

RIGHTS UNDER BILLS OF LADING: TRAWLING THROUGH SINGAPORE WATERS

This paper examines the Singapore case law on the proprietary and possessory rights of bill of lading holders and the transfer of contractual rights under the Bills of Lading Act (Cap 384, 1994 Rev Ed).

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I. Introduction

1 As Singapore is a major international shipping hub, it is not surprising that many important and some arcane issues of shipping law have exercised the Singapore courts. In dealing with some of these issues, the Singapore courts have broken new ground, particularly in relation to the enforcement of rights under a bill of lading which has been described as one of the pillars of international trade.¹ Undoubtedly, the three functions of the bill of lading as a document of title,² a receipt for goods and evidence of the contract of carriage are responsible for its importance in international trade.³

2 At this juncture, it is relevant to point out that rights under a bill of lading derive from its contractual aspects and from it being a

1 Lord Steyn described the bill of lading as one of the pillars of international trade in *J I MacWilliam Co Inc v Mediterranean Shipping Co SA (The Rafaela S)* [2005] 2 AC 423 at 454.

2 The law merchant recognises indorsed bills of lading as symbols of the goods by the delivery of which the goods carried under it could be delivered: see *Sanders Brothers v Maclean & Co* (1883) 11 QBD 327. A negotiable shipped-on-board bill of lading is a document of title: see *Sanders Brothers v Maclean & Co, ibid*, as is an ordinary received-for-shipment bill of lading: see *Elder Dempster Lines v Zaki Ishag (The Lycaon)* [1983] 2 Lloyd's Rep 548 and *The Ship "Marlborough Hill" v Alex Cowan and Sons Limited* [1921] 1 AC 444.

3 It is worthy of note that in *Homburg Houtimport BV v Agrosin Private Ltd (The Starsin)* [2004] 1 AC 715 at 770, Lord Hobhouse of Woodborough said that the bill of lading's "primary role is as a receipt for the goods at the port of shipment".

document of title.⁴ As the negotiable bill of lading is a document of title to the goods described in it, its indorsement and transfer passes the property or other interest in the goods if such is the intention underlying the indorsement and transfer.⁵ Where the indorsement and transfer of such a bill of lading are accomplished in compliance with the statutory requirements, which are set out in the Bills of Lading Act (Cap 384, 1994 Rev Ed) ("BLA"), the indorsee obtains contractual rights against the carrier.

3 This paper trawls the plethora of cases decided by the Singapore courts to highlight those which deal with the contractual, possessory and proprietary rights arising from the issuance and transfer of a bill of lading. These rights will be examined under two broad heads, namely, (a) rights of shippers; and (b) rights of transferees.

II. Rights of shippers

4 Writing in 1954, Devlin J (as he then was) observed that the contract of carriage is always concluded before the bill of lading, which evidences its terms, is actually issued.⁶ It is axiomatic that the shipper's contractual rights depend on the particular terms of the contract of carriage, for example whether the carrier has agreed to undertake the tasks of loading and stowing the cargo.⁷ The shipper loses his contractual

4 Lord Hoffmann in *The Starsin*, *id*, at 754 observed that the bill of lading "evidences a contract of carriage but it is also a document of title, drafted with a view to being transferred to third parties either absolutely or by way of security for advances to finance the underlying transaction".

5 In *Chan Cheng Kum v Wah Tat Bank Ltd* [1969–1971] SLR 22 at 29, [23], Lord Devlin explained that the word "negotiable" when used in relation to a bill of lading means simply transferable. The bill of lading is not negotiable in the strict sense as it cannot, as can be done by the negotiation of a bill of exchange, give to the transferee a better title than the transferor has got. It is axiomatic that a bill of lading is a document of title only if it is transferable, for its purpose is to transfer the right to constructive possession of the goods.

6 *Pyrene Co Ltd v Scindia Steam Navigation Co Ltd* [1954] 2 QB 402 at 419. More recently, Tuckey LJ in *Parsons Corporation v CV Scheepvaartonderneming "Happy Ranger"* [2002] 2 Lloyd's Rep 357 at 362 said "[t]he issue of a bill of lading rarely creates a contract. Normally it evidences a contract which pre-exists its issue".

7 See *Jindal Iron and Steel Co Ltd v Islamic Solidarity Shipping Co Jordan Inc* [2005] 1 WLR 1363 where the House of Lords affirmed the long-standing rule that Art III r 2 of the Hague-Visby Rules does not define the irreducible scope of the contract of service to be provided by the carrier by sea but merely stipulates the manner of performance of the functions which the carrier has undertaken by the contract of service. The Hague-Visby Rules have the force of law in Singapore: see s 3(1) of the Carriage of Goods by Sea Act (Cap 33, 1998 Rev Ed).

rights of suit against the carrier when the bill of lading issued to the shipper has been indorsed and transferred to another person in circumstances such that the other person becomes a lawful holder of the bill of lading. This is due to the operation of s 2(1) read with s 2(5)(a) of the BLA.⁸

5 It is not the intention of this paper to consider the shipper's right to require the carrier to perform the contract of carriage in accordance with its terms (whether they be standard terms or particular one-off terms).⁹ This paper examines the general contractual rights accruing to the shipper upon the issuance of the bill of lading to him and these rights are considered below.

A. Right to rely on bill of lading as a contractual document

6 The shipper has the right to rely on the bill of lading as evidence of the contract of carriage. In the words of Wee Chong Jin CJ in *National Jaya (Pte) Ltd v Hong Tat Marine Shipping Pte Ltd*,¹⁰ "the bill of lading issued by [a shipowner] and accepted by [a shipper] is evidence of the contract of carriage of goods by sea entered into by the parties".

7 In this regard, while the bill of lading constitutes the best evidence¹¹ of the terms of the contract of carriage as between the shipowner and the shipper, it remains open to the parties to show that the terms of the contract of carriage are not found in the bill of lading as it is generally the case that the bill of lading is issued after the making of the contract of carriage.¹²

8 In *Daewoo Hong Kong Ltd v Mana Maritime Inc* [1997] 3 HKC 109, the Hong Kong High Court held this to be the case in the context of the corresponding Hong Kong statutory provisions, *viz*, s 4(1)(a) and 4(5)(a) of the Bills of Lading and Analogous Shipping Documents Ordinance (Cap 440) (HK).

9 Contractual rights arising from the particular terms of shipment for goods under a bill of lading such as those considered in *The David Agmashenebeli* [2003] 1 Lloyd's Rep 92 will not be examined.

10 [1978–1979] SLR 416 at 419.

11 See *J Sewell v James Burdick* (1884) 10 App Cas 74 at 105; see also *Playing Cards (Malaysia) Sdn Bhd v China Mutual Navigation Co Ltd* [1980] 2 MLJ 182 (Federal Court of Malaysia).

12 See *Peninsular & Oriental Steam Navigation Co Ltd v Rambler Cycle Co Ltd* [1964] MLJ 443 at 447; see also *Pyrene Co Ltd v Scindia Steam Navigation Co Ltd, supra* n 6, at 419; and *Heskell v Continental Express Ltd* [1950] 1 All ER 1033 at 1041 where Devlin J said that the contract of carriage would normally be made when the goods are delivered to the loading brokers.

8 The fact that the bill of lading is not immediately issued at the time of the shipment does not prevent the bill of lading from being relied on as evidencing the terms of the contract of carriage. The case in point is *Rapiscan Asia Pte Ltd v Global Container Freight Pte Ltd*¹³ where Rajendran J held that when parties entered into a contract of carriage in the expectation that a bill of lading would be issued to cover it, they entered into it upon those terms which they knew or expected the bill of lading to contain.¹⁴

9 In the case of a bill of lading issued for the shipment of goods on board a chartered vessel, whether or not such a bill of lading evidences a contract of carriage between the shipper and the shipowner depends on a proper construction of the bill of lading. This was made clear in *The Arktis Sky*¹⁵ where the High Court held that bills of lading issued to the shipper evidenced a contract of carriage between the shipowners and the shipper. The court came to this conclusion as it found that the time charterer's agent signed the bill of lading with the authorisation of the shipowners and there was an identity of carrier clause in the bills of lading.

10 However, a bill of lading issued to a voyage charterer who has shipped goods on the chartered vessel is only evidence of the receipt of the goods. Such a bill of lading does not evidence the contract of carriage between the voyage charterer and the shipowner as the voyage charterparty is the contract of carriage. If authority is needed for this proposition, it may be found in the decision of the High Court in *BNP Paribas v Bandung Shipping Pte Ltd*.¹⁶

13 [2002] 2 SLR 325.

14 His Honour applied *Pyrene Co Ltd v Scindia Steam Navigation Co Ltd*, *supra* n 6, at 419. In this case, it was the carrier who sought to rely on the bill of lading as a contractual document to avail itself of an exemption clause. As the plaintiff (through its sister company) had previously done business with the defendant freight forwarding company, Rajendran J held that the plaintiff was to be taken as being aware that there were standard conditions attached to bills of lading issued by the defendant who had undertaken the shipment of the goods. Accordingly, the terms in the bill of lading issued by the freight forwarding company formed part of the contract of carriage even though the bill of lading was not issued at the time the contract was entered into but was issued later. However, the court held that the exemption clause in the bill of lading was not aptly worded to exclude liability for the negligent misrepresentation that the goods were on board a particular vessel at the port of destination on a specific date.

15 [2000] 1 SLR 57.

16 [2003] 3 SLR 611 ("the *BNP Paribas* case").

11 Where goods have been shipped under a house bill of lading¹⁷ issued by a freight forwarder on terms that it undertakes the carriage of the goods, the subsequent issuance of a bill of lading by the disponent owner of the carrying vessel to cover the earlier shipment of goods does not have any contractual effect *vis-à-vis* the shipper of the goods. In such a situation, the contract of carriage is made between the freight forwarder and the shipper as evidenced by the terms of the former's house bill of lading.¹⁸ This occurred in *Ocean Projects Inc v Ultratech Pte Ltd*¹⁹ where the Court of Appeal held that the disponent owner could not rely on the lien clause in its bill of lading to assert a lien against the shipper as there was no contract of carriage between the disponent owner and the shipper.²⁰

- 17 The bill of lading was issued by a Non-Vessel Owning Common Carrier.
- 18 In the case of shipments to the United States of America, the terms of the bill of lading issued by an actual carrier may be applicable to limit liability notwithstanding that the freight forwarder had issued its own set of bills of lading to the shipper. This was held to be the case by the US Supreme Court in *Norfolk Southern Railway Company v James N Kirby Pty Ltd* 543 US 14 (2004) where the court stated at 33 that:

When an intermediary contracts with a carrier to transport goods, the cargo owner's recovery against the carrier is limited by the liability limitation to which the intermediary and carrier agreed. ... [W]hen it comes to liability limitations for negligence resulting in damage, an intermediary can negotiate reliable and enforceable agreements with the carriers it engages.

 In ruling as it did, the US Supreme Court stated that it was setting "an efficient default rule for certain shipping contracts" and the default rule being that the intermediary is treated as the shipper's agent for a single, limited purpose of contracting with subsequent carriers for limitation of liability.
- 19 [1994] 2 SLR 369. In this case, a bill of lading was issued by the freight forwarder to cover the shipment of the goods and about three weeks later, the disponent owner issued a bill of lading and backdated it to the date of shipment of the goods. The disponent owner purported to assert a lien for freight on the goods pursuant to a clause in this later issued bill of lading. The court held that the lien clause was inapplicable as there was no contract of carriage between the disponent owner and the shipper. The court also said that depending on the circumstances, a private carrier may well be entitled to have a lien on the goods he carried for the owner, even if there is no contract made between the carrier and the owner of the goods. However, such a common law lien requires the completion of the carriage of the goods and their delivery at the intended destination or a destination mutually agreed by the parties. See also *Gericke Pte Ltd v Nortrans Shipping Pool Pte Ltd* [1998] 1 SLR 489 where Tan Lee Meng J held that the exercise of contractual lien had to be within reasonable limits and a shipowner who relied on a lien clause had to be careful to insist on the payment of sums that were properly ascertained.
- 20 In *Vastfame Camera Ltd v Birkart Globistics Ltd* [2005] 4 HKC 117, the Hong Kong High Court held that when a bill of lading contained on its face an apparently clear and unambiguous statement of who the carrier was, it would be difficult to accept that a shipper would expect to have to resort to the detailed conditions on the reverse of the bill in an attempt to discover with whom it was contracting. In that case, as there were clear statements appearing on the face of the bill of lading that the freight forwarder was the carrier, any submission to the contrary based on the small and sometimes illegible print on the reverse of the bill of lading was rejected. See also *The Starsin, supra* n 3, at 738 per Lord Bingham of Cornhill.

