rule of the law of conflicts relating to the transfer of property. Hence, the lex situs will determine the power of the seller to pass a good title and the acts required to cause property to pass, whether title passes to the transferee by mere agree-

ment or whether delivery is necessary. Sections 16-18 of the Sale of Goods Act 1979 determine whether and when property has passed where the goods are situated in England. The situs of the goods is difficult to be determined in international sale of goods. The lex situs principle does not apply to goods in transit because of the complex nature of international sales⁴. Thus, the impact of the transfer of documents upon transfer of property and the variety of fact situations make it difficult to establish a system which answers all problems of the conflict of laws in this area⁵. In fact a few problems appear to have arisen regarding the establishment of the applicable law. In commercial practice transfer of goods in transit has been achieved by means of documents of title such as bills of lading.

Contractual Effects

Contractual rights are determined exclusively by the law applicable to the contract. Hence, whether or not the seller owes the buyer a duty to pass good title is matter of contract which is governed not by the lex situs but by the law governing the contract. Sections 12-15 of the Sales of Goods Act 1979 govern the contractual duty to pass title, about description, fitness for purpose, merchantability and sale by sample. How is the decision that English law on sale of goods applies to a particular contract reached? The Rome Convention gives the answer. According to that Convention , where a contract for the sale of goods contains a choice of law clause, the chosen law will apply, except that freedom of choice of law is restricted by other provisions of the Convention⁶.

In the absence of an express choice of law by the parties, the Convention directs the courts to apply the law of the country of the party who is to effect the performance which is characteristic of the contract. Article 4.2 determines the conditions which are taken into consideration in the establishment of the applicable law⁷. The characteristic performance of a FOB and a CIF contract will be deemed to be the place of shipment, an act usually carried out by the seller. Therefore, in the absence of express choice, the contract of sale will be governed by the law of the place in which the seller has his principal place of business. In cases where the seller ships the goods, the place of shipment has been seen as the crucial factor in selecting the applicable law where the parties had failed to choose a law in their contract⁸.

Choice of Law and Its Effect on the Transfer of Title

Parties may agree in the contract of sale that the proprietary effects of the contract will be governed by a chosen law, which law might not be that which the forum's conflict laws would apply. Are the proprietary effects of the transfer of the goods governed by the law chosen by the parties or by the law indicated by the forum's conflict rules? Can the contracting parties evade the rule in section 16 of the Sale of Goods Act 1979 where ascertainment for the transfer of property in unascertained goods is required? In effect, the question is whether section 16⁹ of the Act is a mandatory rule under English law such that a choice of law clause seeking to avoid it would be invalid . An indication of the approach which English courts might take is presented in Cheshire & North's Private law¹⁰ where the authors write that <the law of the situs will not be applied if there is a mandatory statutory provision of English law which the courts are required to apply; though it should be pointed out that it is very

rare for an English provision to be so interpreted>. Thus, where the parties choose by contract the law governing the proprietary effects of their transaction, that choice will prevail and section 16 could be bypassed.

Transfer of Property

Goods the subject of a contract of sale may be either existing goods owned or in the possession of the seller, or future goods to be manufactured or acquired by him after the making of the contract.. The property in specific or ascertained goods passes when this is intended by the parties. The Sale of Goods Act 1979 lays down rules for ascertaining their intention. The Sale of Goods (Amendment) Act 1995 refers to pass of property in unascertained goods. Specifically section 20A regulates the transfer of property as between seller and buyer to undivided shares in goods forming part of a bulk. Additionally, section 20B specifies when it is deemed consent by co-owner to dealings in bulk goods. Section 21 refers to sale by person not the owner of the goods, where the buyer acquires no better title to the goods than the seller had. In case that the owner precluded from denying the seller's authority to sell. Section 23 specifies the sale under voidable title¹¹ which has not been avoided at the time of the sale. In this case the buyer in good faith acquires a good title. However, these rules are expressed to give way to a contrary intention, as where the parties in their contract reserve a right of disposal, reserve title, or otherwise oust the rules.

Careful distinction must be drawn according to whether the contract goods are specific or unascertained. The plaintiffs sold the telephones on terms that the documents would be delivered to the buyers against payment. In these circumstances the property in the telephones did not pass until payment¹²

Where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery or both is postponed¹³. Thus, delivery of the goods is not necessary for the passing of property. The property in unascertained goods cannot pass until they have been ascertained and unconditionally appropriated to the contract in a deliverable state¹⁴. The best example of unconditional appropriation is delivery. Delivery and the passing of the property frequently do not occur at the same time, and thus it may be desirable for the contract to make express provision as to when the property shall pass.

Section 16 lays down the rule that property in goods cannot pass to the buyer <unless and until the goods are ascertained>. If goods were packed and shipped together with other goods of the same type, then, before the Sale of Goods Amendment Act 1995, the property in any of them could not pass to the buyer before the shipment had been separated. Shipment of unascertained goods forming part of a larger quantity in bulk was not pass property¹⁵. Furthermore, subject to section 20A, the goods must be appropriated to the buyer as well. The process of allocation is called appropriation. Thus, property passes to the buyer on unconditional appropriation which means that the goods are allocated to the buyer without evidence tending to show that the seller intended to reserve the property. The passage of property in goods has a direct impact on the creditors of insolvent parties to the contract of sale. An undivided part of the cargo sold to the buyer does not become subject to the claims of the buyer's general creditors if the buyer becomes insolvent while the goods are in transit.

According to section 17: <1. Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. 2. For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case. The section specifies the demands of the law for the transfer of property where it is stated the specific agreement of the parties contained in the contract for their intention of transfer. Delivery of the goods is not demanded.

Section 18 lists the five rules for ascertaining the intention of the parties. The first three regulate the passage of property in specific goods. Specific goods are defined by section 61(1) of the Act as <goods identified and agreed on at the time a contract of sale is made>. The fourth rule states the sale of goods on sale or return terms. In the absence of a different intention the appropriation marks the moment at which property in the goods passes from seller to buyers. Appropriation stated in section 18 rule 5 that <Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods then passes to the buyer; and the assent may be express or implied, and may be given either before or after the appropriation is made>. Furthermore, unconditional appropriation is the act by which a seller allocates a particular parcel of goods to a particular contract. Consequently, the act of appropriation will be an act performed by the seller irreversibly identifying the goods as those sold to the particular buyer. Subsection 2 of the rule 5 identifies an act of appropriation that <where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee or custodian (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is to be taken to have unconditionally appropriated the goods to the contract>. Hence, in case of such goods property would pass upon the shipment of the goods. So, either the sale contract or the shipping documents, or both, will indicate an intention. Section 18 rule 5(3) and (4) as amended by 1995 Amendment stipulate the ascertaining intention of the parties as well.

The effect of the section 19 is to enable the seller expressly to retain property in the goods despite their ascertainment under section 16 and appropriation under section 18. As an example in *The San Nicholas*¹⁶ the contract stipulated that property would pass <at the permanent connection of the vessel., at loading port>. Additionally similar clauses are typical in contracts for the sale of oil¹⁷. Such clauses are known as (reservation of title) or (Romalpa) after the case *Aluminium Industrie Vaasen v Romalpa Aluminium Ltd.*¹⁸ where property was to pass when the buyer paid all that is owing to the seller. The courts in England have recognised some Romalpa clauses¹⁹. The validity of such clauses depends on a number of criteria depending on the extent to which title is sought to be reserved and the degree to which the interests of third parties might be prejudiced by such reservation²⁰.

