

## Comparative Study of Bill of Lading Function as Title Document

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### Abstract

One of the new transformations in the scope of maritime transportation about shipping documents includes non-paper (electronic) maritime transport documents. Three principal functions of a bill of lading in maritime transportation comprise receipt of carriage of good, reason for carriage contract, and title document. The majority of studies are about to realize the functions of carriage receipt and reason for carriage contract within substitution of electronic documents, such as replacement of paper bill of lading with an electronic bill of lading. While there is not the same conclusion about the function of the title document and this doubt on the result is beyond the replacement of paper documents with electronic documents caused by ambiguities in considering the bill of lading as a title document of goods and function of a bill of lading as a title document. In general, the transfer of a bill of lading does not mean the transfer of ownership while ownership is transferred through a contract of goods' sale and bill of shading is considered as a document that indicates a property of goods to facilitate transactions within commercial operations.

**Keywords:** bill of lading, title document, possession (seizure), contractual rights

### 1. Introduction

The fundamental question about the electronic bill of lading is that whether the electronic bill of lading can fulfill the function of a paper bill of lading when it considered as a title document of carrying goods or not. Responding to this question includes a key introduction, and this introduction is to answer the question whether a bill of lading is a title document of goods as well as a tool to transfer property of the goods. In other words, the introduction to the realization of the function of an electronic bill of lading considering it as a title document examining whether a paper bill of lading has been replaced with an electronic bill of lading can be considered as a title document or not.

Many authors have described the bill of lading as a document of title or symbol of the title. The purpose of title document of goods is to provide transaction possibility for owner through the document, for instance; through the sale or litigation based on the document despite the transferee of goods does not physically possess goods, can be yet transacted using a document of title (Meiselles, 2013, P. 86).

Consideration of the bill of lading as a document of title historically goes back to a sixteenth century and the last decade of the eighteenth century in Britain (Porter Benneett, 1913, P. 16).

The common law considers Bill of lading as a title document of existing goods on board of a carrying ship by sea. The main legal advantage of the bill of lading is that this document as a title document can be considered as a collateral of carrying goods on board. This feature would facilitate the process of the international sale of goods. For instance, if the buyer needs to get a loan from a bank, the bank can ask for a bill of lading as a guarantee, ensuring the debt payment (Curwen, 2007, P. 162).

On the other hand, bill of lading or any other title document is issued with the aim of facilitating the transfer of rights of goods when they are seized by carrier (Güner-Özbek, 2007, P. 168).

The other point is that although transaction-ability of the bill of lading leads to the effectiveness of the function of a property of bill of lading especially in maritime transportation, it should be noticed that there is a difference between a title document and transaction-able document.

Property documents are activated through customs of each trade, commercial place, trade law or the relevant substantive law (Maximilian Schmitthoff, 1988, P. 377). Bill of lading like another title document is used to access goals of contractual rights and property rights. The results of issuance or transferring of a title document are related to the implementation of contractual obligations between the exporter and the owner or transferor and transferee as far as they relate to rights of contracts. Contractual conditions determine the executive performance of these documents. Possession of a title document such as a bill of lading can indicate the matter that the carrier of the bill of lading is a party of relevant contract having rights caused by the bill of lading.

The rights and responsibilities of signed carriage contracts after 16 December 1992 in England Law have been covered by the Carriage of Goods by Sea Act 1992 (COGSA).

Carriage of Goods by Sea Act adopted in 1992 is used for different carriage documents including bill of lading, maritime waybills, and orders for delivery of cargo. The used property in this Act is not related to cargo but is related to the legal carrier or determined transferee in carriage document without the need to prove that such carrier or transferee is the owner of determined goods in this document.

In addition to this effect, transfer of rights is done through the carriage contract independently from the transfer of other responsibilities. Therefore, transfer of a paper bill of lading would transfer the relevant rights of implementation of carriage contract with the new holder toward the carrier.

For property law, transfer of a bill of lading in the performance of a contract of sale will usually transfer to the transferee title to the goods that the bill represents (Goldby, 2011, Pp. 3-4). Therefore, this function of a bill of lading in relation with property guarantees that property of sold goods and any possession of these goods belongs to the transferee of the bill of lading. According to this right of ownership, bill of lading transferee has a right to possession (seizure) such as selling the carrying goods on board of a ship at sea. This ownership right is first caused by created property by sale contract assumed for its holder in the bill of lading and then it is related to contractual obligations caused by contracts' rights.