B. Right to take delivery of goods at port of delivery

12 The shipper to whom a bill of lading is issued has a contractual right to take delivery of the goods at the port of delivery on production of the relevant bill of lading.²¹ The shipper's right arises from the carrier's issuance of the bill of lading.²² In such a case, as the court pointed out in *The Cherry*,²³ "neither the owner of the cargo nor anyone else can insist on delivery of the cargo being made to him if he is unable to produce the bill of lading".²⁴ Thus a carrier that delivers goods to a person without requiring the person to surrender the original bill of lading acts in breach of its contractual obligation unless it is able to establish that the instructions on which it acted emanated from or were authorised by the shipper²⁵ who was at all material times the holder of the bill of lading.

13 Where a straight bill of lading has been issued to a shipper, the carrier is under a contractual obligation to deliver the goods at the port of delivery to the shipper on production of the straight bill of lading. The leading case for this proposition is the Singapore Court of Appeal's decision in *APL Co Pte Ltd v Voss Peer*.²⁶ In that case, the carrier issued a set of bills of lading with Voss named as "shipper". The set of bills of lading bore the name of the buyer, Seohwan Trading Co in the box entitled "Consignee" but without the words "to order". The bill of lading stated that there was a set of three originals and upon surrender of any one negotiable bill of lading properly indorsed all others stood void.²⁷

21 *The Cherry* [2003] 1 SLR 471 (CA).

22 Millett J (as he then was) pointed out in *Kuwait Petroleum Corporation v I & D Oil Carriers Ltd (The Houda)* [1994] 2 Lloyd's Rep 541 at 556 that "[o]nce the master has signed a bill of lading and parted with it, he has subjected the shipowners to a contractual obligation at the suit of any person to whom the bill of lading has been negotiated, to deliver the cargo to that person". In similar vein, Lord Denning in *Sze Hai Tong Bank Ltd v Rambler Cycle Co Ltd* [1959] AC 576 at 586 said the "contract is to deliver, on production of the bill of lading, to the person entitled under the bill of lading".

23 *Supra* n 21.

24 *Ibid*, at [27]. This statement should be read subject to the right of the original shipper to vary his instructions (without having to actually produce the straight bill of lading) before they are acted upon: see *The Lycaon*, *supra* n 2; and *Mitchel v Ede* (1840) 11 Ad & E 888. The original shipper loses his right to re-direct the goods once his rights under the contract of carriage are transferred to the named consignee: this may occur through the operation of s 2(1)(c) of the BLA.

25 *Supra* n 21.

26 [2002] 4 SLR 481 (CA) ("the APL case").

27 *Ibid*, at [43]. The court observed that these words are similar in effect to the words "an original bill of lading, duly indorsed, must be surrendered" commonly found in "order" bills of lading.

Voss held all three sets of the original bill of lading because the buyer had yet to pay him for the balance of the purchase price.²⁸ At Busan,²⁹ the carrier delivered the goods to the consignee without requiring production of the straight bill of lading.³⁰ Voss commenced action against the carrier for breach of the contract of carriage or breach of its duty as bailee, and/or in negligence for failure to exercise due care of the goods and failure to deliver the cargo against presentation of the original bill of lading and its wrongful delivery of the goods to Seohwan without production of the bill of lading.³¹

14 In the *APL* case, the carrier contended that under a straight bill of lading, it was required to deliver the goods to only the named consignee and no one else and further, such delivery could be made notwithstanding that the consignee did not produce the straight bill of lading.³² The Court of Appeal found the first proposition unexceptionable³³ but disagreed with the second proposition. Chao Hick Tin JA (as he then was) who delivered the judgment of the court, said that the issue must be resolved on the basis of contract law and the intention of the parties. Noting that the parties had caused the bill of lading to be issued in a set of three originals in the form of a bill of lading (and not a sea waybill), his Honour concluded that the parties intended to retain all the other features of a bill of lading other than the characteristic of transferability.³⁴ Accordingly, the parties intended for the straight bill of

28 The carriage of the goods on board the vessel had been arranged by Voss' forwarding agents and the bill of lading named Voss as the "shipper".

29 The port of discharge.

30 The carrier made the delivery on the strength of a copy of Voss' invoice (to the buyer, Seohwan Trading Co) for the balance of the purchase price and a copy of an outgoing cable from the Korean Exchange Bank to a bank in Frankfurt showing a remittance (of the balance of the purchase price) purportedly as payment for the goods and another transaction between Voss and the buyer.

31 See Judith Prakash J's judgment at first instance: *Voss Peer v APL Co Pte Ltd* [2002] 3 SLR 176 (HC) at [8].

32 The carrier contended that a straight bill of lading is to be equated to a sea waybill. It is settled law that in the case of a sea waybill, the carrier's obligation is to deliver the goods to the named consignee as long as the consignee can prove his identity and there is no requirement that the consignee present the sea waybill as a precondition to taking delivery of the goods. Typically, the shipper retains the sea waybill which is a receipt for the goods and may in appropriate cases, constitute evidence of the contract of carriage.

33 *Supra* n 26, at [9]. Chao JA said:

A bill making goods deliverable 'to XYZ' and nothing more, means that the goods can only be delivered to XYZ and no one else. XYZ will not have the option of transferring it to another person. This second kind of bill is known as a 'straight' bill or a 'non-order' bill.

34 See *supra* n 26, at [49].

lading to retain the other main characteristic of a bill of lading, *viz*, a document of title that has to be presented before delivery of the goods may be taken.³⁵

15 Chao JA said that the fact that a straight bill of lading was not transferable (in the sense that its transfer did not operate as a transfer of the constructive possession of the goods),³⁶ did not in itself mean that the carrier had no contractual obligation under such a bill of lading to deliver the goods only on production of the bill of lading.³⁷ Hence the court in the *APL* case found the carrier liable to the shipper for breach of the contract of carriage and also in conversion³⁸ as it had delivered the goods to the named consignee without production of the straight bill of lading.

16 The decision in the *APL* case affirms the principle that it is an incident of the bill of lading contract that delivery is to be effected only against production of the bill of lading and has thereby introduced certainty in this area of the law. After all, as was aptly observed by Lord Mansfield more than two centuries ago:³⁹

In all mercantile transactions the great object should be certainty: and therefore, it is of more consequence that a rule should be certain, than whether the rule is established one way or the other. Because speculators in trade then know what ground to go upon.

17 It suffices to say that the House of Lords in *The Rafaela S* endorsed the correctness of the *APL* case.⁴⁰

35 See *supra* n 26, at [51]. The Court of Appeal adopted a pragmatic approach that considered the advantage of certainty from the perspective of the market place. The court said that its ruling would avoid shipowners and/or their agents having to decide whether a bill is a straight bill of lading or an order bill of lading and run the risk of an erroneous conclusion when they deliver the goods without production of the relevant bill of lading, and also unnecessary litigation on this question.

36 A straight bill of lading is not a bill of lading for the purposes of the BLA: see s 1(2)(a) thereof.

37 See *supra* n 26, at [48]. Chao JA said:

[I point out here that] while one cannot indorse a straight bill to transfer constructive possession of the cargo, [this does not mean] that the straight bill does not impose a contractual term obligating the carrier to require its production to obtain delivery.

38 At all material times, Voss was entitled to the immediate possession of the goods.

39 *Vallejo v Wheeler* (1774) 1 Cowp 143 at 153; 98 ER 1012 at 1017.

40 *Supra* n 1, at 458 where Lord Steyn observed that the “decision [in the *APL* case] ... that presentation of a straight bill of lading is a requirement for the delivery of the cargo is right”. The actual decision in this case was that a straight bill of lading is a bill of lading or similar document of title within the meaning of Art I(b) of the Hague-Visby Rules and hence of s 1(4) of the Carriage of Goods by Sea Act 1971 (c 19)(UK).

C. Right to sue for loss caused by issuance of second set of bills of lading

18 It has been judicially observed that the provision of a second set of bills of lading for the same cargo is a practice that is fraught with danger.⁴¹ Indeed, the issuance of a second set of bills of lading to a different shipper to cover the same shipment of goods under a set of bills of lading issued earlier to the original shipper is a breach of the contract of carriage.⁴² This occurred in *The Feng Hang*⁴³ where, however, the plaintiff failed to recover damages for the breach of contract as it could not show that the issuance of the second set of bills of lading was an effective or dominant cause of the loss. In this case, while the original set of bills of lading (naming TNW Pte Ltd, the buyer of the goods, as the notify party) was issued to the plaintiffs, the second set of bills of lading (naming TNW Pte Ltd as the shipper for and on behalf of the plaintiffs) was issued and released to TNW Pte Ltd against a letter of indemnity from TNW Pte Ltd. The original set of bills of lading was not returned to the shipowners for cancellation and the plaintiff's consent was not obtained for the issuance of the second set of bills of lading. The second set of bills of lading was not used to obtain delivery of the goods.

19 Given the factual circumstances in *The Feng Hang*, the High Court found that the effective cause of the loss of the cargo (which had been discharged from the vessel into the port authority's custody) was the port authority's insistence on the plaintiff accepting its figure on the quantity of cargo remaining in its custody, and not the issuance of the second set of bills of lading. Unless the plaintiff accepted the port authority's figure on the quantity of remaining cargo, it could not collect the cargo. The cargo was eventually abandoned by the plaintiff after refusing to accept the port authority's figure on the quantity of remaining cargo.⁴⁴

41 The *BNP Paribas* case, *supra* n 16, at [15].

42 *Id*, where Belinda Ang Saw Ean J said that it is negligent for a carrier to issue a second set of bills of lading in respect of the same cargo without the consent of the holder of the first set of bills of lading. See *The Lycaon*, *supra* n 2, where Lloyd J said that the carrier was clearly wrong to have issued two sets of three original bills of lading and allowed them to circulate at the same time when it knew that one set was with a bank.

43 [2002] 2 SLR 205.

44 *Ibid*, at [21]. The cargo was abandoned because the accumulated storage charges exceeded the prevailing market value of the cargo.

D. Possessory rights

20 A negotiable bill of lading is a document of title⁴⁵ and the shipper to whom such a bill of lading is issued has possessory rights over the goods shipped under the bill of lading.⁴⁶ As Lord Devlin pointed out in *Chan Cheng Kum v Wah Tat Bank*,⁴⁷ “[n]ot only is the bill of lading a document of title, but delivery of it is symbolic delivery of the goods”.⁴⁸

21 The shipper to whom a negotiable bill of lading covering shipment of the goods is issued may, on the basis of being holder of the bill of lading with the immediate right to possession of the goods,⁴⁹ maintain an action in conversion against the carrier for wrongfully delivering the goods without production of the bill of lading. This was held to be the case by the High Court in *The Nordic Freedom*⁵⁰ and by the Privy Council in *Sze Hai Tong Bank Ltd v Rambler Cycle Co Ltd*.⁵¹ In the latter case, the carrier delivered the goods to a notify party named in the bill of lading without production of the relevant bill of lading as it had received a form of indemnity from Sze Hai Tong Bank. Lord Denning delivering the judgment of the Privy Council pointed out that as the bills of lading issued to the shipper were made out to the shipper’s “order or his or their assigns” the delivery of the goods to a person without production of the bills of lading is a conversion of the goods as it was a

45 According to Devlin J in *Heskell v Continental Express Ltd*, *supra* n 12, at 1042:

The reason why a bill of lading is a document of title is because it contains a statement by the master of a ship that he is in possession of cargo, and an undertaking to deliver it.

46 The negotiable bill of lading represents the goods shipped under it: see *Official Assignee of Madras v Mercantile Bank of India Limited* [1935] AC 53.

47 *Supra* n 5, at 24, [5]. According to Lord Devlin, the bill of lading obtains its symbolic quality from the custom found in *Lickbarrow v Mason* (1794) 5 TR 368 and that is a custom which makes bills of lading “Negotiable and Transferable” by indorsement and delivery or transmission.

48 A bill of lading that falsely states the shipment of goods under it is not a document of title. See *Hindley & Co Ltd v East Indian Produce Co Ltd* [1973] 2 Lloyd’s Rep 515 where Kerr J also said that it was unnecessary for the purposes of the judgment to consider whether such a bill of lading evidenced anything in the nature of a contract of carriage. In the earlier case of *Heskell v Continental Express Ltd*, *supra* n 12, Devlin J held that a bill of lading issued in the absence of a contract of carriage is a nullity.

49 *The Nordic Freedom* [2001] 1 SLR 232 where the High Court held that the shipper who held “to order” bills of lading at all material times had a sufficient possessory interest to maintain an action in conversion.

50 *Ibid.* In this case, the shipper held all three sets of the bill of lading at all material times and the carrier delivered the goods at the port of discharge to a person who did not produce the relevant bill of lading.