Effect of Possession of Goods Under the Common Law

The law, prior to the Factors Act, as to the power of a person in possession of goods to confer a title to them was stated by Blackburn in *Cole v North Western Bank*²¹. Any person in possession of goods could not confer on another any better title to the

goods than he himself had. The possession of bills of lading or other documents of title to goods did not, at common law, confer on the holder of them any greater power than the possession of the goods themselves. Goods shipped by one who has no right or property in them and he obtains and negotiates a bill of lading then his transferee does not acquire any right to the goods or to possession of them.

There have been differences of opinion among learned judges as to the legal effect of a transfer of a bill of lading regarding the vesting of the property in the goods. There was a view that where there has been a real transfer of the bill of lading, not a mere handing to an agent, nor a possession obtained by a theft the property in the goods, as well as the right to possession follows the bill of lading. The view now established is that the bill of lading merely represents the goods, not the right to them and that possession of it is only equivalent to a physical possession of them. The right of property in the goods depends upon the transaction between the parties. It is a question of the construction of the contract in each case at what stage the property shall pass and a question of fact in each case whether that stage has been reached. The question whether the property in movables has passed under a contract is a question of intention to be gathered from all the circumstances, the expressions made use of in the contract, and also the surrounding circumstances. If the buyer has passed documents of title such as bills of lading to the third party the seller's rights are defeated (Section 47). In *Sewell V Burdick* stated that the effect of an endorsement must be ascertained, in each case, by reference to the intention with which was made. Thus, the real endorsement of the bill of lading as an action means nothing. The absence of this power from the nature of the document means devaluation of its commercial use. A bill of lading is a symbol of the goods themselves. Delivery and endorsement of a bill of lading is equivalent, concerning the passing of property, to a symbolical delivery of the goods. Hence, the agreement between the original parties determines the effect as between themselves of a delivery of the endorsed bill of lading.

The Passage of Property and Bills of Lading

Practical consequences which flow from the mere passing of the property are as follows: a. If the property in the goods has passed to the buyer he will have a good title to them if the seller becomes insolvent while the goods remain in the seller's possession. b. If the cargo is delivered subject to a reservation of title (or property) by the seller, the seller may have a good title to the cargo should the buyer become insolvent. c. The right to sue a third party for damage to, or loss of, the goods may depend on who has the property. d. The risk passes prima facie when the property passes. e. The seller can only sue for the price if the property has passed. Passing of property may have important results as between buyer and seller but its effect on third parties seems to be minimal. In the International Carriage of Goods by Rail, Road and Air the relevant Conventions state who is entitled to claim against the carrier, and the rights under these Conventions do not depend on ownership of the goods²². The Sales of Goods Act 1979 establishes the presumption that property in ascertained goods will pass by appropriation through shipment. This presumption may be rebutted by express terms in the contract of sale or by the way in which the bill of lading is issued or negotiated. Article 19(2) states that: <Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his agent,

the seller is prima facie to be taken to reserve the right of disposal>. Thus, there are three occasions:

Where the bill of lading is made out to the order of the seller

Where the bill of lading is made out to the order of the buyer

Where the contract provides for payment <case against document>.

These three sets of occasions establish assumptions upon which decisions are arrived at by the courts. The decision of the courts will depend on a wide variety of factors.

Where the bill of lading is made out to the order of the seller or his agent, section 19(2) indicates a prima facie presumption that the seller intends to reserve the right of disposal. So, the property in the goods does not pass on shipment. It would do under section 18 rule 5(2). On the other hand, the fact that a bill of lading is made out to the order of the seller does not preclude the passage of property on shipment. Hence, in case that the seller takes a bill of lading as agent of a buyer, or where a bill of lading is made available to the buyer, property may pass on shipment notwithstanding the fact that the bill of lading has been made out to the seller's order. In *HorstBiddell Bros. v E Clemens Co*²³ Kennedy suggests that property <passes conditionally where the bill is made out in favour of the seller>. On the other hand the effect of section 19(2) is to stop property from passing rather than to pass property conditionally. It seems that according to 19(2) where a bill of lading is made out to the buyer's order, this would indicate that the parties intended property to pass on shipment. On the other hand, where the seller took a bill of lading out to the buyer's order, but retained possession of it until payment, it was held that property did not pass on shipment of the goods, but on transfer of the bill of lading²⁴. Where the contract provides for payment <cash against documents> this is taken to be a sign that the parties intend the property goods to pass on payment of the price²⁵. According to *Ginzeberg and Others v Barrow Haematite Steel Company*²⁶ where the seller took a bill of lading to his order under a contract stipulating for payment against documents, and where the seller then tendered a ship's delivery order to the buyer entitling the buyer to take possession of the goods from the carrier, the delivery of the goods to the buyer did not disturb the presumption the property was to pass on payment of the price. According to English law the term <document of title to goods> is used in two senses: a narrow common law sense and a much broader statutory sense. In common law there is no definition 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 can operate as a transfer of the property in them. In *The Sanders Bros. V Maclean & Co*²⁷ is referred as symbolical and constructive delivery. The court in *Lickbarrow V Mason*²⁸ confirmed that transferring a bill of lading meant transfer of the property in the goods to the transferee. Additionally a pledge of the bill can operate as a pledge of the goods²⁹. The statutory definition of <document of title> is stated in section 1(4) of the Factors Act 1889 and is incorporated by reference in Section 61(1) of the Sale of Goods Act 1979. In the context of the contract of carriage the fact that the bill of lading is a symbol representing the goods during transit has the following consequences:

a. the holder of the bill controls the goods during transit. b. A lawful holder of the bill has title to sue under the contract of carriage as if he had been an original party to it. He becomes subject to liabilities under the contract only when he takes delivery of the goods from the carrier. c. The holder is entitled to delivery of the cargo at the port of discharge on presentation of the bill of lading.

The bill of lading remains a document of title and a negotiable instrument as long as the contract is not discharged. However, the bill of lading stands as a valid document of title as long as it is based on a valid contract of carriage³⁰. A bill of lading which states that goods have been shipped on board and which is either a bearer or an order bill is a document of title regarding to those goods. The unique characteristic of the bill of lading is that delivery of the goods has to be made against surrender of the document. On the one hand, it protects the holder of the bill in that it is a basic term of the contract of carriage that the carrier must only deliver the goods against presentation of the bill of lading. On the other hand, such delivery discharges the carrier from further obligations under the contract of carriage. Endorsement and delivery of the bill of lading will normally transfer the ownership in the goods covered by it to the endorsee in relation with the following requirements:

1. The bill must be negotiable on its face.
2. The goods must be in transit at the time of the indorsement.
3. The bill must be initiated by a person with good title.
4. The indorsement must be accompanied by an intention to transfer the ownership in the goods covered by it.