In other words, bill of lading holder as the holder of title document has the right to possession toward involving goods in the bill of lading not because of being obliged of sale contract but because of being billed of lading holder. In other words, the role of the bill of lading regardless of basic carriage contract is considering the bill of lading holder as the owner of carrying goods, giving authority of having possession and seizure in carrying goods to the holder.

These features in trade customs are more based on the matter that the bill of lading holder as the holder of title document has right of property seizure in involving goods in the bill of lading compared to being based on contractual obligations.

The meaning of electronic title bill is that this document is proved by a formed background from stored information in electronic mediators (Mann, Barry, 2015, P. 85).

It has been stated about electronic bills of lading if such bills can ensure contract parties about the function of this bill as title document. It would be doubted on the matter if the electronic message as a bill of lading can realize the property function similar to a paper bill of lading in the absence of any explicit judicial definitions, rules, and regulation have recognized the function of an electronic bill of lading.

In general, there are three main functions considered for a bill of lading as the title document that includes transfer of possession (seizure), transfer of property, and transfer of contractual rights. It would be important to study the possibility of realization of these three functions of a bill of lading considering as title document.

## **2. Method**

### *2.1 Transfer of Possession*

The matter has been accepted at world scale that transfer of a bill of lading acts as a transfer of possession of described goods in the bill of lading. Using a legal fiction, possession of the bill of lading has been considered as the possession of its involved goods. Bill of lading performs as a symbol of property, and its transfer is considered as symbolic delivery of goods with similar signs and effects of physical delivery. The right of possession of goods would naturally guarantee the right of different seizures in goods permitting the bill of lading holder to supply transiting goods (for sale) through the transfer of a bill of lading. The right to deliver goods is based on the right of possession. Therefore, the legal holder of the bill of lading can use this bill as a tool to supply goods for sale or obtain goods delivery.

The purpose of transferring a bill of lading is not to transfer the title, but the constructive (symbolic) delivery of goods during the carriage. The exclusive title that the bill of lading consistently carries is the right to demand the

goods represented in it from the carrier and to take those goods into possession. The transfer of the bill of lading constitutes the transfer of what the bill of lading represents is a constructive possession, not the property (Pejovic, 2004, P. 50). Bill of lading holder has right to demand carrier for the possession of goods because the bill of lading is the key to the warehouse (Chan Leng Sun, 1995, P. 355). This function of a bill of lading has been expressed by John F Wilson as:

“The bill merely “represents” the goods and possession of the bill of lading is treated as equivalent to possession of the goods covered by it – no more, no less (Anderson, 2005, P. 23). Accordingly, right of demanding and possession of described goods is the only right that is undoubtedly transferred to transferee after the signing of a bill of lading (Güner-Özbek, 2007, p. 168).

In this regard, although the transfer of a bill of lading might not be done to transfer of possession, it is evident that the bill of lading, as a document of title would give the right of possession of goods. In fact, delivery of the bill of lading is treated as the effective delivery of involved goods to the holder, and the bill of lading holder has any right to possession and the seizure of associated goods based on this constructive delivery.

This effect is caused by the unique feature of the bill of lading about the sale of carried goods by the sea as if physical delivery of goods to the purchaser is not possible at the time of moving goods by sea. Hence, delivery is done by the carrier and a mediator who receives these goods from the seller (shipping company) to deliver the cargo to the purchaser (or transferee) after presenting a bill of lading. In fact, the seller delivers the goods through transferring the bill of lading to purchase were giving the demand right of goods delivery from the carrier to the purchaser after presenting a bill of lading at the port.

This right to demand is based on the sale contract instead of carriage contract. To implement relevant obligations to the sale contract, the seller signs the carriage contract with the carrier and receives the bill of lading after delivery of goods. When a seller transfers the bill of lading to the purchaser, possession of goods will transform from the seller account to possession of customer account by the carrier.

It should be noticed that all carrying goods are moveable properties to understand the role of the bill of lading within a documented sale considering the subject that transfer of possession (documents of title) in the case of moveable properties is the most important factor in the transfer of property of the goods. Transfer of bill of lading regarding the transfer of property in a documented sale transaction seems enough by the matter that this transfer is treated as a transfer of possession of goods. Because the law of ownership of movable properties is based on the trust in outward aspects and transfer of possession of goods through the transfer of a bill of lading is considered as a transfer of property of the goods.