51 *Supra* n 22.

delivery to a person not entitled to receive them.⁵² Lord Denning added that the fact that the carrier had obtained a form of indemnity as a condition for delivery of the goods without production of the bill of lading did not affect the carrier's liability for conversion unless it was able to show that such delivery was authorised by the holder of the bill of lading.

22 To constitute the tort of conversion, physical possession or physical handling of the goods by the defendant is not a necessary element. However, it is necessary to show that the defendant's act deprived the plaintiff of his right to possession or amounted to a substantial interference with that right.⁵³ By merely issuing a letter of indemnity or banker's guarantee that was used to obtain wrongful delivery of goods from a carrier, a bank does not commit the tort of conversion. This was decided in *UCO Bank v Ringler Pte Ltd*⁵⁴ where the Court of Appeal stated that the bank's issuance of a letter of indemnity or banker's guarantee did not amount to a dealing with the goods in a manner inconsistent with the rights of the true owner or person entitled to possession of the goods. Further, the court held that the issuance of a bank guarantee did not amount to wrongfully assisting the carrier in the unlawful transfer of the goods.

23 In *The Cherry*,⁵⁵ the Court of Appeal affirmed the principle that in an action for conversion, a claimant has to show that it had actual possession of the goods or the immediate right to possession of the goods at the time the carrier converted the goods. In this regard, it is trite law that having title in the goods is not necessarily accompanied by any right of possession to the goods.⁵⁶ This was held to be the case in *Steelmet Pte Ltd v APL Co Pte Ltd*⁵⁷ where Judith Prakash J found that the shipper who was the owner of the goods shipped under the bill of lading failed to show that at the time of the carrier's wrongful delivery of the goods, it

52 In *Bank Negara Indonesia v Kie Hock Shipping Co Ltd* [1963] MLJ 138, Tan Ah Tah J applied *Sze Hai Tong Bank Ltd v Rambler Cycle Co Ltd*, *supra* n 22.

53 *UCO Bank v Ringler Pte Ltd* [1995] 1 SLR 713.

54 *Ibid.* The Court of Appeal held that UCO Bank's issuance of the banker's guarantee did not operate as delivery of the goods to the third party. The court also held that the banker's guarantee only entitled the carrier to indemnity against any claim by the person entitled to the possession of the goods. The banker's guarantee did not affect the carrier's liability towards such a person for damages arising out of the delivery of the goods without production of the bills of lading.

55 *Supra* n 21.

56 *Ibid.*

57 [2000] SGHC 252.

had the immediate right to possession of the goods.⁵⁸ In that case, the shipper had indorsed the bills of lading to three banks and the court found that the basis of the transactions with the banks was such that either the banks became owners of the goods or they were pledgees of the goods.⁵⁹ If it were the latter, her Honour found that in law, the shipper's retention of general property rights in the goods as pledgor did not give it any right to immediate possession of the goods.⁶⁰ Accordingly, the shipper's claim in conversion against the carrier for wrongful delivery of the goods failed.

24 As detinue remains extant as a tort in Singapore,⁶¹ a shipper may rely on the tort to claim against a carrier for wrongfully detaining his goods. This was made clear by Chan Sek Keong J (as he then was) in *The Kota Sejarah*⁶² who also pointed out that to maintain an action for detinue, it is necessary for the claimant to show that there had been a demand for delivery of the goods and a refusal by the carrier to deliver the goods.⁶³

25 A shipper under a straight bill of lading has a possessory interest in the goods shipped under the straight bill of lading. This is the implication from the decision of the Court of Appeal in the *APL* case,⁶⁴ especially that part of the judgment where Chao JA said that "there is no reason why one should thereby infer that the parties had intended to do away with the other main characteristic [of a bill of lading], i.e. delivery

58 A pledgor of goods carried under a bill of lading has the general property in the goods: he may not maintain an action in conversion as he does not have the immediate right to possession of the goods.

59 *Supra* n 57, at [16].

60 *Id.* at [17].

61 In the UK, detinue was abolished by the Torts (Interferences with Goods) Act 1977 (c 32) (UK).

62 [1990] SLR 718. The Court of Appeal affirmed Chan J's decision, see *The Kota Bakti* [1993] 1 SLR 849. For a case where the claimant successfully sued for wrongful detention of cargo: see *PT GE Astra Finance v Owners of the "Pioneer Glory" and "POE-2401"* [1998] SGHC 240, judgment of Warren Khoo J dated 14 July 1998 affirmed by the Court of Appeal in *The Owners of the Ship or Vessel "Pioneer Glory" v PT GE Astra Finance* [2002] 1 SLR 265.

63 *Supra* n 62, at 734; [37]. On the damages recoverable for wrongful detention of goods, see the Court of Appeal decisions in *Siew Kong Engineering Works v Lian Yit Engineering Sdn Bhd* [1993] 2 SLR 505 and *The Owners of the Ship or Vessel "Pioneer Glory" v PT GE Astra Finance, supra* n 62.

64 At first instance, Judith Prakash J pointed out that the plaintiff's claims against the carrier included "breach of their duty as bailee and/or negligently ... failed to exercise due care with the cargo and had failed to deliver the cargo against presentation of the original bill of lading". See *supra* n 31, at [8].

upon presentation".⁶⁵ In fact, it seems that his Honour regarded the straight bill of lading as a document of title⁶⁶ with the difference that one could not indorse it to transfer constructive possession of the cargo or title in the cargo. Thus, the *APL* case provides an answer to the question left open by Lord Devlin in *Chan Cheng Kum v Wah Tat Bank*,⁶⁷ viz, whether transfer of a non-negotiable bill of lading effects a transfer of title in or possession of the goods carried under the bill of lading.

III. Rights of transferees

26 This part examines the general contractual, possessory and proprietary rights of the transferee of a bill of lading. The transferee's right to require the carrier to perform the contract of carriage in accordance with its terms (whether they be standard terms or particular one-off terms) will not be considered.

27 For the purposes of this paper, the word "transferee" refers to any person to whom a bill of lading has been physically transferred whether with or without any accompanying indorsement of the bill of lading. Accordingly, the concept of transferee includes the indorsee of a specially indorsed bill of lading, the transferee of a bearer bill of lading,⁶⁸ the named consignee of a bill of lading made out to his order or assigns and a person to whom a straight bill of lading is physically delivered.

28 It suffices to say that a "to order" bill of lading is negotiable, *i.e.*, it is "a negotiable instrument as well as a document evidencing a contract capable of passing from hand to hand".⁶⁹ As Lord Devlin explained in *Chan Cheng Kum v Wah Tat Bank*, the word "negotiable" when used in relation to a bill of lading simply means transferable and does not mean negotiable in the strict sense as its transfer cannot⁷⁰ give to the transferee a

65 *Supra* n 26, at [48].

66 There are *dicta* of Lord Steyn and Rix LJ (in the Court of Appeal) in *The Rafaela S*, *supra* n 1, to the effect that the straight bill of lading is a document of title at common law. However, these dicta have been strongly criticised by Prof Treitel in (2003) 119 LQR 608 at 620 to 624. See also the trenchant views of the authors, Sir Guenter Treitel & F M B Reynolds of *Carver on Bills of Lading* (Sweet & Maxwell, 2nd Ed, 2005) at paras 6-017 to 6-026 from pp 282 to 294.

67 *Supra* n 5, at 29, [23] where Lord Devlin said, "[b]ut it has never been settled whether delivery of a non-negotiable bill of lading transfers title or possession at all".

68 The effect of s 5(2)(b) read with s 2(1) of the BLA is that in the case of bearer bills of lading, its transfer without any indorsement is sufficient to transfer rights of suit.

69 *Feoso (Singapore) Pte Ltd v Faith Maritime Co Ltd* [2003] 3 SLR 556 at [42] *per* Belinda Ang Saw Ean J who delivered the judgment of the Court of Appeal.

70 Unlike the negotiation of a bill of exchange.

better title than that of the transferor's.⁷¹ A bearer bill of lading, a blank indorsed bill of lading and a bill of lading made out to a specific consignee or his order and assigns are also negotiable bills of lading.

A. *Contractual rights of suit*

29 At the outset, it is relevant to point out that the Contracts (Rights of Third Parties) Act does not apply to confer any right on a third party in a contract for carriage of goods by sea as defined in that legislation.⁷² It should also be noted that it is possible for a shipper to assign his contractual rights (as evidenced by the bill of lading) to another person pursuant to s 4(8) of the Civil Law Act.⁷³

30 Where the transfer of a negotiable bill of lading complies with the requirements of the BLA, the indorsee or consignee obtains all contractual rights of suit as if he had been a party to the original contract of carriage.⁷⁴ The transferee's rights of suit are "all rights of suit under the contract of carriage". The terms of the transferred contract are contained in the relevant bill of lading. The transferee of such a contract also "become[s] subject to the same liabilities under [the original] contract [of carriage] as if he had been a party to that contract" if he takes action of the kind specified in s 3(1) of the BLA.⁷⁵

71 *Supra* n 5, at 29, [23].

72 (Cap 53B, 2002 Rev Ed). Section 7(4)(a) of the act states that the conferment of any right on a third party as provided for in s 2 does not apply to contracts for the carriage of goods by sea. Section 7(5) of the act defines the expression "contract for the carriage of goods by sea" to mean a contract of carriage (a) contained in or evidenced by a bill of lading, sea waybill or a corresponding electronic transaction; or (b) under or for the purposes of which there is given an undertaking which is contained in a ship's delivery order or a corresponding electronic transaction.

73 (Cap 43, 1999 Rev Ed). For an English case, see *Kaukomarkkinat O/Y v "Elbe" Transport-Union GmbH (The Kelo)* [1985] 2 Lloyd's Rep 85 where Staughton J accepted that there had been such an assignment that satisfied the requirements of s 136 of the Law of Property Act, 1925. Such an assignment is not invalid as being an assignment of a bare right of action or savouring of maintenance if the assignment is of a property right or interest and the cause of action is ancillary to that right or interest, or if the assignee had a genuine commercial interest in taking the assignment and in enforcing it for his own benefit.

74 Section 2(1) of the BLA provides that "all rights of suit under the contract of carriage" are transferred.

75 The fact that there is a statutory imposition of contractual liabilities under the contract of carriage on the transferee does not mean that the original shipper is freed from liabilities. This is the common law position (see *Fox v Nott* (1861) 6 H & N 630 at 636; 158 ER 260 at 263, where Pollock CB said "[t]he statute creates a new liability, but it does not exonerate the person [the original shipper] who has entered into an express contract") as preserved by s 3(3) of the BLA.

31 The BLA removed the link between the right of suit under the contract of carriage and the passing of property.⁷⁶ In other words, the statutory transfer of rights of suit is no longer dependent on the transfer of property in the goods shipped under the bill of lading. This led Chao Hick Tin JA to point out in *Bandung Shipping Pte Ltd v Keppel TatLee Bank Ltd*,⁷⁷ that “the question of rights of suit is now governed by the BLA and under this statute an order [bill of lading] is transferred by indorsement, coupled with physical delivery of the bill”.⁷⁸

32 In the *APL* case,⁷⁹ the Court of Appeal pointed out that the BLA requires a bill to be transferable before it is a bill of lading for the purposes of the statute.⁸⁰ On transferable or negotiable bills of lading, Chao JA in the *Keppel TatLee* case observed with his customary clarity that:⁸¹

[W]here a [bill of lading] has been indorsed in blank, it becomes like a bearer bill and can be transferred simply by delivering the bill to the intended transferee without any further indorsement. But where a [bill of lading] has been specially indorsed, the indorsee must, if he wishes to further transfer the [bill of lading], indorse it either specially or in blank. And if this further indorsement is in blank, then the [bill of lading] will again function like a bearer [bill of lading]. This is the scheme of things under the BLA.⁸²

33 A transferee of a bill of lading may obtain rights of suit under the BLA if he “becomes the lawful holder of a bill of lading”⁸³ in any of the

76 See *Feoso (Singapore) Pte Ltd v Faith Maritime Company Limited*, *supra* n 69. Under the Bills of Lading Act 1855 (c 111) (UK), the transfer of rights of suit in contract was dependent on the transfer of general property in the goods covered by the bill of lading. The Bills of Lading Act 1855 was repealed by the Carriage of Goods by Sea Act 1992 (c 50) (UK) (“the UK Carriage of Goods by Sea Act 1992”).

77 [2003] 1 SLR 295 (“the *Keppel TatLee* case”).

78 *Ibid.* at [32]; see also *Feoso (Singapore) Pte Ltd v Faith Maritime Company Limited*, *supra* n 69.

79 *Supra* n 26.

80 See s 1(2)(a) of the BLA. Note that a straight bill of lading would rank as a sea waybill under the BLA (see s 1(1)(b) and 1(3)) and the consignee could sue by virtue of s 2(1)(b) of the BLA.