As it is stated in the Prinz Adalbert³¹ possession of the bill of lading gives its possessor constructive possession of the goods. So the carrier will deliver the goods to the person in possession of the bill of lading whether as original shipper or a transferee of the bill or as consignee. The carrier is not bound to deliver the goods except on production of the bill of lading and is liable to the holder of the bill if he wrongfully delivers the goods to anyone else³². On the one hand since the *Lickbarrow v Mason* it has been settled that the transfer of a bill of lading will operate to transfer the transferor's property in the goods, if the transfer was made with that intention³³. On the other hand a bill of lading may operate as a transfer of constructive possession of the goods even though the property in the goods has already passed from transferor to transferee. It means that a bill of lading may operate as delivery under a contract of sale even after property has passed from seller to buyer³⁴. The bill of lading is not a document of title if the goods have not been shipped³⁵. Furthermore, a bill of lading as a document of title at common law possesses one of the attributes of negotiability that it is transferable by endorsement. <Received for shipment> bills of lading are also transferable documents of title³⁶. However, in *Diamond Alkali V Bourgeois*³⁷ the court refused to accept that received bills of lading were within the scope of the Bills of Lading Act 1855. On the one hand according to Carriage of Goods by Sea Act 1924 received bills of lading are regarded to be documents of title. On the other hand a non negotiable bill of lading is not regarded as being a bill of lading (section 1(2) Coga 1924). This problem is bypassed by regarding non negotiable bills of lading as seawaybills³⁸. Through bills of lading are regularly treated by banks on the basis that they confer equivalent rights upon the transferee to those conferred by ocean bills of lading. Thus, through bills of lading should be seen as documents of title. On the other hand if the bill of lading makes the goods deliverable to a named consignee it is not a negotiable document of title³⁹. Finally, the assignment

of a non negotiable bill of lading passes to the assignee the right of possession of the goods together with such property in the goods as the assignor had. There are cases where the bill of lading is referred as negotiable. This term is translated in English literature that it means merely transferable. On the other hand the accuracy in the use of legal terminology should be the rule in any legal system. It is inconsistent to use the mode of negotiability for documents which are not similarly negotiable instruments. Especially in bills of lading documents used frequently and circulated in different countries. The transferee of a bill of lading in general acquires only such interest as the transferor had, and does not take free from defects in the transferor's title. On the other hand a lawful transferee of a bill of lading by making a further transfer to a bona fide transferee can confer on the latter a title free from the shipper's right of stoppage in transit and any defect. This exception is now contained in section 10 of the Factors Act 1889 and in section 47(2) of the Sale of Goods Act 1979. Thus, the bill of lading becomes a negotiable instrument. It seems that the bill of lading is not borne as a fully negotiable instrument but in the process becomes a fully negotiable instrument by its endorsement to any third party. On the other hand an instrument has to be fully negotiable in order to be endorsed as such. Additionally a seller in possession of a bill of lading with the consent of the seller may be able to confer a better title than he himself had. Of course the transfer of a bill of lading does not pass property or title, or bar the right of stoppage in transit, unless value is given for the transfer. The transfer of a bill of lading operates to transfer the transferor's property in the goods to the transferee if the transfer was made with that intention⁴⁰. It seems that the endorsement by itself as an action does not mean intention of passing of property. This means devaluation of the instrument as a document of title. The transfer of a bill of lading for value is prima facie evidence of intention to pass property⁴¹. Hence, if the transfer is by way of pledge or security, the transferee will only have a <special property> or security interest in the goods while the general property will remain unaffected by the transfer of the bill⁴². The contract of sale is the governing contract for the purposes of determining the parties' intentions in this respect. Additionally, the Incoterms 1990 do not deal with the passing of property in goods. By virtue of the endorsement, the new owner enjoys all the rights and obligations of the previous owner, and the document serves as conclusive proof of transfer and shipment (Carriage of Goods by Sea Act 1992). On transfer of the bill to the buyer, the seller will lose his right to sue on the contract of carriage while, a delivery of the goods to the buyer, the bill of lading will cease to be a document of title. The lawful holder of a bill of lading is defined as a person in possession of the bill of lading in good faith and as a holder of the bill of lading will obtain title to sue only provided that he became holder of the bill in pursuance of contractual or other arrangements made before the bill ceased to be a negotiable document of title (section 2.2a). The transfer of a bill of lading to a third party was held to be inoperative when the property had already passed to the buyer⁴³. So, every holder has to investigate the real situation regarding the ownership of the goods before accepts any bill of lading which means the transformation of the bill of lading into a useless paper, regardless of the liability of the carrier and the means of defence which the holder of the bill of lading has in order to sue the carrier. The lawful holder of a bill of lading which is no longer a transferable document of title can sue the carrier providing that he become the holder of the bill in pursuance of arrangements made before the bill ceased to be a transferable document of title. Furthermore, according to section 2(2) of COGSA 1992 possession of the bill of lading no longer gives a right to possession of the goods. The case where delivery of the goods has been made and the case where the goods are destroyed covered by these section, despite that there is no definition

about it in the Act. Otherwise the bill of lading is not representative of the goods. Hence, any future holder of a bill of lading has to investigate even if the goods are in possession of the carrier. When the seller of goods has a voidable title to them the buyer acquires a good title to the goods provided he buys them in good faith and without notice of the seller's defect of title. In the Argentina case⁴⁴ there was a resale and a transfer of the bill of lading by a fraudulent buyer. Where by the bill of lading the goods are deliverable to the order of the seller, then the seller retains the right of disposal. On the other hand even though by the bill of lading the goods are not in terms deliverable to the order of the seller, the seller should retain the documents, including the bill of lading, until payment. A mere appropriation of goods to the contract will not pass the property⁴⁵.

Payment of only part of the price does not entitle property to pass⁴⁶. Although section 47 only talks of a transfer of a document of title, it has been held that it applies also where the documents are issued by the seller to the buyer and transferred by the latter to a third party in good faith and for value⁴⁷.

3. United States Law

Uniform Commercial Code

The general law governing the sale of goods is article 2 of the UCC. Article 7 of the UCC (Uniform Commercial Code) is a consolidation, there is no section defining its scope, and revision of the Uniform Warehouse Receipts Act, and the Uniform Bills of Lading Act and contains also the provisions of the Uniform Sales Act relating to negotiation of documents of title. It combines under the single concept of document of title a wide variety of instruments which have the common element of standing for or representing the title to property. Bills of lading are documents of title (UCC 1-201:80) which, if negotiable, can be negotiated under article 7. It applies to intra-state shipments while interstate shipments being governed by the Federal Bills of Lading Act⁴⁸. So, bills of lading covering exports are governed by the Federal Bills of Lading Act. The transfer of title, while it remains the characteristic element of a sale, has little significance in determining the rights of the parties as between themselves. The code itself determines the question of when, where and who acquires title and UCC 2-401 deals with the transfer of title under the express agreement of the parties, under a contract calling for physical delivery of the goods or not calling for their physical delivery. There is an adoption of the <specific issue> approach and the law deals with each specific question, such as the buyer's ability to pass title to a third party, the passing of risk, liability for the price etc., without reference to the passing of property. It deals with the effect of identification of goods and a reservation by the seller of a property or security interest and the re-vesting of title in the seller. After the seller who retains title until paid has delivered the goods to the buyer his interest therein is a security interest and the extent and effect of that interest is dependent upon article 9. According to UCC 2-401 title cannot pass to the identification of the goods to the contract. Title will pass in any manner and absence of explicit agreement, that it will pass at the time and place at which seller completes his performance with reference to the physical delivery of the goods. This is described as a step by step performance of the contract⁴⁹. The provisions of the 2-401 are subject to modification by the explicit agreement of the parties. Title passes to the buyer who is the person dealing with seller regardless if somebody else pays for the goods⁵⁰. If either