Bill of shipping as a document of title is appropriate to actualize such role. Bill of lading would enable the lawful holder of it through the transfer of a bill of lading toward the physical acquisition of goods at destination port and supply of goods have not yet physically possessed by the purchaser.

Meanwhile, the retailer delivers the goods to the carrier; he can only have constructive possession of the goods. The seller can retain control over the goods after he had delivered them to the carrier if the bill of lading is issued on his order until the buyer pays the price or accepts the bill of exchange. Thus, the seller can be sure that the buyer who refuses to pay, or cannot pay the price, will not get the goods. The buyer cannot receive the goods from the carrier without the bill of lading, and he will not obtain the bill of lading before he pays the price, or accepts the bill of exchange. The seller will lose control over the goods and the right to dispose of the goods at the moment he transfers the bill to the buyer. By acquiring the bill, the buyer receives the control over the goods and constructive possession. If he wishes so, the consumer may dispose of the goods by transferring the bill to a new buyer (Pejovic, 2004, Pp. 50-51).

## *2.2 Transfer of Property*

The second function discussed in the paper bill of lading is whether the transfer of a bill of lading is itself considered as a transfer of property.

As a general principle, the property is not transferred only through the transfer of a bill of lading. Bill of lading as an issued document by carrier naturally implies the goods are receiving for carriage.

The quality of goods is assigned to the buyer based on the specified principles in the sale contract so that this transfer can be conditionally realized after paying the total price of goods (Dubovec, 2006, P. 442). Bill of lading is issued based on the carriage contract between carriers and shipping company, and the issue of property treated out of the range of carriage contract.

Although the bill of lading treated as a document caused by contract, bill of lading can include other individuals

(except parties) of carriage deal. Transport contract is usually signed after sale contract and transfer of a bill of lading; therefore, bill of lading is considered as the reason for the matter that goods for carriage have been delivered based on the sale contract while buyers use bill of lading as the right to receive goods. Neither shipping company nor transferee of goods are definite parties of the sale contract, but they only can perform on behalf of seller and buyer.

Transfer of bill of lading has the aspect of transfer of property in the majority of cases. However, some special conditions should be realized to actualize transfer of property.

The first condition to achieve the transfer of property through bill of lading is that the transferor should have an appropriate property of guaranteed goods in the bill of lading so that it can legally enable him for coordination with no dating rule toward the transfer of it. The transferor is not obliged to prove that he has been the owner at the time of transfer of a bill of lading since such obligation is against the trade customs.

The second circumstance is that the transferor and transferee have agreed on the transfer of property if the conditions of transfer exist.

It has been emphasized that the contract of sale would activate the transfer of property and bill of lading only facilitates this transfer (Pejovic, 2004, P. 53). Therefore, although the bill of lading can be treated as a document of title, transfer of a bill of lading does not require the transfer of property of goods unless the realization of mentioned circumstances. In other words, the transfer of a bill of lading (itself) is not related to transfer of property of the goods (Furmston, 2001, P. 192).

The important point in this field is related to the role of trade customs in treating the transfer of a bill of lading as the transfer of property. This role about electronic bills of lading is raised. Legal projects such as Bolero, C Dox, and UNCITRAL can successfully perform when they recognize the role and function of transfer of property of electronic bill of lading by trade customs and involved individuals in maritime transportation in addition to provided mechanisms in these laws.

The role of the lading bill in the transfer of wealth is not the same under all national laws. The rules regulating the transfer of property are different in various federal laws, and the answer to the question of whether the property can be moved by the transfer of a bill of lading depends on the applicable law (Pejovic, 2004, P. 55). In other words, although the possession of the bill of lading would create a right for holder over the possession of goods, the final question about the property of the goods is responded with the customs regulations of the personal property law (Von Ziegler, 2011, P. 13).

The relevant problem for the treatment of the transfer of a bill of lading as the transfer of property has been examined in three legal systems of English, French, and German. These legal systems (as active advanced countries in the field of legislation and international commerce) have served, more or less, as models for most national laws in the world.

In English law, property in the goods is transferred when the parties to the contract intend it to be transferred (Sale of Goods Act section 17).

Hence, property in goods will be transferred by a transfer of a bill of lading if the transfer of the bill of lading has been made by the owner with the intention of passing the property to the transferee.