81 *Supra* n 77, at [20].

82 Thus the indorsement in blank of a negotiable bill of lading causes it to operate as a bearer bill of lading; see also *The Stone Gemini* [1999] 2 Lloyd’s Rep 255 at 258.

83 The words of s 2(1)(a) of the BLA.

circumstances specified in s 5(2)(a), 5(2)(b) or 5(2)(c) of the BLA.⁸⁴ On the import of the expression “lawful holder”, the Court of Appeal in *UCO Bank v Golden Shore Transportation Pte Ltd*⁸⁵ has clarified that it means what is prescribed in s 5(2) of the BLA, *i.e.*, that a person becomes a lawful holder if he has become the holder in good faith. Further, in the *UCO Bank (CA)* case, the court said that the words “good faith” connoted honest conduct and there was no reason to read more into the expression than its plain meaning.⁸⁶

34 In the *UCO Bank (CA)* case, the court elucidated the concept of “holder” of a bill of lading under the BLA by explaining that a person becomes the holder of the bill of lading only when he receives and accepts the delivery⁸⁷ of the bill of lading.⁸⁸ That is to say, under the BLA, the requirement of possession of the bill of lading as a result of the completion by delivery of an indorsed bill of lading⁸⁹ must have the consensual element on the part of the indorsee to accept delivery of the indorsed bill of lading. Accordingly, a person does not satisfy the requirements under s 5(2)(b) of the BLA and does not become the holder of a bill of lading if that person obtains the bill of lading merely in

84 The Act has been described as extending “the rights of suit ... to all holders of bills of lading ... [A] sweeping statutory reform, powered by the needs of commerce, which has the effect of enlarging the circumstances in which contractual rights may be transferred by virtue of the transfer of certain documents”. See *White v Jones* [1995] 2 AC 207 at 265 per Lord Goff of Chieveley speaking of the UK Carriage of Goods by Sea Act 1992 which in Singapore is known as the BLA.

85 [2006] 1 SLR 1 (“the *UCO Bank (CA)* case”). The Court of Appeal reversed the High Court’s decision which is reported as *UCO Bank v Golden Shore Transportation Pte Ltd* [2005] 2 SLR 735 (“the *UCO Bank (HC)* case”).

86 *Supra* n 85, at [39], where the court adopted the view of the English High Court in *The Aegean Sea* [1998] 2 Lloyd’s Rep 39 at 60. In that case, Thomas J said:

Although it could be argued that in view of lack of definition in COGSA, 1992, a broad meaning should be attributed to ‘good faith’, I do not consider that would be the correct interpretation. In the commercial context of bills of lading, the meaning of the term good faith should be clear, capable of unambiguous application and be consistent with the usage in other contexts and countries. In my view, it therefore connotes honest conduct and not a broader concept of good faith such as ‘the observance of reasonable commercial standards of fair dealing in the conclusion and performance of the transaction concerned’.

87 *Supra* n 85, at [40]. The delivery may be direct or through an independent intermediary.

88 *Id.* at [28]. The Court of Appeal appeared to have approved of Thomas J’s statement of the law in *The Aegean Sea*, *supra* n 86, at 59 and 60, *viz.*, although:

... the sending and receipt of a document through the post often constitutes service of a document, the sending of a bill of lading through the post does not without more constitute delivery; the person receiving it has to receive it into his possession and accept the delivery before he becomes the holder [of the bill of lading].

89 These are the words used in s 5(2)(b) of the BLA.

consequence of someone indorsing it and sending it to him without his concurrence.⁹⁰

35 On the transfer of rights of suit under the BLA, the High Court in the *BNP Paribas* case⁹¹ affirmed the position that a holder of a bill of lading is entitled to sue in contract in respect of any breach, even if that breach was committed prior to the time at which the claimant became the holder of the bill.⁹² In this regard, it is pertinent to note that the contract of carriage evidenced by or contained in the bill of lading generally continues and the bill of lading remains effective until the goods are delivered to the person entitled under the bill of lading.⁹³

36 The carrier of goods carried under a negotiable bill of lading owes a contractual obligation to a lawful holder of the bill of lading to deliver the goods at the agreed destination on production of the relevant bill of lading.⁹⁴ The right to obtain delivery of the goods on presentation of the relevant bill of lading is one of the rights transferred to a lawful holder under s 2(1) of the BLA.⁹⁵

90 Section 5(2)(b) of the BLA requires the indorsee to have possession as a result of the completion of an indorsement by delivery.

91 *Supra* n 16. In this case, the carrier delivered the cargo without requiring the presentation of the relevant bill of lading.

92 *Supra* n 16, at [29]; see also *The Starsin*, *supra* n 3, at 767 where Lord Hobhouse of Woodborough observed that if the claimants could establish the contractual cause of action under the UK Carriage of Goods by Sea Act 1992 (which in Singapore is known as the BLA), they would not need to prove what damage had been caused at a particular stage of the voyage.

93 See the *BNP Paribas* case, *supra* n 16, at [30].

94 See *The Cherry*, *supra* n 21, at [27] and the *BNP Paribas* case, *supra* n 16.

95 See *East West Corporation v DKBS* 1912 [2002] 2 Lloyd's Rep 182 at 192–193 where Thomas J held that the phrase "rights of suit" refers not merely to the right to sue, but the rights under the contract. These rights include the contractual right as against the carrier to demand delivery against presentation of the bill of lading and hence the right to possess the goods. The court said that both the language of the UK Carriage of Goods by Sea Act 1992 and the Law Commission's Report (in particular paras 2.34 and 3.13–3.21) made it clear that it was intended that "rights of suit" include the right to demand delivery. According to the court, it would make no sense to the scheme of the UK Carriage of Goods by Sea Act 1992 if the contractual right to demand delivery from the carrier was excluded from the rights transferred. In the earlier case of *The Owners of the Ship "Freedom" v Messrs Simmonds, Hunt, & Co (The Freedom)* (1871) LR 3 PC 594 at 599; 17 ER 224, in the context of the phrase as used in the Bills of Lading Act 1855 (c 111) (UK), it was said that the phrase refers to the rights of "suing upon the contract". When the case proceeded to the Court of Appeal, Mance LJ opined that the statutory transfer of rights of suit carries with it purely contractual rights and where there is no intention to pass any possessory right in the goods, possessory rights sounding in bailment remain unaffected: see *East West Corp v DKBS AF* 1912 A/S [2003] QB 1509 (CA) at 1538.

37 Where the rights of suit under the contract of carriage have been transferred to, and become vested in, the indorsee of a bill of lading pursuant to s 2(1) of the BLA, and the indorsee becomes subject to the liabilities under that contract pursuant to s 3(1) of the BLA, the indorsee ceases, on the true construction of the BLA, to be so liable⁹⁶ when he indorses over the bill of lading to another so as to transfer his rights of suit to that other.⁹⁷

38 Quite apart from the transfer of contractual rights under the BLA, a holder of a bill of lading may also, depending on the factual circumstances, claim on the basis of an implied contract arising from the presentation of a bill of lading and the collection of goods thereunder. Such a contract is known as the *Brandt v Liverpool* implied contract⁹⁸ and is more often pleaded than proved. To date there is no reported decision of the Singapore courts on the *Brandt v Liverpool* implied contract. That said, the *Brandt v Liverpool* implied contract remains as one of the ways through which a person presenting a bill of lading (including a straight bill of lading and some forms of delivery order) to obtain delivery of the goods may obtain contractual rights against the carrier.

(1) *Indorsees of bills of lading under the BLA*

39 It is axiomatic that an indorsee suing as a “lawful holder” of the bill of lading under the BLA must have become the lawful holder before

96 There is, to date, no reported Singapore case on the transfer of liabilities under the BLA to the lawful holder of a bill of lading. For the English cases dealing with the transfer of liabilities under the UK Carriage of Goods by Sea Act 1992 (which is the BLA in Singapore): see *Borealis AB v Stargas Ltd* [2002] 2 AC 205 (“The Berge Sisar”); and *Primetrade AG v Ythan Ltd* [2006] 1 Lloyd’s Rep 457 (“The Ythan”).

97 *The Berge Sisar*, *supra* n 96, at 233 where it was said that the UK Carriage of Goods by Sea Act 1992 (in Singapore, known as the Bills of Lading Act) should be construed as providing that, if a person should cease to have the rights vested in him, he should no longer be subject to the liabilities. The House of Lords pointed out that the mutuality of rights and obligations of the indorsee under the bill of lading is the rationale for imposing liability on the indorsee.

98 It derives its name from the leading case which established its existence, *viz*, *Brandt v Liverpool, Brazil and River Plate Steam Navigation Company Limited* [1924] 1 KB 575 (“*Brandt v Liverpool*”). For the necessary circumstances to establish the *Brandt v Liverpool* implied contract: see *Mitsui & Co Ltd v Novorossiysk Shipping Co (The Gudermes)* [1993] 1 Lloyd’s Rep 311.

the commencement of the action.⁹⁹ In *The Shravan*¹⁰⁰ and *Steelmet Pte Ltd v APL Co Pte Ltd*,¹⁰¹ the Singapore High Court pointed this out as a prerequisite to the indorsee's action. In the latter case, the indorsee was the original shipper of the goods who had the bills of lading re-indorsed to it by various banks. The carrier's wrongful delivery of the goods had occurred after the shipper had indorsed the relevant bills of lading to various banks. At the time when the indorsee filed its writ against the carrier, the relevant bills of lading had not been re-indorsed to it and, consequently, it was not the "holder" of the bills of lading as defined by s 5(2)(b) of the BLA.¹⁰²

40 In *The Cherry*,¹⁰³ the High Court held that an indorsee having constructive possession of the bill of lading through his agent (holding purely in a ministerial capacity) may also sue as a "lawful holder" of the bill of lading under the BLA.¹⁰⁴ This decision of Kan Ting Chiu J establishes the point that under Singapore law, constructive possession of the bill of lading through one's agent enables the principal to sue under the BLA.

41 In *The Cherry*, the bills of lading were physically held by the indorsee's wholly-owned subsidiary for the purpose of transmitting the

99 Section 2(1) of the BLA provides that a person who becomes the holder of a bill of lading shall by virtue of becoming such holder "have transferred to and vested in him all rights of suit under the contract of carriage as if he had been a party to that contract".

100 [1999] 4 SLR 194. In this case, Chao Hick Tin J (as he then was) also held that there was a ship's delivery order which conferred upon the plaintiffs the right to sue in contract under s 2(1)(c) of the BLA.

101 *Supra* n 57. In this case, Judith Prakash J agreed with the concession that for an indorsee (who was the original shipper to whom the bills of lading were re-indorsed) to acquire rights of suit under the BLA, he had to be the "holder" of the bills of lading (within the meaning of that term as defined in s 5(2) of the BLA) at the time they filed the writ.

102 If at the time the indorsee filed the writ, it was to have possession of the relevant bills of lading re-indorsed to it, the question arises as to whether the contract is that transferred under s 2(1) of the BLA or the original contract of carriage. This writer favours the former view whereas the authors of *Carver on Bills of Lading*, *supra* n 66, submit at para 5-028 (at p 190) that "the rights of the original shipper should be governed by the actual terms of the original contract for the fiction [in the concluding words of s 2(1) of the BLA] is inappropriate in the case of a holder who actually was a party to that contract".

103 [2002] 3 SLR 431 (HC).

104 There was no appeal against this finding: see *supra* n 21, at [12].

shipping documents and liaison with bankers and financiers.¹⁰⁵ At the time that the indorsee's subsidiary came into possession of the bills of lading, it received them as agent of the plaintiffs and had on its own no interest in the bills of lading. Kan J referred¹⁰⁶ with approval to the following passage from *Carver on Bills of Lading*:¹⁰⁷

Where the person who receives the bill acts in a purely ministerial capacity, there can be little doubt that possession of the bill will be regarded as having been transferred to the buyer: this would be so in the common case in which possession is acquired on behalf of a corporate buyer by a member of its staff. [emphasis added by Kan J]

42 Having found that the agreement between the plaintiff and its subsidiary clearly established that the latter was the plaintiff's agent for the specified purposes,¹⁰⁸ Kan J observed that:¹⁰⁹

There is no justification to confine possession to physical possession in this case. The rights of the holder cannot be diminished because it had arranged for the bill to be kept by its agent which has no separate interest in it.

43 At this juncture, it is relevant to note that while the bill of lading considered in *The Cherry* was indorsed in blank, the principle established

105 The bill of lading covering a cargo of oil was made out to the order of Banque Trad Credit Lyonnais (France) SA Paris or his or their assigns or order. The plaintiffs bought the oil and paid for the oil through a letter of credit issued by Banque Trad Credit Lyonnais. The bank made payment under the letter of credit upon presentation of the bills of lading and on 2 February 1998, the plaintiffs instructed its subsidiary, Glencore UK to indorse the bills of lading to the order of Credit Lyonnais London and forward them to Credit Lyonnais with further instructions for Credit Lyonnais to indorse the bills of lading in blank and forward them to Glencore UK. Credit Lyonnais did so and forwarded the bills of lading to Glencore UK on 5 February 1998.