the agreement of the parties or another provision of the Code provides a conclusion other than that which would be reached under 2-401 the latter section does not control. Looking at the transfer of goods in the light of a "transactional concept" we see that other forms of contracts can fall within the scope of article 2. The term "transaction in goods" is broader than the term sales" which is defined as a transfer of title to goods. So, The provisions of article 2 are not to be confined to title transferring transactions unless the context so requires. On the other hand some courts have concluded that the provisions of article 2 are limited to the sale of goods, since the language of the code refers only to sales and sellers⁵¹. On the other hand most courts have not embraced this narrow approach and have applied article 2 to nonsale transactions in goods⁵². Although construction contracts are not within the scope of article 2, they will be governed by article 2 where both parties regard the transaction as a sale⁵³. The identification of goods to the contract has both a positive and a negative aspect. The buyer acquires a special property in the goods upon the identification, unless it is explicitly agreed otherwise. This special property is less than title when the physical movement of the goods or the transmission of documents is necessary for delivery under the contract no title passes before delivery is made. When there is a definite contract relating to existing identified goods title will pass to the buyer at the time of the transaction. No title can pass under a contract for sale before goods have been identified to the contract⁵⁴. The fact that the assets of a business are not identified at the time of contracting does not prevent title from passing to the buyer taking possession of them⁵⁵. Title does not pass at the time of the transaction when the goods are future goods. As long as the goods come into existence and identified title to future goods will pass when the seller does an act in satisfaction of his delivery obligation under the contract Title passes when the seller makes the necessary delivery of goods or documents in performance of his obligation under the contract. However, since principles of equity are preserved the seller is estopped to deny that the buyer acquired title to the goods at the time that the seller purported to make a present sale thereof to the buyer Additionally a good faith purchaser can acquire title by estoppel⁵⁶. On the other hand the parties may agree that title should not pass until insurance binders have been obtained and a mortgage has been assumed⁵⁷. Furthermore, the title to goods does not pass to the buyer at the time of the transaction when it is expressly agreed that the seller should give the buyer a bill of sale after being paid. The reservation by the seller of title creates only a security interest⁵⁸. In the absence of an express statutory requirement of a bill of sale such a document is not essential to a transfer of title to goods⁵⁹. In case that the buyer holds a bill of lading from the seller does not establish that the buyer is the owner of the goods⁶⁰. A document which does not identify the goods which are sold and contains no language which permits identification of the goods sold cannot become a bill of sale and it conveys title to nothing⁶¹. An agreement to deliver a bill of sale meant that title was to pass by the bill of sale and the bill of sale performed the function of transferring title. On the other hand if the seller retained possession of the goods did not bar concluding that title had passed to the buyer. Furthermore if the goods are still in the possession of the seller, he may assert his unpaid vendor's lien against the goods. The seller can stop delivery to the buyer (UCC 2-705) or reclaim the goods on discovery of the buyer's insolvency (UCC 2-702 (2)). The passage of title to the buyer can in some cases be set aside. This may be done by the buyer by 1. Making a justified revocation of acceptance 2. Rejecting or refusing to receive or retain the goods. In this case the retransfer of title takes place by operation of law. Under UCC the title passes with respect to existing, identified goods at the time of the transaction. With respect to unidentified and future goods, it typically passes when the seller has com-

pleted the performance required by the contract. In the absence of a contrary intention the transfer of title is equated to delivery of possession⁶². Delivery of the goods in the manner required by the contract or agreement is very strong evidence that title to the property has passed. Delivery and transfer of possession are not synonymous. So when it is clear that the parties did not intend that title should pass to the buyer when the goods were delivered to him, delivery does not pass title⁶³. If the contract involving transportation is a shipment contract the title passes to the buyer on the making of a proper delivery to the carrier unless there is proof of contrary intent of the parties. If delivery is required at the destination, title passes on tender there. A sale is a transfer of ownership, ownership and title are words used interchangeably, and a conveyance of the property interest in the goods for a price. The seller's ability to prove that title exists in the buyer depends upon the ability of the seller to convey the goods. A thief is not capable of transferring a reliable title to personal property which he has stolen⁶⁴. The purchaser of stolen property, in good faith and for value, receives no better title than the thief himself has to give. As it is stated above title cannot pass prior to the time that the goods are identified to the contract. So, identification of the goods to the contract is an absolute prerequisite of the passage of title. However, title and identification are not synonymous nor are necessarily simultaneously interchangeable. Where there is failure by the parties to identify the goods to their contract, there is no sale. The identification of existing goods confers at the same time a special property interest in those goods upon the buyer. A special property interest does not mean necessarily title. It should be noted that identification of the goods determines the first point of time at which title may pass. Identification has to occur either before, or simultaneously with the time when the goods are put into the possession of the buyer. The time and place of the passing of title can depend upon the intention of the parties to a particular transaction. The fact that a transaction is never completed does not mean that title to the goods had not passed. In the absence of an express contract provision, breach by the buyer does not revert title of the goods in the seller⁶⁵. The delivery is merely one test to help determine and if it is deferred, the evidence would be strong that no title has passed between the parties⁶⁶. Moreover, determination of the intent of the parties in the matter regarding when title passes is a question of fact for the jury⁶⁷. The intention is disclosed by the contract of the parties, common usage of the trade in the goods in which they are dealing, and by the circumstances surrounding the transaction. If the contract provides for a delivery at the destination of the buyer, title does not pass until such delivery is made. Title to the goods which are subject matter of the sale passes upon the tender of delivery at the contract destination. In a shipment contract, where goods are to be transported and delivered by a carrier the seller's delivery is complete when the carrier delivers the goods to the possession of the buyer. Carrier is not defined in the code. On delivery to the carrier title passes to the buyer and the seller retains merely a security interest in the goods. According to a shipment contract delivery is tendered at place of shipment, risk of loss then moves to the buyer and the goods must have been delivered to a carrier (UCC 2-509 (1)a). However, a shipping direction must not be confused with an order to deliver to a specified location. An agreement which is <fob point of shipment> title will pass upon the delivery of the goods by the seller to the carrier. Negotiable bills of lading seems that they are not intended to be used with incoterms FOB shipments. On the other hand where goods are shipped CIF title will pass to the buyer upon delivery to the carrier as to those goods which are conforming to the contract. Thus, the obligations, costs, and risks of seller and buyer are different under FOB, than they are under CIF terms under which the contract has been con-

cluded. There is a conflict between UCC and the CISG (Convention in Contracts for International Sales of Goods) relating to the commercial terms that provide rules for delivery terms in a contract for the sale of goods. There are no detailed rules on the meaning of individual terms and the drafters of the CISG could rely upon a written formulation of industry understanding on the meaning of such terms. The written formulation is contained in Incoterms published by the International Chamber of Commerce. The Incoterms 1990 have made the definitions of commercial terms substantially different from the UCC definitions of similar terms. Article 2 of the UCC is itself currently being revised. Since the ICC is a non-governmental entity, incoterms is neither a national legislation nor an international Treaty. Thus, incoterms cannot be the applicable law of any contract. It could be said that it is a written form of custom and usage in the trade. Therefore, an express reference to incoterms will supersede the UCC provisions and United States courts have held so⁶⁸. But if there is no express term then the UCC is the governing law rather than the CISG. Incoterms can still be applicable as a "usage of trade" under the UCC (UCC 1-205). Incoterms and American domestic practices are not identical. The 1990 Incoterms does not have any provisions on when title to the goods passes from the seller to the buyer⁶⁹. Therefore, when title issues arise the courts have to turn to the UCC for applicable provisions. Therefore, when title issues arise the courts have to turn to the UCC for applicable provisions. Title issues are resolved by the parties' agreement or by the applicable law. But the Incoterms 1990 are the most widely recognised sets of non statutory definitions for foreign trade. The revised article 2 of the UCC includes, as the old one did, provisions that govern the passing of title (UCC 2-510, 2-401, 7-502). If the parties enter into an agreement whereby a delivery is to be made without moving the goods, either requiring the seller to deliver a document of title, in which case title will pass at the time and place he delivers that document, or the seller is not required to deliver any documents and the contract is silent, then the identification at the time of the conclusion of the contract means pass of the title at that time. Hence, the delivery of papers or documents may or may not be significant in determining when title passes. On the other hand when the transaction is a dealing in documents rather than in the goods, the transfer of title, as it is mentioned above, to the buyer occurs at the time and place of delivery of the documents by the seller. In case that the goods are in the possession of a bailee or some other third party where the seller has notified the bailee that he is to surrender possession of the goods to the buyer, that seller has made a delivery to the purchaser and title has passed to him. Although where goods are to be delivered without being moved, tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods. However, the buyer's rejection will automatically revert title in those goods in the seller. A seller's statement that no title in goods can pass where there has been a dishonour of a check given for the purchase price has been rejected by the courts applying the code⁷⁰. So, if the seller has given unrestricted possession of the goods to the buyer then title will pass to the buyer which cannot be reverted to the seller upon the subsequent dishonour of the buyer's check. The transfer can pass a good and valid title to the goods which are sold even though his own title is voidable when the goods are purchased by a good faith buyer and for value.