In French law, property in the goods passes from the seller to the buyer at the moment when they have agreed with the goods and the price (*solo consensus*), even though the goods are not delivered nor the price paid (French Civil Code article 1153). The transfer of a lading bill, so, operates as a transfer of the possession of the goods, while the contract of sale transfers the property.

The seller carries out his contractual duty by transfer of a bill of lading to the buyer, while at the moment of the transfer of a bill of lading the property already passes to the purchaser. The importance of the transfer of a bill of lading in this legal system lies solely in the fact that it enables the consignee to acquire physical possession of the goods at the port of destination.

In German law, there are two conditions for the transfer of property: the agreement of the parties and the delivery of the goods (Civil Code Article 929). This system is based on Roman law, based on which property could be transferred if two conditions fulfilled the legal ground ("*Justus titulus*") and the method of acquiring the thing. The legal field is the contract of sale, and the way of acquiring is the delivery of the goods. Delivery of the goods can be done symbolically by the transfer of a bill of lading. The German Commercial Code Article 650 expressly provides that the provision of a bill of lading has the same effect as the delivery of the goods. It means that the transfer of a bill of lading affects both the transfer of possession and the transfer of property at the same time

(Pejovic, 2004, P. 56).

### *2.3 Transfer of Contractual Rights*

According to the Clause 6 of Article 1 of Hamburg Convention, 1978 about the definition of carriage contract, "contract of carriage by sea" means any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another. However, a contract which involves carriage by sea and also carriage by some other means is deemed to be a contract of carriage by sea for this Convention only in so far as it relates to the carriage by sea.

Therefore, contract definition is first a guarantee for a lawful relation between carrier and owner of the goods. The contractual relation is between buyer and carrier in this contract because of the obligation as the third party is for the carrier so that he is supposed to deliver the goods at the destination port to whom (buyer) presents a bill of lading.

According to Article 1 of the Rotterdam Convention, 2008 about the definition of the contract of carriage similar to regulations of Hamburg, a carriage contract is a contract in which, the carrier is obliged to move goods from one place to another in exchange for paying the freight. Carriage contract embodies the carriage by the sea as well as other maritime carriage methods.

Accordingly, the definitions in texts of Hamburg and Rotterdam Act include "maritime bill of lading" or other specific contracts. Finally, it can be expressed that "bill of lading" is the relation making goods sender to consider the right for goods' receiver after receiving goods from the carrier or making carrier responsible in front of goods receiver instead of being a contractual and legal relation between the receiver of goods and the carrier. Since the "bill of lading" is carriage contract, would give the right of demand for covered goods in the bill of lading from the carrier at destination port in accordance with the contractual relation indicated in the bill of lading.

In fact, the sender of the goods has an obligation to the third party (receiver) through issuing bills of lading. Because of the property of the goods without the need to contract between the receiver and carrier so that the receiver who his name is recorded on the bill of lading can demand the goods from the carrier at destination port (Taghizade, 2015, P. 89).

Under common law, in the past, the contracts were not assignable, so that although the transfer of a bill of lading could affect a transfer of property in the goods, it did not transfer the rights and liabilities under the contract of carriage. Consequently, by the doctrine of privity of contract, the transferee of a bill of lading was not able to sue the carrier on the contract of carriage, as he was not a party to it. This problem was partly solved by the Bills of Lading Act 1855 (U.K) to deal with this problem by providing that the transfer of a bill of lading has to effect the transfer of the contract of carriage. Nevertheless, a transferee had a right of action under the bill of lading only if the property in the goods stated to him "upon or because of such consignment or endorsement. Of course, the linking of transfer of contractual rights under a contract of carriage with the passing of property by the transfer of a bill of lading is contrary to the nature of the contract of carriage.

The right of action against the carrier is connected with the right to delivery of the goods. In the case of delay, damage or loss of the goods it is logical that the person who was entitled to receive delivery is entitled to claim damages against the person who has made the delivery.

The right of the consignee, as the lawful holder of a bill of lading, to the delivery of the goods, includes the right to obtain compensation for damage because it merely represents the value of the goods that the carrier failed to deliver.

The consignee is entitled to claim damages against the carrier if the damage or loss occurred while the goods were in the custody of the carrier, regardless of whether he is the owner of the goods or whether he suffered the loss. The consignee's right of action is based on the contract of carriage and the property in the goods is not relevant to the relationship of carrier and consignee (Pejovic, 2004, P. 57).