106 *Supra* n 103, at [20].

107 This was the first edition of *Carver on Bills of Lading* (Sweet & Maxwell, 2001) where in para 5-017, the authors discussed the situation of an independent contractor with physical possession of the bill of lading who is engaged by the buyer of goods to take delivery of the goods from the ship. The authors concluded:

It would seem to follow that, on facts such as those in *The Aramis*, the 'forwarding agents' could likewise now acquire contractual rights against the carriers, and that under section 2(4) of the Act they could exercise these rights for the benefit of their principals, the buyers. But it is submitted that this does not exclude the possibility of such rights being acquired also by the principal. *The Act does not define 'possession', which is a sufficiently flexible concept to allow for the possibility of actual possession being held by one person and constructive possession being held, at least for some purposes, by another.* [emphasis added]

108 That is for the transmission of information, correspondence and documents and served as the plaintiff's London liaison with bankers and financiers.

109 *Supra* n 103, at [21].

by that case is not limited to blank indorsed bills of lading. It is submitted that the operative legal principle is that an indorsee of a bill of lading (whether specifically indorsed or indorsed in blank) may maintain a contractual action under the BLA if he has actual or constructive possession (through its agent acting in a purely ministerial capacity) of the bill of lading before commencement of the action.

44 It is evident that Kan J in *The Cherry* accepted that the concept of "possession" as used in the BLA¹¹⁰ "is a sufficiently flexible concept to allow for the possibility of actual possession being held by one person and constructive possession being held, at least for some purposes, by another".¹¹¹ By way of *obiter dicta*, his Honour said that in an appropriate case,¹¹² both the indorsee and its agent could sue on the bills of lading and the fact that the principal has a right of suit does not *ipso facto* mean that its agent has no right of suit under the BLA. Thus, Kan J recognised that under s 2(1) of the BLA, in the case of a bill of lading indorsed in blank, there could be two persons having contractual rights of suit against the carrier.

45 However, it is unclear whether Kan J in *The Cherry* agreed with the suggestion by the authors of *Carver on Bills of Lading* that an independent contractor for the purpose of taking delivery of the goods such as a forwarding agent who holds blank indorsed bills of lading and its principal both have contractual rights of suit under the BLA.¹¹³ On this issue, the position under English law is open.¹¹⁴

46 It is submitted that there is no commercial need for the law to recognise that in respect of a bill of lading, rights of suit can be vested in more than one person. There is no commercial need for this duality of rights of suit because s 2(4) of the BLA allows a holder to recover substantial damages on behalf of the person who actually sustained loss

110 See s 5(2)(b) of the BLA.

111 The quoted words are from para 5-017 of the first edition of *Carver on Bills of Lading*, *supra* n 107; see now second edition of *Carver on Bills of Lading*, *supra* n 66, para 5-022 at p 185.

112 It bears reiteration that the bill of lading in that case was indorsed in blank.

113 In para 5-017 of the first edition of *Carver on Bills of Lading*, *supra* n 107; see now second edition of *Carver on Bills of Lading*, *supra* n 66, at para 5-022 at p 185.

114 In *East West Corp v DKBS AF 1912 A/S (CA)*, *supra* n 95, at 1526, Mance LJ declined to express a view on the correctness of the suggestion.

or damage.¹¹⁵ To recognise that both principal and agent have contractual rights of suit against the carrier would also be somewhat inconsistent with the position that after a statutory transfer of contractual rights by a principal to its agent, the principal may no longer sue in contract in its own name.¹¹⁶

47 In the *Keppel TatLee* case,¹¹⁷ the Court of Appeal dealt with transfer of rights of suit under s 2(1) read with s 5(2)(b) of the BLA. In this case,¹¹⁸ the court held that the named indorsee on a bill of lading must re-indorse it in favour of the transferee (who had forwarded the bill of lading to the named indorsee) if the transferee were to acquire rights of suit. The facts involved a letter of credit transaction under which Keppel TatLee Bank was the negotiating bank which received the bills of lading indorsed in blank and a foreign bank, State Bank of Saurashtra (State Bank) in India was the collecting bank. Keppel TatLee Bank obtained the shipping documents including the bills of lading (indorsed in blank) and filled in the name of State Bank onto the blank indorsement and forwarded the bills of lading to State Bank to hold the same for collection by the buyer (Lanyard Foods Ltd).¹¹⁹

115 This would enable the freight forwarder or any other independent contractor having physical possession of the blank indorsed bill of lading to recover substantial damages from the carrier on behalf of the person who actually sustained the loss or damage.

116 *East West Corp v DKBS AF 1912 A/S (CA)*, *supra* n 95, at 1527 where Mance LJ said that the express consignment of the goods under the bills to the Chilean banks (whom the principal alleged were their agents) or order, followed by the delivery of such bills to such banks by or under the authority of the principal, equates with a personal indorsement of the bill of lading. In such a situation, Mance LJ said that the principal could not also be a "holder" of the bill of lading for the purposes of the UK Carriage of Goods by Sea Act 1992; see also the *Keppel TatLee* case, *supra* n 77, at [25].

117 *Supra* n 77.

118 The case went before the Court of Appeal after the defendant succeeded in its application to strike out the plaintiff's claim. The court held that it was plain and obvious that the claim was hopeless and should be struck out. In that case, there was no dispute on the facts.

119 The shippers had indorsed the bills of lading in blank and delivered them to a buyer, Ranchhoddas Purshottam Holdings Pte Ltd ("R") pursuant to a contract of sale for the goods shipped under the bills of lading. R then in turn sold the goods to Lanyard Foods Ltd. Subsequently R delivered the bills of lading to the plaintiff's bank for collection/purchase/negotiation, without filling in any name to the indorsement (it was still a blank indorsement). The plaintiff later filled in the name of State Bank of Saurashtra in India and delivered the bills of lading to it, for collection by Lanyard Foods Ltd. However the bills were subsequently returned to the plaintiff with the word "CANCELLED" stamped over the indorsements to State Bank. There were no indorsements on both bills of lading by State Bank to the plaintiff.

48 As the buyer never paid for the cargo, the bills of lading were duly returned by State Bank to Keppel TatLee Bank but no indorsement was made by State Bank on the bills of lading either in blank or specially in favour of Keppel TatLee Bank. Upon receipt of the bills of lading, Keppel TatLee Bank stamped the word "cancelled" over the indorsement (to State Bank). The Court of Appeal rejected the arguments that the specific indorsement and delivery of the bills of lading to State Bank were insufficient to result in State Bank becoming the "lawful holder" and that Keppel TatLee Bank retained the rights of suit it had acquired under s 2(1) of the BLA.

49 The court said that Keppel TatLee Bank's contention that it was never its intention to vest the rights of suit in State Bank was incorrect as the latter was clearly authorised to indorse the bills of lading and deliver them over to the buyer, Lanyard Foods Ltd upon payment for the goods.¹²⁰ Reading the instruction to State Bank together with the special indorsement made in favour of State Bank, the court concluded that it was obvious that the indorser's intention was to vest the rights of suit in State Bank with a view to enabling the latter to transfer the bills of lading, with the attendant rights of suit, to the buyer of the goods. In these circumstances, the court in the *Keppel TatLee* case found that the indorsement of the bills of lading and their delivery to State Bank vested the rights of suit in State Bank pursuant to s 2(1) read with s 5(2)(b) of the BLA.

50 In the *Keppel TatLee* case, the court pointed out that if the rights of suit vested in State Bank for the purpose of indorsing the bills of lading to the buyer or its nominee, then no residual rights of suit remained with Keppel TatLee Bank.¹²¹ With characteristic pragmatism, Chao JA remarked that any other approach to the matter would do violence to the scheme envisaged under the BLA. His Honour said that if Keppel TatLee Bank wanted contractual rights of suit against the carrier, it was necessary for

120 In fact, the court pointed out that the precise instruction to State Bank was to "deliver documents against payment". The court said that reading this instruction together with the special indorsement made in favour of State Bank, it was obvious that the intention was to vest the rights of suit in State Bank with a view to enabling it to transfer the bills of lading, with the attendant rights of suit, to Lanyard Foods Ltd.

121 The indorser of the bill of lading loses his rights of suit once the bill of lading has been indorsed and delivered to the indorsee as the latter then becomes the holder of the bill of lading with rights of suit. See also *Daewoo Hong Kong Ltd v Mana Maritime Inc*, *supra* n 8, a decision on s 4(5) of the Bills of Lading and Analogous Shipping Documents Ordinance (Cap 440) (HK).

State Bank to indorse the bill of lading in favour of Keppel TatLee Bank or in blank and forward it to Keppel TatLee Bank. His Honour observed that “[a] simple endorsement by the State Bank in favour of Keppel TL or in blank would have transferred the rights of suit back to Keppel TL”. Thus, the court found that it was plain and obvious that the plaintiff’s claim could not succeed as it was hopeless and should be struck out.

51 The indorsement and transfer of a negotiable bill of lading may be made to effect a pledge of the goods shipped under the bill of lading.¹²² In this regard, the deposit of a generally indorsed bill of lading with the intention of creating a pledge over the cargo operates to render the pledgee the holder of the bill of lading under s 5(2)(b) of the BLA. This was held to be the case in the *BNP Paribas* case.¹²³ In that case, the High Court also held that although the original bills of lading were released by the bank to the buyer under trust receipts, the terms of the trust receipts ensured that the bank remained the pledgee of the cargo.¹²⁴ Belinda Ang Saw Ean J pointed out that as s 5(2)(b) of the BLA refers to the completion “of any other transfer of the bill”, a transfer of the bill of lading by way of pledge fell within those words.¹²⁵

52 In the *BNP Paribas* case, Belinda Ang Saw Ean J also found that BNP was a holder of the bills of lading under s 2(2) of the BLA and the extended definition of “holder”¹²⁶ in s 5(2) of the BLA because the facility

122 See *Bank Negara Indonesia v Kie Hock Shipping Co Ltd*, *supra* n 52.

123 *Supra* n 16. Ang J found that with BNP’s approval of Shweta’s application to draw on the USD10m credit facility, BNP undertook a contractual commitment to pay the suppliers. The contractual commitment and payment by BNP in good faith to Shweta’s suppliers had the effect of conferring on it a right to possession of the cargo by way of security. BNP became a pledgee of the cargo as from the time it received the original bills indorsed in blank.

124 See *North Western Bank Limited v John Poynter, Son & Macdonalds* [1895] AC 56; *In re David Allester Ltd* [1922] 2 Ch 211; *Lloyds Bank Limited v Bank of America National Trust and Savings Association* [1938] 2 KB 147 and *Official Assignee of Madras v Mercantile Bank of India*, *supra* n 46.

125 See *supra* n 16, at [27]; see also *The Berge Sisar*, *supra* n 96, at 226–227 where Lord Hobhouse of Woodborough said:

A party who takes a bill of lading as security, as a pledgee, has the contractual rights transferred to him under section 2. He can enforce them against the carrier or not as he chooses and may, if he chooses to do so, recover from the carrier also on behalf of the person with the full legal title: section 2(4). This leaves the question whether the pledgee or similar person should come under any liability to the carrier.

126 Her Honour was referring to s 5(2)(c) of the BLA.

agreement was transacted before the bills of lading became spent. Her Honour said that:¹²⁷

A holder of a bill which is indorsed after delivery has taken place could still sue the carrier in contract: s 2(2) [of the BLA]. The holder must have become a holder by virtue of some prior transaction (*ie* facility agreement as in this case) before the bill of lading became spent: s 5(2)(c).

In that case, the facility agreement was made before the bills of lading were indorsed to the bank.¹²⁸

53 It was also in the *BNP Paribas* case that the High Court ruled that the contractual right of a holder of a bill of lading (in that case, the bank was the indorsee of the negotiable bills of lading) to require delivery of goods against production of the relevant bill of lading was “not taken away by a provision [in the charterparty (which was incorporated in the bill of lading)]¹²⁹ for the vessel to discharge against a letter of indemnity even though the vessel would arrive at the discharge port ahead of the bill of lading”.¹³⁰ This ruling followed that of the earlier High Court decision

127 *Supra* n 16, at [31].