Conflict of Laws and Bills Of Lading

The bill of lading as the contract of carriage presents the same difficult choice of law problems of the area of contracts. Any dispute on issues of contract are determined

by the law which is chosen by the contracting parties This principle is stated in section 186 of the Restatement on Conflict of Laws⁷¹ and it is applicable to all contracts and all issues arising out of them. According to section 187 <the law of the state chosen by the parties to govern their contractual rights and duties will be applied>⁷². The parties' choice of law is expressed in their contract itself and not in any document which is merely evidence of it⁷³. The Carriage of Goods by Sea Act 1936 (COGSA) governs all issues of the contract of carriage and the relation between the parties where a bill of lading is issued as the contract of carriage⁷⁴. The US Carriage of Goods by Sea Act applies to shipments both inward to the US and outward from the US in foreign trade, regarding the carrier's liability for loss or damage to cargo, instead of outward only, as in most other Hague Rules nations⁷⁵. Such legislation violates the principle of comity of nations and the basic principles of conflict of laws. By the principle of comity, courts in one country will respect the law and judgments of other countries, with the expectation that this respect will be reciprocated⁷⁶. On the other hand the US courts by applying Cogsa bring a uniformity and certainty concerning the liabilities of the carrier. What law will the courts of foreign countries apply to disputes arising under bills of lading issued in the United States is not clear. The Act supersedes the normally applicable *lex loci contractus*. When Cogsa applies to the bill of lading contract as a matter of law then foreign choice of law clauses contained in bills of lading are *per se* invalid⁷⁷. On the other hand when Cogsa is applicable only because it has been incorporated by reference in the bill of lading, then the forum selection clause contained in the bill of lading is enforceable and the Bremen⁷⁸ test is applicable⁷⁹. The US supreme court in a recent case decided that a clause in a bill of lading which requires arbitration in a foreign country is not invalid in all circumstances under the Carriage of Goods by Sea Act⁸⁰. Aim of COGSA 1936, which has implemented the Hague Rules, was to establish standardised minimum liabilities which must be assumed by the carrier. Whether a bill of lading is negotiable is determined by the law of the place its issue⁸¹. On the other hand what contractual rights and duties are succeeded to by the person to whom the bill is negotiated are determined by the law of the place of the purported negotiation. The rights acquired by negotiation of a bill of lading issued in US for the purposes of interstate or foreign commerce are governed by the Federal Bills of Lading Act 1916 (Pomerene Act)⁸². Bills of lading issued abroad are not governed by the Pomerene Act and the rights acquired by negotiation will be governed by the law of the state in which the negotiation took place⁸³. The ocean carrier's rights and obligations in regard to delivery of cargo carried to a US port from a foreign one, absent an effective choice of law clause in the bill of lading, are subject to determination under the general maritime law of the US⁸⁴. US courts may draw on relevant federal and state statutes including the Pomerene Act and article 7 of the UCC. The bill of lading functions as a document of title which means that title to goods covered by the bill is <merged> or <embodied> in the document. The commercial utility of bills of lading based on the application of the merger doctrine and it enables merchants to deal with goods during the period of transit while the cargo is incapable of physical delivery. The transfer of property interests in goods by transfer of documents of title has been explained by two theories. According to the common law view the document represents the goods and the endorsee of the bill acquires those proprietary rights that the endorser could have transferred him by an actual delivery of the goods. So, posses-

sion of the bill of lading does not mean anything else than the actual possession of the goods. On the other hand under the mercantile view the bill of lading is compared to the bill of exchange and by its negotiation the endorsee can receive a better title than the endorser had or than he could have given by delivering the goods. Congress by enactment of the Pomerene Act declared that bills of lading are fully negotiable instruments⁸⁵. Therefore, the mercantile theory goes beyond the doctrine of merger and invests bills of lading with broad negotiability⁸⁶. As McCarthy stated in order the doctrine of embodiment to work effectively, dealing with the document must be the exclusive mode of dealing with title to the goods⁸⁷. Thus, every buyer and banker must be certain that the title he obtains through a documentary transaction will not be subject to attack by someone claiming an inconsistent property interest derived from a dealing with the cargo while it is covered by a bill of lading. The carrier is made liable to any party injured by his misdelivery of the goods or by his failure to cancel a negotiable bill of lading upon the delivery of the goods. The first question which arises is which is the law determining whether a bill of lading embodies title to the goods. According to the Restatement <whether the title to a chattel is embodied in a document is determined by the local law of the state where the chattel was at the time when the document was issued>⁸⁸. The section does not state the extent to which title to a chattel is embodied in a document. The law of the place where the bill was located when negotiated will determine the transfer of title to the goods by the negotiation of a bill of lading. In Barrett⁸⁹ case there was an argument first that the law of the jurisdiction in which the goods are located governs questions involving the creation and transfer of property rights in those goods. Second since the bill of lading embodied title to the goods, the law of the situs of the document should govern the validity of the transaction. It is established that where no documents of title are involved the creation and transfer of property rights in chattels are governed by the law of the place where the goods are located⁹⁰.

It has been said that the proprietary effect of a transfer of a bill of lading covering the goods should be governed by the law of the situs of the goods. It is difficult to locate the situs of the goods while they are in transit. Additionally it cannot be applied the *lex loci destinationis* rule to goods in transit when the destination is not prescribed in the bill of lading. The law of the place of negotiation govern the proprietary and the contractual aspects of negotiation⁹¹. While the cargo is on the high seas and is represented by bills of lading, the situs of the documents is more ascertainable than that of the cargo and so the jurisdiction which has effective control over title to the cargo is that in which the documents are situated. The legal relations arising from a particular transaction will be governed by the law of the place where that transaction takes place. Since the Pomerene Act does not apply to bills of lading issued in a foreign country for shipment to the US, the negotiability of such bill of lading depends on the law of the country of issue. The piece of paper on which the bill is written becomes indispensable and the goods are locked up in the bill in the same way that the debt is merged in the instrument. Rights acquired by negotiation will be determined by the law of the jurisdiction where the negotiation took place. Hence, while the holder is protected by his possession of the instrument, the obligor is also protected by the rule which allows him to pay any holder. A bill of lading issued to a person who has no title to the goods does not cut off the true owner. The true owner can replace the goods or the bill of lading from the carrier or anyone into whose pos-

session the goods may have come, good faith purchaser or not. The question is the validity of the bill of lading. Courts will look to the law of the jurisdiction where the bill was issued.