128 For an English case where the relevant transaction occurred after possession of the bill of lading no longer gave a contractual right (as against the carrier) to possession of the goods to which the bill relates: see *The Ythan*, *supra* n 96, at 476. On the transfer of rights of suit after possession of the bill of lading no longer gives a contractual right (as against the carrier) to possession of the goods to which the bill relates, Colman J in *The David Agmashenebeli*, *supra* n 9, at 118 said that s 2(2)(a) of the UK Carriage of Goods by Sea Act 1992 (which in Singapore is known as the BLA) was inserted for the purpose of permitting the transference of rights under the contract of carriage in those cases where, although the sale contract was made before the ship had made delivery, the bills of lading were not transferred to the ultimate buyer until after delivery by the ship, at which point the bills would cease to be documents of title as against the ship. Colman J said:

In essence, the transference of the bill of lading after it has ceased to be a document of title has to be a transference provided for by the antecedent contractual or other arrangements. If it is a transference called for by contractual or other arrangements made after the bills of lading ceased to be documents of title vis-à-vis the ship, proviso (a) has no application.

129 The bills of lading incorporated by reference “all conditions, liberties and exceptions in the relevant charterparty” in the conditions of carriage. Clause 16 of the relevant charterparty read “In the absence of original b/l/s at discharge port(s), owners to release the entire cargo to receivers against charterers’ LOI (Shweta or Lanyard without bank guarantee. (LOI wording always to be in Owners’ P and I Club format.)”: see *supra* n 16, at [65].

130 *Supra* n 16, at [69] where Ang J held that cl 16 and its incorporation in the bills of lading cannot on a proper consideration provide a defence to wrongful discharge of the cargo against letters of indemnity.

in *The Nordic Freedom*¹³¹ and the path taken by Australian and English cases.¹³²

(2) *Consignees of bills of lading under the BLA*

54 From s 1(2)(a) of the BLA and the *APL*¹³³ case, it is evident that a bill of lading made out for delivery to a specific consignee is a straight bill of lading falling outside the BLA with the consequence that the consignee does not acquire rights of suit under the BLA.¹³⁴ In relation to bills of lading made out to a specific consignee, transferability or negotiability is endowed only if the operative words are added after the name of the specific consignee.¹³⁵

55 In the case of a bill of lading made out to a specific consignee or his order, it is clear from *The Jian He*¹³⁶ that the consignee in possession of the bill of lading has the right to obtain delivery of the goods at the port of discharge and the carrier who has delivered the goods against forged or false bills of lading has no real defence to the consignee's claim for breach of contract and conversion.

56 Under s 5(2)(a) of the BLA, the consignee of a bill of lading made out to its order obtains rights of suit when the bill of lading is transferred to it without any need for the shipper to indorse the bill of lading to the

131 *Supra* n 49. In this case, the High Court considered a clause similar to that in the *BNP Paribas* case and concluded that the clause did not mean that the carrier no longer has an obligation to deliver goods on production of the bill of lading. On this issue, the court agreed with Clarke J's reasoning in *The Sormovskiy* 3068 [1994] 2 Lloyd's Rep 266 at 274 that such a contractual provision "contemplated that [the shipowners] would be liable to the holder of the bill of lading if they delivered otherwise than in return for an original bill of lading".

132 Ang J cited with approval Tamberlin J's observation in *The Stone Gemini*, *supra* n 82, at 266 on a similar contractual provision for delivery of goods against letters of indemnity, *ie*, that "it is not an authority by the holder of the bearer bill of lading for the shipowner to deliver the cargo to whoever produces a letter of indemnity".

133 *Supra* n 26.

134 A straight bill of lading would rank as a sea waybill under the BLA (see s 1(1)(b) and 1(3)) and the consignee named therein could sue by virtue of s 2(1)(b) of the BLA.

135 A bill of lading is transferable if it is made out such that the goods are deliverable to a named consignee "or order or assigns", or similar wording to indicate that the named consignee may substitute an alternative deliverer. In the Hong Kong case of *Melissa (HK) Ltd v P & O Nedlloyd (HK) Ltd* [2000] 1 HKC 483, Deputy Judge Ze Li said that the legend "Consignee or Order" in the bill of lading is no more than a description of the box for specifying the consignee or placing instructions for delivery and such a legend does not render the document an order bill.

136 [2000] 1 SLR 8, a decision of the Court of Appeal dealing principally with the carrier's application to stay the Singapore proceedings on the ground of a foreign jurisdiction clause in the bill of lading.

consignee. This was established by the the Court of Appeal in the *UCO Bank (CA)* case.¹³⁷ The facts of this case may be shortly stated. Four bills of lading were issued to cover four shipments of logs on board the Asean Pioneer from East Malaysia to Kandla (an Indian port). Each of the four bills of lading named different Malaysian companies as shippers and the bills of lading were made out to the “order of UCO Bank”. The notify parties in the bills of lading were “SOM and UCO Bank”. UCO Bank was the banker for SOM (SOM International Pte Ltd, a Singapore company) and had financed the four shipments by issuing three letters of credit. SOM collected the goods at Kandla by presenting switched bills of lading which had been issued by the carrier.¹³⁸

57 In the *UCO Bank (CA)* case, the shippers presented drafts drawn under the letters of credit together with the four original bills of lading and other documents required under the letters of credit to the Hongkong and Shanghai Banking Corporation (“HSBC”) for negotiation. The shippers did not indorse (either specifically to HSBC or in blank) any of the original bills of lading when forwarding them to HSBC. Upon HSBC’s presentation of the shipping documents (including the four original bills of lading), the appellant bank reimbursed HSBC. The appellant bank sued the carrier for failing to deliver the goods¹³⁹ on production of the four original bills of lading and applied for summary judgment.¹⁴⁰

58 The Court of Appeal¹⁴¹ rejected the carrier’s argument that the appellant bank did not have any rights of suit unless the shipper had indorsed the bills of lading to HSBC (upon the shipper’s negotiation of the bills of lading to HSBC) and HSBC had in turn indorsed the bills of lading to the appellant. The argument was, in essence, that the appellant

137 *Supra* n 85. The Court of Appeal reversed the High Court’s decision (the *UCO (HC)* case, *supra* n 85).

138 SOM provided a letter of indemnity to the respondent and promised that it would obtain and surrender the original bills of lading later.

139 SOM did not reimburse the appellant the amount which the latter paid to HSBC under the three letters of credit.

140 The carrier’s attempt to stay the Singapore action on the ground of the foreign jurisdiction clause in the four bills of lading failed: see *Golden Shore Transportation Pte Ltd v UCO Bank* [2004] 1 SLR 6 where the Singapore Court of Appeal held that notwithstanding cl 17 in the bills of lading provided for claims to be dealt with under the jurisdiction of the courts at the intended port of delivery in Kandla, India, there were exceptional circumstances amounting to “strong cause” why the court should exercise its discretion in the plaintiff’s favour and assist him in breaching cl 17.

141 In the *UCO (HC)* case, *supra* n 85, the High Court ruled in favour of the carrier on a preliminary question of law as to whether the appellant bank had title to sue under the four original bills of lading.

bank had not become a lawful holder of the bills of lading within the meaning of ss 2(1) and 5(2) of the BLA. The carrier contended that in such a situation the person entitled to sue on the bills of lading was the shipper pursuant to s 2(4) of the BLA.¹⁴²

59 Chao Hick Tin JA, who delivered the judgment of the Court of Appeal, said that as the bills of lading were order bills, upon their transfer to the named consignee, the named consignee obtained rights of suit without the need for any indorsement from the shipper.¹⁴³ His Honour said that such a conclusion is clear from the wording of s 5(2)(a) of the BLA. The interposition of HSBC as the negotiating bank did not alter that conclusion.¹⁴⁴ On the carrier's contention that the word "becomes" in s 2(1) of the BLA requires a consideration of how and from whom the person acquires the bill of lading, Chao JA said that the word "becomes" in s 2(1) simply means "to come to be" and does not require the court to consider the way in which a person obtains the bill of lading. His Honour said that how the named consignee obtained the bill of lading is not relevant provided that it was obtained in good faith.

60 The effect of s 2(1) and s 5(2)(a) of the BLA is such that rights of suit are transferred to a consignee of a negotiable bill of lading even if the consignee's interest in the goods shipped under the bill of lading is that of a pledgee.¹⁴⁵ The contract of carriage between the carrier and the consignee is contained in the bill of lading and the consignee is not affected by any parol understanding between shipper and shipowner.¹⁴⁶

142 The Court of Appeal pointed out that this could not be right because the shippers did not have possession of the bills of lading and had been paid for their shipments. In addition, the court said that s 2(4) was inapplicable because that provision only applied where the rights of suit have been vested in another person pursuant to s 2(1) of the BLA. However, on the respondent's contention, the rights of suit would remain with the shippers (as there was no proper indorsement).

143 The Court of Appeal noted that the shippers could have indorsed and delivered the original bills of lading to HSBC even though the bills of lading were initially made out to the order of the appellant bank. If that had been done, and HSBC had further indorsed the bills of lading to the appellant bank, the latter would have become the lawful holder pursuant to s 5(2)(b) of the BLA.

144 This in fact was the position as recognised in *East West Corp v DKBS AF 1912 A/S (CA), supra* n 95, at 1527 where Mance LJ said:

The express consignment of the goods under the bills to the Chilean banks or order, followed by the delivery of such bills to such banks by or under the authority of the [respondents], equates with a personal indorsement.

145 See Ang J's decision in the *BNP Paribas* case, *supra* n 16, where her Honour applied *The Berge Sisar*, *supra* n 96, at 226 and 227; see also *supra* n 121 and *The Ythan*, *supra* n 96, at 476.

146 *SS Ardennes (Cargo Owners) v SS Ardennes (Owners)* [1951] 1 KB 55 at 60 per Lord Goddard CJ.

B. Possessory rights

61 It is hornbook law that the transfer of a possessory interest at common law depends just as much upon the parties' intentions as does the transfer of any fuller proprietary interest.¹⁴⁷ Accordingly, the mere transfer of a negotiable bill of lading does not transfer possessory rights to the goods shipped under the bill of lading unless the parties to the transfer intend to do so.

62 Where by an indorsement and transfer of the bill of lading, the indorser intended to create a pledge of the goods shipped under the bill of lading, the indorsee obtains a special property in the goods as pledgee of the bill of lading representing the goods.¹⁴⁸ The pledgee's special property in the pledged goods constitutes a possessory interest sufficient to enable him to maintain an action in conversion.¹⁴⁹ Authority for this proposition is *Chabba Corporation Pte Ltd v Jag Shakti (Owners)*¹⁵⁰ where the Privy Council held that the pledgee of a bill of lading is entitled, on presentation of it to the ship at the port of discharge, to the possession of the goods represented by it¹⁵¹ and upheld the pledgee's claim in conversion against the carrier for wrongful delivery of the goods.

63 In *The Jag Shakti*, Lord Brandon of Oakbrook, who delivered the judgment of the Privy Council, pointed out that where the pledgee is deprived of possession of the goods by the tortious conduct of another person, whether such conduct consists in conversion or negligence, the proper measure in law of the damages recoverable by the pledgee from the wrongdoer is the full market value of the goods at the time when and the place where possession of them should have been given. His Lordship

147 See *The Future Express* [1992] 2 Lloyd's Rep 79 affirmed at [1993] 2 Lloyd's Rep 542; see also *East West Corp v DKBS AF 1912 A/S (CA)*, *supra* n 95, at 1535.

148 A negotiable bill of lading is a document of title and its delivery conveys possession of the goods to which the bill of lading relates: see *Glyn Mills Currie & Co v The East and West India Dock Company* (1882) 7 App Cas 591 at 604 per Lord Blackburn.

149 On the tort of conversion, Kan Ting Chiu J in *Abani Trading Pte Ltd v PT Delta Karina Mandiri* [2001] 4 SLR 475 at [40] (this case concerned a voyage charterparty) said that there must be a wrongful act of dealing with the goods in a manner inconsistent with the owner's rights, coupled with an intention to deny the owner's rights, or to assert a right inconsistent with them.

150 [1986] 1 MLJ 197; [1986] AC 337 ("The Jag Shakti"). See also *Commercial & Savings Bank of Somalia v Joo Seng Co* [1988] SLR 699.

151 A mere contractual right to possession is insufficient to found a right to sue in conversion: see *Jarvis v Williams* [1955] 1 WLR 71 and *International Factors Ltd v Rodriguez* [1979] QB 351 at 357. However, a bailor's right to possession of the goods is sufficient to maintain an action in conversion: see *East West Corp v DKBS AF 1912 A/S (CA)*, *supra* n 95.

said that for the purpose of assessing damages in relation to the wrongdoer's tortious conduct, it was irrelevant whether the claimant has the general property in the goods as the outright owner of them, or only a special property in them as pledgee, or only possession or a right to possession of them as a bailee.¹⁵²

64 From *The Jag Shakti and Commercial & Savings Bank of Somalia v Joo Seng Co*,¹⁵³ it is clear that a pledgee of a bill of lading has the requisite possessory interest in the goods carried under the bill of lading to maintain an action in conversion and detinue. Both a bailor and a bailee of goods have the possessory interest to maintain an action in conversion as was pointed out by G P Selvam J in *The Endurance 1 ex Tokai Maru*.¹⁵⁴ However, his Honour elucidated that there can only be recovery of damages by either the bailor or bailee in respect of the same act of conversion.¹⁵⁵ Where the bailee recovers the full market value of the goods, he is obliged to account to the bailor for the damages.¹⁵⁶

152 In the case of a pledgee or bailee of goods recovering the full market value of the goods from the wrongdoer, there is a liability on the part of the pledgee's or bailee's to account for the whole or part of what he has recovered to the owner of the goods. See *The Endurance 1 ex Tokai Maru* [2000] 3 SLR 190 at [31]–[33], where Selvam J said that in the action against the wrongdoer, the bailee is entitled to recover substantial damages, that is, the full value of the goods, notwithstanding that his interest in the goods is limited or he has a valid defence against the bailor. In this regard, Selvam J applied *The Winkfield* [1902] P 42.

153 *Supra* n 150, where Lai Kew Chai J held that the bank as pledgees were entitled to possession of the goods represented by the bills of lading held by the bank.

154 *Supra* n 152.

155 *Id.* at [37]. According to Selvam J, the basis of this rule is estoppel and implied authorisation. His Honour said:

Once there was a conclusive dealing or settlement the cause of action against the third party is extinguished. This is especially so if the owner transfers his rights to the bailee without reservation of title. The purpose of the rule is to prevent double jeopardy.

156 *Id.* at [34] where the court applied *The Joannis Vatis* [1922] P 92 at 103 and *Eastern Construction Company Limited v National Trust Company Limited* [1914] AC 197 at 210; see also *Jet Holding Ltd v Cooper Cameron (Singapore) Pte Ltd* [2005] 4 SLR 417 at [59] where Belinda Ang Saw Ean J said:

The principle here as paraphrased by Lord Millet in *Alfred McAlpine Construction Ltd v Panatown Ltd* [2001] 1 AC 518 at 581 is that as between the bailee and stranger, possession gives a complete title and entitles the bailee to damages for the loss or injury to the property itself, whereas as between the bailee and bailor the real interests of each must be ascertained. As the bailee must account to the bailor for the thing bailed, so he must account for its proceeds. What he receives above his own interest he receives to the use of the bailor; the wrongdoer, having paid damages in full to the bailee has a good defence to any action by the bailor.

65 To succeed in conversion, the claimant must show that the defendant's act deprived the plaintiff of his right to possession or amounted to a substantial interference with that right.¹⁵⁷ Liability for conversion does not depend on the tortfeasor having knowledge that the goods belong to someone else nor any positive intention on the tortfeasor's part challenging the true owner's rights.¹⁵⁸ Hence, delivery of goods by a carrier to a consignee without production of the relevant bill of lading is a conversion of the goods even if the carrier genuinely (and erroneously) believed that the consignee was the owner of the goods and was entitled to possession of them.¹⁵⁹ The use of a letter of indemnity to obtain goods in lieu of the bill of lading is merely for the sake of business efficacy and does not in law attenuate the carrier's liability.¹⁶⁰ A case in point is *The Cherry*¹⁶¹ where the shipowners acted on the instructions of the time charterer and delivered the cargo to another party, Metro, who provided a letter of indemnity to the shipowners instead of presenting the relevant bill of lading.¹⁶²

66 The consignee of a straight bill of lading lawfully in possession of the bill of lading under circumstances that give him possessory rights in

157 See *UCO Bank v Ringler Pte Ltd*, *supra* n 53.

158 *Cycle & Carriage Motor Dealer Pte Ltd v Hong Leong Finance Ltd* [2005] 1 SLR 458 at [11] where Lai Kew Chai J said that to constitute the form of conversion referred to in that case:

“there must [have been] a positive wrongful act in dealing with the goods in a manner inconsistent with the owner's rights, and an intention in so doing to deny the owner's rights or to assert a right inconsistent with them.” ... Goods may be the subject of successive and independent conversions by persons dealing with them in such manner and with such an intention.

159 See *Sze Hai Tong Bank Ltd v Rambler Cycle Co Ltd*, *supra* n 22.

160 See *The Epic* [2000] 3 SLR 735 at [37] where L P Thean JA said:

[T]he carriers of the cargo, are not obliged to deliver the cargo on board their vessel without the production of the relevant bill of lading. Where the bill of lading is not available at the time when the cargo is ready to be discharged, they may, in accordance with recognised commercial practice, deliver the cargo to the recipient upon the latter providing a letter of indemnity (with or without it being countersigned by a bank, depending on the circumstances) in lieu of the bill of lading.

161 *Supra* n 21. The shipowners did not appeal against the High Court's decision that the respondents were the bill of lading holders and had rights of suit under the BLA against the shipowners.

162 The shipowners knew that they were not making delivery to a representative of the bill of lading holder because Metro invoked the letter of indemnity clause in requesting discharge and delivery of the cargo without production of the bill of lading. Instead of delivering all the cargo at the Fujairah storage facility, the shipowners carried part of the cargo and discharged it elsewhere. The shipowners also acted on Metro's instructions to issue false documents stating that the cargo was fully discharged.

the goods has an immediate right to possession of the goods covered by the bill of lading.¹⁶³ On this basis, the consignee has a sufficient possessory interest in the goods to maintain an action for conversion against a carrier that delivered the goods to another person without production of the straight bill of lading. Where the consignee named in a straight bill of lading does not hold the bill of lading, he is not entitled to possession of the goods and consequently lacks the possessory interest to maintain an action in conversion or detinue.

67 Where the goods have been wrongfully detained¹⁶⁴ by the carrier, the proper measure of damages recoverable in tort by the bill of lading holder is the fall in value of the goods between the time when they ought to have been delivered and the date of actual delivery (at least in a case where the claimant intends to sell the goods). This measure of damages is an application of the principle of *restitutio in integrum* and was applied by the Court of Appeal in *The Owners of the Ship or Vessel "Pioneer Glory" v PT GE Astra Finance*.¹⁶⁵ In that case, the court pointed out that there is no distinction between the torts of detinue¹⁶⁶ and conversion on the matter of recovery of damages for the depreciation in value of the goods.

68 The burden lies on the claimant to prove that the loss it suffers by reason of the carrier's conversion of the goods is the proximate or dominant cause of the loss.¹⁶⁷ According to the Court of Appeal in *The Cherry* a common sense approach is to be adopted for determining whether the conversion was the cause of the loss or merely gave the

163 This is to be inferred from the *APL* case, *supra* n 26, where the consignee did not have possession of the straight bill of lading as it was held by the shipper, Voss who was owner of the goods shipped under the straight bill of lading. Thus, Voss had the immediate right to possession of the goods at the time the carrier delivered the goods to the consignee without requiring the latter to produce the straight bill of lading. The Court of Appeal upheld the High Court's decision that the carrier converted the goods by delivering them to the consignee without requiring the presentation of the straight bill of lading. In that case, one of the plaintiff's pleaded causes of action was the carrier's breach of duty as bailee to deliver the goods against presentation of the straight bill of lading. As framed, this pleading is wide enough to include the tort of conversion against the carrier for delivering the goods without production of the straight bill of lading.

164 Wrongful retention of goods with the intention of setting up a lien is both a detinue and a form of conversion: see *Tear v Freebody* (1858) 4 CBNS 228; 140 ER 1071 and *Brandeis Goldschmidt Co Ltd v Western Transport Ltd* [1981] QB 864.

165 *Supra* n 63.

166 This tort remains extant in Singapore: see *The Kota Sejarah*, *supra* n 62, and *The Owners of the Ship or Vessel "Pioneer Glory" v PT GE Astra Finance*, *supra* n 63, at [37].

167 See *The Feng Hang*, *supra* n 43 approved in *The Cherry*, *supra* n 21, at [68].

opportunity for the loss to be sustained.¹⁶⁸ Such an approach is essentially a factual inquiry into whether the tortious conduct causally contributed to the loss.¹⁶⁹ It is irrelevant that in the absence of the carrier's conversion, someone else would have wrongfully converted the goods. However, loss that the claimant would have suffered even if he had retained the goods is not "caused" by the carrier. In this regard, the carrier bears the burden of showing that goods would have been lost even if the carrier had dutifully delivered the goods to the person rightfully entitled to its possession.¹⁷⁰

69 In *The Kota Bakti*,¹⁷¹ the Court of Appeal clarified that after the carrier's abandonment of the contractual carriage under circumstances for which the carrier is not at fault, the holders¹⁷² of the bill of lading are entitled to obtain delivery of the goods after reimbursing the carrier in its capacity as bailee for all storage charges and other reasonable expenses incurred in safekeeping the goods. If after the termination of the contract of carriage, the carrier removes the goods from the warehouse and transships them without authorisation from the bill of lading holders, the carrier is liable for the tort of trespass to the goods.¹⁷³ It was also in *The Kota Bakti* that the court held that a clause in the bill of lading purporting to confer a right of transhipment was inapplicable to a situation where the carrier had abandoned the contractual voyage and consequently terminated the contract of carriage.

70 As long as the contract of carriage has not been fully performed, possession of the bill of lading gives to the lawful holder the right to obtain delivery of the goods from the carrier on presentation of the relevant bill of lading. This was decided by Ang J in the *BNP Paribas* case.¹⁷⁴ In that case, the carrier had contended that after it parted with

168 *The Cherry*, *supra* n 21, at [68].

169 *Supra* n 21, at [69], where the Court of Appeal pointed out that consistent with this principle, every person through whose hands goods pass in a series of conversion, is himself guilty of conversion and liable to the owner for the loss caused by his misappropriation of the goods because each such person wrongfully excludes the owner from possession of his goods.

170 In *The Cherry*, the carrier failed to discharge the burden of showing that had they delivered the cargo into the storage tanks at Fujairah, the plaintiff would still have suffered the loss.

171 *Supra* n 62, at 861.

172 They were also the owners of the goods.

173 *Supra* n 62, at 861. In this case, it was not disputed that the claimants had the right to possession of the goods as they were the owners of the goods and holders of the negotiable bill of lading.

174 *Supra* n 16.

possession of the cargo (by delivering it against a letter of indemnity), it was not possible for the bill of lading to transfer constructive possession of the cargo. BNP Paribas had become the lawful holder of the relevant blank indorsed bill of lading about a week after the carrier had delivered the cargo to the notify party named in the bill of lading who had given letters of indemnity. Rejecting this contention, her Honour said that the contract of carriage generally continues and the bill of lading remains effective, until the goods are delivered to the person entitled under the bill of lading.¹⁷⁵ This is on the basis of well-established authority that such a right to obtain possession of the goods shipped under the bill of lading continues so long as complete delivery of possession of the goods has not been made to some person entitled to delivery of the goods under the bill of lading.¹⁷⁶

71 It is worthy of note that the carrier's contention that the bill of lading was spent after its delivery of the goods to a person without production of the bill of lading was also rejected by the English Commercial Court in *East West Corporation v DKBS* 1912.¹⁷⁷ In that case, Thomas J said that it was clear from the UK Carriage of Goods by Sea Act 1992 (which is the BLA in Singapore) that the reference to the right to possess is a reference to one of the primary rights emanating from the bill of lading's function as a document of title. Accordingly, his Honour held that as the party who obtained delivery of the goods had no right to take

175 For this proposition, her Honour relied on *The Future Express*, *supra* n 147 where the English Admiralty Court held that the bill of lading was not spent or exhausted as delivery was not to the person who had a right to demand delivery or was entitled to them. The goods were delivered against an indemnity to a person who did not have a right to delivery under the bill of lading. The English Court of Appeal affirmed the first instance decision on a different ground making it unnecessary for the appellate court to decide on whether the bill of lading was spent.

176 See *Barber v Meyerstein* (1870) LR 4 HL 317 and *The Berge Sisar*, *supra* n 96, at 224 *per* Lord Hobhouse of Woodborough. In *The David Agmashenebeli*, *supra* n 9, at 118, Colman J pointed out that there is nothing in the judgments in *Barber v Meyerstein* which suggests that where bills of lading have been presented to the ship and have been indorsed "Accomplished" by agreement between the ship and the bill of lading holder and where the cargo to which the bills of lading relate has been partly discharged into the possession of the party presenting the bills, there remains in those bills any residual attribute of negotiability as document of title as against the ship. On these facts, Colman J held that after the bills of lading were indorsed "Accomplished" or alternatively, after commencement of discharge of the cargo, possession of the bills no longer gave to the transferee any right as against the carrier to possession of the goods to which the bills of lading related.