Bills of Lading in US Law

Bills of lading stand as the substitute and representative of the goods described therein⁹². The legal title to the goods as well as the right to control their delivery passes by the endorsement of the bill of lading⁹³. In the *Telegraph v Gorton*⁹⁴ case stated that the transfer of a bill of lading carries with it the legal title to the property described in it. On the other hand whether the title to personal property passes or not is dependent upon the intention of the parties as appears from the contract of sale⁹⁵ without actual delivery⁹⁶. Hence, according to *Fry v United States*⁹⁷ case the legal effect of a bill of lading is to vest the ownership of the goods in the consignee⁹⁸ unless the contrary is shown by the bill of lading itself or by extrinsic evidence. The transfer of the ownership as well as of the right of possession is made as effectual by the transfer of the bill as it can be by a physical delivery of the good⁹⁹. The delivery of the goods from a ship must be according to the custom and usage of the port, and such delivery will discharge the carrier of his responsibility¹⁰⁰. An order bill of lading must be properly endorsed in order that physical possession thereof can justify delivery¹⁰¹. The right of the shipper to stop the delivery of the goods in transit continues until the carrier has finally delivered them to the consignee¹⁰². The concept of due negotiation of a document of title parallels the concept of the negotiation of a negotiable instrument to a holder in due course, and results in the acquisition by the holder of greater rights than he would possess by a mere negotiation not constituting a due negotiation, or by a mere assignment of the document. Where the transfer of a negotiable document fails as a negotiation because a requisite endorsement is forged, the buyer in good faith and for value has less rights than if he had purchased the goods themselves (UCC 7-504). Transferee of order bill of lading not endorsed by person to whom carrier undertook to deliver goods, took no better title than transferor. A non negotiable bill of lading may be assigned or transferred by delivery and the transferee acquired against the transferor the title to the goods, subject to the terms of any agreement between them¹⁰³. Thus an assignee of a straight bill of lading stands in the shoes of his assignor¹⁰⁴. A holder in due course (UCC 3-302) is a holder who takes the document for value in good faith and without notice that there is a defect such as it is overdue or has been dishonored. So, a negotiable document of title is <due negotiated> when it is negotiated to a person who purchases it for value in good faith without notice of any defense or claim against the document. Furthermore, the presence of a name in a negotiable bill of lading of a person to be notified on arrival of the goods does not limit the negotiability of the document¹⁰⁵. The original party who receives a negotiable document of title in return for the goods can hold the document by due negotiation. The holder acquires title to the document and title to the goods. Hence, the bill of lading stands for goods, and its transfer transfers title to goods¹⁰⁶. On the other hand where there is a transfer of a negotiable instrument but the transfer is not a due negotiation or the instrument is non negotiable the transferee acquires the title and rights which the transferor had. A buyer to whom title to the goods passes on their delivery to the carrier and to whom the bill of lading is issued is a person entitled to the possession of the good¹⁰⁷. The title to goods in transit is transferred by sale and endorsement of the bill of lading¹⁰⁸. Consignor using an order bill of lading loses control over goods and person acquiring a bill of lading obtains good

title as against owner, his vendee or creditors¹⁰⁹. Anyway if a bill of lading is negotiable, it controls possession of the goods and is one of the indispensable documents in financing the movement of goods and merchandise throughout the world¹¹⁰. The retention of title by the seller through the form of a bill of lading is only for the purpose of giving security for the payment of the price¹¹¹. Even though a negotiable bill of lading is involved, transaction is not a sale of goods held by a bailee which are not to be transported, in which situation, title and risk of loss would pass upon receipt of the negotiable document of title. The holder acquires title to the document and title to the goods represented by the document.

4. Greek Law

The function of the bill of lading as a document of title is regulated by articles 978 of the Civil Code and article 172 of the Private Maritime Code¹¹². According to article 978 in case that the goods are represented by documents of title such as bills of lading stored in warehouses, their transfer of property can be achieved by transfer of the document of title. Regarding bills of lading article 978 is supplemented by article 172 where it is stated that the transfer of the bill of lading, concerning the proprietary rights, has the same effect as the transfer of the goods themselves.

Greek conflict of law rules determining the law applicable to an export contract are now contained in the Rome Convention 1980 which came in force in April 1991¹¹³. Therefore, contractual effects of the contract will be decided by its rules. On the other hand proprietary effects will be decided by the <lex rei sitae>. If the goods in transit are covered by a bill of lading, then the <lex cartae sitae> will decide the transfer of the proprietary rights.

The function of the bill of lading as a document of title is explained by the following theories. First the theory expressed by Heymann¹¹⁴, according to which as soon as the goods represented by the bill of lading have been accepted by the carrier then the transfer of the property is achieved by the transfer of the bill of lading and a parallel intention of passing the property regardless if the goods are in hands of the carrier or not. Second according to the <streng relative theorie> expressed by Hellwing¹¹⁵ the transfer of property is achieved in accordance with the rules for the transfer of property of movables regardless of the transfer of the bill of lading because the bill of lading merely represents the goods. Then what is the use of article 978 which specifies the way of transferring property of goods represented by a document of title. Third in accordance with the <representative theory> which has been accepted by the Greek law, the bill of lading functions as a document of title for the transfer of property as long as goods are in possession of the carrier. Otherwise the transfer of the bill of lading does not mean transfer of property when there is an intention of it. There is no distinction between order bills of lading and non negotiable bills of lading regarding their function as documents of title. Additionally bills of lading are documents of title as long as there is a loaded cargo represented by them. The bill of lading keeps its function as a document of title until the delivery of the cargo to its destination as long as the goods are in possession of the carrier. The transfer of the bill of lading to its holder, according to the way of endorsement which depends on its form, is necessary for its function as a document of title. The legalisation of its holder of course is necessary for its documentary function. Moreover, according to article 1034 of the Civil Code for the transfer of property of movables, in addition to the contract of sale, there is a need to have agreement regarding the transfer of prop-

erty (intention of passing the property and simultaneously delivery of the movables. Therefore, merely agreement of the parties for the transfer of the property is not enough but there is a need for the delivery of the possession of the goods themselves in order to have passing of the property. Thus, in Greek law there is a need to have a sales contract, ebraymatos agreement for the intention of the transfer of the property and delivery of the goods in order to have transfer of the property. Endorsement of the bill of lading passes to the endorsee, together with constructive possession of the goods, such property in the goods as the endorser intends to pass. The endorser's intention is ascertained by the examination of the nature of the transaction between endorser and endorsee. The effect which a transfer of a bill of lading contract concerning property rights has it depends upon the terms of the sale contract. The endorsement of the bill of lading passes to the endorsee the right to possession of the goods together with such property in the goods as the endorser intends to pass. Thus, the endorsement by itself means nothing regarding the transfer of property. There is a need to look to other documents in order to find out the intention of the parties. On the other hand for a third party in good faith the kind of endorsement determines the kind of proprietary rights which are transferred. Thus, a third party in good faith gets title on the goods if he is holder of the bill of lading in accordance with a series of endorsements regardless if the bill of lading has been stolen. On the other hand if the goods are not any more in possession of the carrier, then the function of the bill of lading as a document of title is nullified. The intention of the parties to transfer the bill of lading merely as pledge should come out from the wording of the endorsement. Otherwise, the endorser cannot suggest against any third party in good faith that the endorsement of the bill of lading was merely a pledge or a security transfer. In this case the holder in good faith of an order bill of lading and legalized by a series of endorsements gets a good title even if the bill of lading was stolen or lost. On the other hand the holder of a non negotiable bill of lading does not get title because article 80 of the Degree of the 17-7-1923 in relation with article 16(2) of the Law 5325/32 of bills of exchange is applied only to order bills of lading which are negotiable. Received bills of lading are not regarded as documents of title as long as the goods are not shipped. The bill of lading continues to be a document of title as long as the goods are in possession of the carrier or his representative in a warehouse during the time of its transfer. If the carrier gets possession of the lost goods again, then the bill of lading acts retroactively as a document of title. Parties can agree by incorporating a clause in their sale contract or in their agreement where their intention for the transfer of property is expressed that property will be kept by the seller until a specific time or property will be transferred after the meet of some conditions. The clause must be inserted in the sale contract but it must be agreed at least during the agreement about the transfer of property. Any agreement about retention of property is void after the conclusion of the real (ebraymatos) agreement. There are many occasions in Greek law, which will not be analyzed here, where the seller can keep property of the goods despite of the fact that the goods are in the possession of the buyer.