177 *Supra* n 95, at 191. The English Court of Appeal affirmed Thomas J's decision on different grounds: see *supra* n 95.

such delivery, the bills of lading were not spent when the goods were delivered to it.¹⁷⁸

C. Proprietary rights

72 Under the general law,¹⁷⁹ the indorsement and delivery of a negotiable bill of lading cannot give the transferee a better title than the transferor has in the goods; such indorsement and delivery is only capable of giving to the transferee as good a title as the transferor has in the goods. So where a pledgee is an indorsee of the bill of lading, the pledgee's indorsement and transfer of the bill of lading to another would, at the most,¹⁸⁰ give to the other the pledgee's interest in the goods.¹⁸¹

73 A person with either legal ownership or a possessory title to the goods at the time of the loss or damage may sue in negligence for damages. This was established by the House of Lords in *Leigh and Sillavan Ltd v Aliakmon Shipping Co Ltd (The Aliakmon)*.¹⁸² The principle

178 Thomas J relied on Willes J's judgment in *Meyerstein v Barber* (1866) LR 2 CP 38 at 53 and Lord Hatherley LC's judgment in the House of Lords (reported as *Barber v Meyerstein*, *supra* n 176) at 332. It should be pointed out that the relevant passage of Lord Hatherley LC's judgment appears at p 333 of the law report and not at p 332 as Thomas J mistakenly believed. At p 332 of the law report, Lord Hatherley LC was summarising the reasoning of Baron Martin in the Court of Exchequer Chamber. It is also to be noted that the report of Thomas J's judgment incorrectly states that Willes J and Lord Hatherley LC had given their judgments in *Glyn Mills Currie & Co v The East and West India Dock Company*, *supra* n 148.

179 The position under statutory law is different: see ss 8 and 9 of the Factors Act (Cap 386, 1994 Rev Ed) and ss 24 to 26 of the Sale of Goods Act (Cap 393, 1999 Rev Ed).

180 The conferment of a possessory interest in the goods depends on the parties' intentions.

181 See the facts of *The Jag Shakti*, *supra* n 150, where the claimant was the indorsee of two negotiable bills of lading which had been indorsed to it by a party who had financed the sale transaction and had a pledgee's interest in the goods shipped under the bill of lading; see also *Gurney v Behrend* (1854) 3 El & Bl 622 and *Finlay v The Liverpool and Great Western Steamship Co* (1870) 23 LT 251.

182 [1986] AC 785. In this case, a seller under a cost and freight contract of sale sent to the buyer a bill of lading which named the buyer as consignee and was indorsed to the buyer. As the buyer was unable to pay the seller in accordance with the original contract, the buyer agreed to take delivery of the goods as agent of the seller. At the port of discharge, it was found that improper stowage had caused damage to the goods. The House of Lords decided that the buyer had no cause of action against the carrier either in contract or in tort in respect of damage done to the goods even though the resulting loss fell on the buyer, the risk having passed to him on shipment of the goods. The upshot is that the person with only constructive possession of the goods through holding the bill of lading (like the buyer in *The Aliakmon*) lacks the requisite possessory interest in the goods to maintain an action in negligence.

in *The Aliakmon* has been applied by the Singapore courts. Judith Prakash J who delivered the judgment of the Court of Appeal in *The Cherry* had occasion to summarise the principle in *The Aliakmon* in the following terms:¹⁸³

[I]n order to enable a person to claim in negligence for loss of or damage to property, he must have had either the legal ownership or a possessory title to the property concerned at the time of the loss or damage and it is not enough for him to have had only contractual rights in relation to the property at that time. This meant that to sue in negligence, either legal ownership or possessory rights would suffice.

74 In the recent case of *The Patraikos 2*,¹⁸⁴ Lai Siu Chiu J found that the plaintiffs in that case had legal ownership of or possessory title to the cargo at the time of their loss based on the fact that no other person had in the past five years made a claim to the cargo and on the defendants' conduct *vis-à-vis* the plaintiffs that was only consistent with the defendants having accepted the plaintiffs' entitlement to possession of the cargo.¹⁸⁵

75 The owner of goods in possession of the bill of lading is entitled to bring an action in negligence as can be seen from *The Kota Bakti*.¹⁸⁶ In that case, the holders of the bill of lading were also the owners of the goods who claimed in negligence against the shipowners for loss of the goods. The shipowners had, after abandoning the voyage and terminating

183 *Supra* n 21, at [65]. For the statement of the applicable legal principle by Lord Brandon of Oakbrook: see *The Aliakmon*, *supra* n 182, at 809.

184 [2002] 4 SLR 232. In this case, the plaintiffs claimed under straight consigned bills of lading and/or as holders and/or indorsees who had taken delivery of the cargo from the defendants in Singapore, after surrender of their original bills of lading. The plaintiffs were identified as the notify party under the bills of lading. Some of the bills of lading named a bank as the consignee. Various shippers of the goods also appeared in the consignee's column by the remark "to shipper's order". For another Singapore case where the principle established in *The Aliakmon* was applied: see *Jet Holding Ltd v Cooper Cameron (Singapore) Pte Ltd*, *supra* n 156.

185 *Supra* n 184, at [137]–[138], where Lai J pointed out that the defendants must have been satisfied with the plaintiffs' title in the goods as otherwise they would not have delivered the cargo in exchange for the bills of lading presented by the plaintiffs. Lai J also said that the plaintiffs had furnished to the defendants Lloyd's Average Bonds in exchange for the defendants' surrender of their lien on the cargo for general average contributions.

186 *Supra* n 62.

the contract of carriage, taken the claimant's goods from the warehouse¹⁸⁷ without authorisation and shipped them on board the vessel Kota Agung. While the goods were on board the vessel, a fire broke out on board the vessel and destroyed the goods. In these circumstances, the court held that the first carrier was a bailee of the goods by reason of its tortious act of transhipping the goods on board the Kota Agung.¹⁸⁸ The Court of Appeal affirming Chan Sek Keong J (as he then was) held that the shipowners were liable in negligence for not taking due care of the goods given their highly sensitive and combustible nature.¹⁸⁹

76 The right of the owner of the goods to claim in negligence against the carrier as bailee of the goods subsists notwithstanding that a lawful holder of the bill of lading has rights of suit under the BLA by reason of the indorsement and delivery of the bill of lading.¹⁹⁰ The carrier is not imperiled by the potential duality of claimants as the carrier is entitled to deliver the goods to a lawful holder of the bill of lading on his production of the relevant bill of lading.¹⁹¹

77 Just as a pledgee's possessory interest in the pledged goods enables him to maintain an action for conversion, his special interest in the pledged goods is sufficient to maintain an action in negligence for loss or damage to the goods. The pledgee who seeks to claim in negligence will have to show that he had acquired his possessory interest in the goods at the time of loss or damage to the pledged goods.¹⁹²

78 The decision of the High Court in *Steelmet Pte Ltd v APL Co Pte Ltd*¹⁹³ is authority for the proposition that an owner of goods without any

187 After the abandonment of the voyage, the goods were brought to a port and the carrier discharged the goods from the vessel and stored them in a warehouse.

188 The Court of Appeal found that the shipowners had committed the tort of conversion when they transhipped the goods on board the Kota Agung without any authorisation from the owners of the goods.

189 The court also held that the shipowners bore the burden of showing that the fire was not occasioned by their negligence as they were bailees of the goods which had been shipped in good order and condition: see *The Kota Bakti*, *supra* n 62, at 862 and at first instance, *The Kota Sejarah*, *supra* n 62.

190 *East West Corp v DKBS AF 1912 A/S (CA)*, *supra* n 95, at 1539–1540 per Mance LJ.

191 See *Barber v Meyerstein*, *supra* n 176; *Glyn Mills Currie & Co v The East and West Indian Dock Company*, *supra* n 148; *East West Corp v DKBS AF 1912 A/S (CA)*, *supra* n 95, at 1539.

192 This is an application of the principle in *The Aliakmon*.

193 *Supra* n 57.

right to immediate possession of the goods is not entitled to claim in negligence for the loss of the goods. In this case, the plaintiff had indorsed eight bills of lading to three banks. At the port of discharge, the carrier wrongfully delivered the goods to the notify party named in the bills of lading without requiring the production of the eight bills of lading. The plaintiff's claim against the carrier for negligence¹⁹⁴ failed because Judith Prakash J found it did not retain ownership in the goods after its indorsement of the eight bills of lading to the banks especially since the banks "purchased" the bills of lading on terms which allowed them to have recourse to the plaintiff. Her Honour said:¹⁹⁵

The documents [the plaintiffs] submitted appeared, to me, to show a sale to the banks. This would mean that title to the goods would have passed to the banks at the same time. The fact that the banks had purchased 'with recourse' meant that the banks could require the plaintiffs to repurchase the documents from them. If the banks exercised that right and the repurchase took place, title would then pass back to the plaintiffs. Until then, however, ... the banks and not the plaintiffs owned the goods. The position *vis-à-vis* the banks was not entirely explained and there was the possibility that the documents had been endorsed as security for advances rather than in order to pass title pursuant to the sale. If that was the case, then as the plaintiffs submitted, whilst the banks would have special property rights in the documents, the plaintiffs would retain their general property rights.

79 Thus, it is clear from *Steelmet Pte Ltd v APL Co Pte Ltd* that where the owner of goods has no right to possession of the goods, he lacks the possessory interest to maintain an action in negligence against the carrier for wrongful delivery of the goods.¹⁹⁶ Hence, an owner of goods with bare title in the goods (without any right to possession of the goods) may not

194 *Ibid*, at [14]–[15]. The plaintiff failed in its claim in contract because at the time it filed its writ, it had no standing to sue under the BLA since it was not then the "holder" of the relevant bills of lading. The plaintiff also conceded before Prakash J that mere ownership of the goods did not give it title to sue the carrier in contract. Hence, the plaintiff relied on its ownership of the goods to claim in the tort of negligence against the carrier. The plaintiff had also relied on the tort of conversion but as it was found by the court not to have the immediate right to possession of the goods, the claim in conversion also failed: *id*, at [19].

195 *Id*, at [16].

196 A bailor with a right to possession of the goods may maintain an action in negligence for loss of the goods: see *East West Corpn v DKBS AF 1912 A/S (CA)*, *supra* n 95.

bring an action in negligence against the carrier for loss of the goods¹⁹⁷ unless there is injury to his reversionary interest in the goods.¹⁹⁸

80 Where the carrier has abandoned the contractual voyage and terminated the contract of carriage, the owners of the goods have the right to obtain delivery of the goods. This was established by the Court of Appeal in *The Kota Bakti*.¹⁹⁹ At common law, the carrier has no right to tranship the goods after its abandonment of the carriage and termination of the contract of carriage.²⁰⁰

IV. Conclusion

81 The foregoing excursus on Singapore case law relating to the enforcement of rights under bills of lading has shown that the Singapore courts are alive to the needs of the maritime and commercial communities for certainty and pragmatism in the application of legal principles. Consistency in the application of legal principles is much to be desired but at the same time, one should be mindful of Justice Oliver Wendell Holmes' observation that "[t]he life of the law has not been logic: it has been experience".²⁰¹ It cannot be gainsaid that experiential development of legal principles enables the law to keep pace with the expectations of the maritime and commercial communities and consequently ensures that the law remains relevant to the fast-changing commercial landscape. After all, the same considerations led to the courts

197 See *HSBC Rail (UK) Ltd v Network Rail Infrastructure Ltd* [2006] 1 Lloyd's Rep 358 where the English Court of Appeal held that a bailor with a bare proprietary title with no right to possession of the goods may not sue in negligence for damage or loss to the goods.

198 *Ibid.* The English Court of Appeal accepted that in cases where the owner of goods has no possessory interest, he may maintain an action in negligence for loss of the goods if there is actual and permanent injury to his reversionary proprietary interest. However, any claim for reversionary injury must be treated as ancillary or parasitical to the principal tort to which it relates (*viz*, trespass to goods, conversion, detinue or negligence); see *East West Corp v DKBS AF 1912 A/S (CA)*, *supra* n 95, at 1533. If the person with the reversionary proprietary interest has been compensated for loss of the goods, he may not maintain an action in negligence because there is no permanent injury to his reversionary proprietary interest; see *HSBC Rail (UK) Ltd v Network Rail Infrastructure Ltd*, *supra* n 197.

199 *Supra* n 62.

200 *Ibid.*, at 856. In this case, the court restrictively construed an ambiguous term in the bill of lading which purported to give the carrier a general right of transhipment such that it was inapplicable after the carrier's abandonment of the contractual voyage.

201 Oliver Wendell Holmes Jr, *The Common Law* (Little, Brown and Company, 1881, republished by Dover Publications, 1991) at p 1.

recognising the bill of lading as a document of title which is hailed today as having been born out of the genius of the common law.