5. Conclusions

As mentioned above there was a view that where there has been a real transfer of the bill of lading, the property in the goods and the right to possession follows the bill of lading. At the moment the bill of lading merely represents the goods and even this is questionable now (section 2(2) Cogsa 1992). Does the transfer of a bill of lading

mean transfer of the property regardless of the parties intention? The bill of lading as a fully negotiable instrument means transfer of the property as well regardless of the parties intention. This of course happens when and if the bill of lading is a fully negotiable instrument as mentioned above. The only thing which is firmly connected with the holding and transfer of the bill of lading is the liability of the carrier against the holder of the bill of lading. The connection of the function of the bill of lading as a document of title and the possession of the goods, which are supposed to be represented by the bill of lading, by the carrier puts in doubt even the notion that the bill of lading is representative of the goods. Do by the circulation of bills of lading sell merely liabilities of the carrier than goods represented by the bill of lading? So, if somebody was interested in the actual goods represented by the bill of lading, he could not be sure that in fact the holding of the bill of lading was the substitute and representative of the referred in the content of the bill of lading goods. Of course the goods must be shipped in order the bill of lading to be a document of title. Additionally, the bill of lading has to be the contract of carriage as well. Delivery and endorsement of a bill of lading is equivalent, concerning the passing of property, to a symbolical delivery of the goods. Among the three legal Systems there is a common view that in many occasions bills of lading are fully negotiable instruments. The commercial utility of bills of lading based on the application of the merger doctrine and it enables merchants to deal with goods in transit. As long as the goods represented by the bill of lading have been accepted by the carrier, the transfer of the bill of lading should mean, as mandatory law, transfer of good title to any third party regardless if the goods are still in hands of the carrier and until their delivery and canceling of the bill of lading. Of course the intention of the parties expressed by the used kind of endorsement should be taken into consideration. So, if the endorsement of a bill of lading is made for reasons of pledge then the goods represented by a bill of lading are pledged. It seems that what has remained unattached regarding the function of the bill of lading as a document of title is the connection of the holding of the bill of lading and the liability of the carrier.

Endnotes

1. G. Zekos <The Negotiability of Bills of Lading and their contractual role under Greek, English and United States> law 1994 Vol. 36 Number 1 *Managerial Law*, England.
2. R Merkin <Contracts (Applicable Law) Act 1990> 1991 JBL 205. According to article 4 of the UN Convention on Contracts for the International Sale of Goods 1980 <This Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this Convention, it is not concerned with: ..b) the effect which the contract may have on the property in the goods sold>.
3. Dicey & Morris (The Conflict of Laws) Rule 118 12th Ed 1993.
4. Cheshire and North (Private International Law) 12th Ed 1992 at 87 (no one law can be made the exclusive arbiter of disputes arising out of a transfer of goods in transit).
5. Benjamin (Sale of Goods) 4th Ed 1992 par 125-26 (In any event, uniformity of international practice with regard to documentary sales of goods in transit (notably c.i.f. sales) means that the above rules are not likely to be called on frequently).
6. OJ 1980 L 266/1 Article 3.1 of the Convention <A contract shall be governed by the law chosen by the parties. The choice must be express or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or part only of the contract>.
7. <Subject to the provisions of paragraph 5 of this article, it shall be presumed that the contract is most closely connected with the country where the party who is to effect the performance which, is characteristic of the contract has, at the time of conclusion of the contract, his habitual residence, or in the case of a body corporate or unincorporate, its central administration. However, if the contract is entered into in the course of that party's trade or profession, that country shall be the country in which the principal place of business is situated>.
8. *Johnson v Taylor* [1920] AC 144. *Benaim v Debono* [1924] AC 514.
9. Section 16
<where there is contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained>.
10. Cheshire & North (Private International Law) 12th Ed 1992 at 800.
11. *Pilgrim v Rice Smith* [1977] 2 All ER 658. *Car and Universal Finance Co Ltd. v Caldwell* [1965] 1 QB 525.
12. *The Iness* [1995] 2 Lloyd's Rep 144.
13. *Dennant v Skinner and Collom* [1948] 2 KB 164.

14. *Carlos Federspiel & Co v Charles Twigg & Co Ltd.* [1957] 1 Lloyd's Rep 240.
15. *The Aramis* [1989] 1 Lloyd's Rep 213.
16. [1976] 1 Lloyd's Rep 8.
17. *The Wise* [1989] 2 Lloyd's Rep 451.
18. [1976] 1 WLR 676.
19. Section 19(1) Sales of Goods Act 1979 <Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled; and in such a case, notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee or custodian for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled>.
20. *Re Peachdart Ltd.* [1984] Ch 131. *Borden Ltd. v Scottish Timber Products Ltd.* [1981] Ch 25. *Re Bond Worth Ltd.* [1979] 3 All ER 919.
21. [1875] LR 10 CP 354.
22. *Texas Investments Ltd. v Nason (Europe) Ltd.* [1991] 1 Lloyd's Rep 146.
23. [1911] 1 KB 934 at 956
24. *The Parana* [1921] AC 486, 511-17.
25. *The Miramich* [1915] P 71.
26. [1966] 1 Lloyd's Rep 343.
27. [1883] 11 QBD 327.
28. [1787] 2 TR 63, [1793] 2 H Bl 211.
29. *Official Assignee of Madras v Mercantile Bank of India Ltd.* [1935] AC 53.
30. *Heskell v Continental Express* [1950] 1 All ER 1033 at 1044 "The whole truth of this matter is that, in the absence of a contract of carriage, the bill of lading is a nullity".
31. [1917] AC 586.
32. *Chabra Corp Ltd. v Jag Shakti* [1986] AC 337.
33. *Thompson v Dominy* [1845] 14 M&M 403.
34. *The Elli 2* [1985] 1 Lloyd's Rep 107.
35. *Hindley v East Indian Produce Co.* [1973] 2 Lloyd's Rep 515.

36. *The Marlborough Hill* [1921] 1 AC 444. *Ishag v Allied Bank* [1981] 1 Lloyd's Rep 92. *The Lycaon* [1983] 2 Lloyd's Rep 548.
37. [1921] 3 KB 443.
38. G Zekos, J Carby Hall *Seawaybills: A new marketable name for straight bills of lading* 1994 IL Diritto Marittimo 714.
39. *Henderson v Comptoir d'Escomete* [1873] LR 5 PC 253. *Soproma v Marine & Animal By-products Assn.* [1966] 1 Lloyd's Rep 367.
40. *The Aliakmon* [1986] AC 785. *The Kelo* [1985] 2 Lloyd's Rep 85.
41. *Dracachi v Anglo-Egyptian Navigation Co* [1868] LR 3 CP 190.
42. *Brandt v Liverpool Steam Navigation Co* [1924] 1 KB 575. *Sewell v Burdick* [1884] 10 App. Cas. 74.
43. *Ogle v Akinson* [1814] 5 Taunt 759.
44. [1867] LR 1 A&Q 370.
45. *Leigh and Sullivan Ltd. v Aliakmon Shipping Co Ltd.* [1985] QB 350.
46. *Mitsui & Co v Flota Mercante* [1989] 1 All ER 951.
47. *Ant Jurgens v Luis Dreyfus & Co Ltd.* [1914] 3 KB 40.
48. *G Commercial Corp v Wilson* 271 Fsup 242.
49. *William F Wilke Inc v Cummins Engines Inc* 250 A2d 886.
50. *Lindt v Henshel* 254 NE2d 746.
51. *O J & C Co v General Hospital Leasing Inc* 578 SW 2d 877, *Redfern Meats Inc v Hertz Corp* 215 SE 2d 10.
52. *W Johnson Equipment Co v United Airlines Inc* 238 So 2d 98.
53. *Wellcome Coal CO v Powell Consrt.* CO 600 F Sup 1042.
54. *First Nat Bank v Smoker* 286 NE2d 203.
55. *Young v Golden State Bank* 560 P2d 855.
56. *United Road Machinery v Jasper* 568 NW2d 242.
57. *Puamier v Barge* 395 Fsup 1019.
58. *Witmer v Kleppe* 469 F2d 1245.

59. *Norris v Insurance Co of North America* 215 SE 2d 379.
60. *City Car Sales Inc v McAlpin* 380 SO2d 865.
61. *Chatham v Clack's Food Fair* 127 SE2d 868.
62. *Indiana Ins Co v Fidelity General Ins Co* 393 F2d 204.
63. *Mechanics Nat Bank v Gaucher* 386 NE2d 1052.
64. *Wynn v McMahan Ford Co* 414 SW2d 330.
65. *Jordan v Butter* 156 NW2d 778.
66. *Motors Ins Corp v Safeco Ins Co* 412 SW 2d 584.
67. *Southern First & Casualty Co v Teal* 287 Fsup 617.
68. *Phillips Puerto Rico Inc v Tradax Petroleum Ltd* 782 F2d 314.
69. *Textfull Textile Ltd v Cotton Express Textile Ltd* [1995] 891 F Sup 1381.
70. *Gross v Powell* 181 NW2d 113.
71. Restatement of the Law Conflict of Laws 2d 1971 Vol1 at 558.
72. Ibid. section 187 at 561.
73. W Reese <General Course of Private International Law> 1976 Recueil Des Cours Vol. II A Sijthoff at 128 <Almost invariably, this agreement will take the form of a choice of law provision in the contract>.
74. T Schoenbaum <Admiralty and Maritime Law> 1987 West Publishing at 315 <Thus, Cogs governs the relationship between the parties where a bill of lading is issued as the contract of carriage> .
75. *Schoroeder Bros. Inc v The Saturina* 226 F2d 147. *J Gerber & Co v SS Sabine Howaldt* 310 F Sup 343. *Trans-Amazonica Iquitos v Geirgia Steamship Co* 335 F Sup 935.
76. *Atlantic Ship Supply v The M/V Lucy* 392 F Sup 179.
77. *Hughes Drilling Fluids v M/V Luo Fu Shan* 852 F2d 840.
78. *The Bremen v Zapata Off- Shore Co* 32 Led 2d 513.
79. *North River Insurance Co v Fed Sea/ Fed Pac Line* 647 F2d 985.
80. *Vimar Seguros y Reasegueros SA v M/V Sky Reefer* (1995) 132 Led 2d 462.
81. Restatement of Law Conflict of Laws 1934 Par 336 <the law of the place of contracting determines whether a mercantile instrument is negotiable>.

82. 49 USC 81-124.

83. *The Ferncliff* 22 Fsup 728. *Stiles v Ocean Co* 34 F2d 627.

84. *Lauritzen v Larsen* 345 US 571.

85. *The Ferncliff* 22 Fsup 728 at 729 <At common law a bill of lading was regarded as quasi negotiable only and Congress enacted Federal Bills of Lading Act to remove that limitation on fully negotiability>.

86. *Llewellyn* 1930 p 760-61.

87. G McCarthy <Jurisdiction over chattels the title to which is embodied in a document> 1955 31 N Dak L Rev 160-62.

88. Restatement of Law Conflict of Laws 2d 1971 Vol. 2 Section 248 at 83. See Vol.1 Section 62 at 201 When title to a chattel is embodied in a document such as a bill of lading the state which may exercise judicial jurisdiction to affect interests in the document may exercise judicial jurisdiction to affect interests in the chattel as well. The rule does not state the extent to which title to a chattel is embodied in a document. Section 216 at 712 The local law of the state where a negotiable instrument was at the time of the transfer of an interest in the instrument determines the validity and effect of the transfer. The local law of the state where the instrument was at the time of its transfer to a person determines whether that person holds the instrument in due course. *The Sellinger v Kentucky* 213 US 200.

89. *Barrett v Bank of the Manhattan Co* 218 F2d 763.

90. *Hervey v Rhode Island* 93 US 664.

91. *Hutchison v Ross* 187 NE 65. *Roland m Baker v Brown* 100 NE 1025.

92. *The Carlos F Roses* 44 Led 929.

93. *The Thames v Seaman* 20 Led 804.

94. 20 Led 807.

95. *United States v Woodruff* 22 Led 863.

96. *Briggs v United States* 36 Led 180. *Louisville & Co v United States* 69 Led 678 <Title passes from seller to buyer with delivery of the goods>.

97. 18 Led 127.

98. *Temple v Southern* 129 SE 815.

99. *Means v Bank of Randall* 36 Led 1107.

100. *Constable v National SS* 38 Led 903.

101. *Davis v Fruita Mercantile Co.*
102. *Interstate Window Co v New York* 133 A 102.
103. *Southern Pac Co v Agencia Joffroy* 174 P2d 278.
104. *Quality Shingle Co v Old Oregon Lumber Co* 187 P 705.
105. *Huntley Cotton C v Fields* 551 SW2d 472.
106. *People v Home Oil & Supply Co* 34 P2d 67.
107. *Chandler Motor Car v United Fruit Co* 216 NYS 413.
108. *Roswell First Nat Bank v McClain* 279 SW 614.
109. *Tennessee Egg Co v Monroe* 268 SW 372, 70 Led 422.
110. *West India Industries Inc v Tradex* 664 F2d 946.
111. *Yellow Freight System v Hydraulic Products Co* 482 SW2d 659.
112. T Karatzas, N Ready <The Greek Code of Private Maritime Law> 1982 Nijhoff Publishers.
113. Z Papazoi-Pasia <Private International Law> 1991 Thessaloniki.
114. E Heymann <Die dingliche Wirkung der handelsrechtlichen traditionspapiere> Festgabe Fur Felix Dahn 1905.
115. C Hellwing <Vertrage auf Leistung on Dritte> 1899 p 345.