Therefore, the legal relation between the carrier and consignee of goods is analyzed through the effects of the transfer of a bill of lading to transferee not based on the contract of sale of goods. In other words, the liability of the carrier of goods toward consignee of goods not only can be raised from the rights of carriage contact between seller and carrier but also can be so that the consignee of goods (guarantee of this contract) as the obligation to the third party. However, the holder of the paper bill of lading as the holder of a document of title to goods can demand carrier for goods delivery. This demand right would give the right for compensation to the bill of lading holder if there is any loss or damage in the delivery process against the carrier. Therefore, this document would enable the bill of lading holder to file a lawsuit against the carrier demanding for compensation and the carrier is

not able to demand property proof through another method against the bill of lading holder. When the bill of lading is held by someone, the carrier is obliged to deliver goods to him. Therefore, transfer of a bill of lading to transferee would give the right to demand goods delivery as well as filing lawsuit against the carrier who has caused damage within goods delivery process.

According to the mentioned points, transfer of paper bill of lading has following consequences:

Transfer of possession, transfer of property and transfer of contractual rights. Study of the functions of a paper bill of lading indicates disagreements on the treatment of paper bill of lading as the document of title that property transferred when this document is transferred. Many of theorists believe that transfer of a bill of lading is not equivalent with the transfer of assets, but is only a tool that facilitates the transfer of property through a contract of sale.

According to many of legal systems such as Iran, the buyer will be the owner of sold goods right after the signing of the contract of sale. So that the issuance and delivery of the bill of lading to buyer occur after transferring the property of the goods to the purchaser and delivery of the bill of lading is not treated as a transfer of property of the goods to the customer. In this regard, Bill of lading is a symbol of assets that holder of it has the right to receive goods, demand for compensation and other seizures in carrying cargo such as disposing it to another person for sale.

### **3. Bill of Lading as Document of Title within Iran's Law**

There is not a determined text in Iran's Law and Maritime Law about the function of a property of bill of lading. The legislature is just considering one of the three primary features (reason for carriage contract, receipt of goods receiving, and document of title) of the bill of lading within Clause 7 of Article 52 when defining a maritime bill of lading. According to this Article, maritime bill of lading is a document that includes the whole specifications of cargo signed by the ship's commander or any other person determined by him carrying the obligation out to deliver the cargo to destination and consignee. Maritime bill of lading or similar documents is used as the receipt of goods delivery.

According to the mentioned definition, the legislature only describes the bill of lading and mentioning that it is as the receipt of goods delivery without any point whether the bill of lading can be treated as the reason for the property of goods or not. On the other hand, treatment of bill of lading as a document of title has a close relation with transaction capability of the bill of lading. In other words, bill of lading should give the right of exclusive control and possession over transiting goods to the bill of lading holder based on the function of a document of title.

Iranian legislature has only given the right of receiving cargo to the bill of lading holder by the Clause 6 of Article 52 of Maritime Law of Iran. According to this Article and definition of the receiver, receiver (consignee) is a person who has right to receive cargo based on the bill of lading.

Accordingly, the bill of lading holder is the only person with the right to receive goods from the carrier. By Maritime Law of Iran, the possibility of a transferable issuance bill of lading in Maritime Law of Iran is a point in which, maritime bill of lading is treated as a document of title to goods.

According to the Articles 61 and 65 of Maritime Law of Iran, the possibility of the bill of lading issuance for carrier and its consequences has been recognized in Iran's Law. Bill of lading is issued to the order of carrier if the sender of good has intention not to determine the identity of the good's receiver in the bill of lading and not to mention his name as the sender. Therefore, he signs an agreement with ship's commander or carrier to issue the bill of lading to the order of carrier. In this case, the holder of issued document in the order of carrier treated as the owner having the right to receive goods, and no one is permitted to violate such right. It is not required to write anything on the backside of the bill of lading for assignment, but done through taking delivery and handling over the goods (Elsan & Amini, 2014, P. 42). In fact, the holder of issued bill of lading to the order of carrier can transfer it to the other person endorsing it. In this case, bill of lading issued by order of a determined person, and he can transfer it to the other person supporting it. The endorsement should be under the regulations of trade law in such conditions. Therefore, firstly, the endorsement should be signed by the endorser and secondly the date and the name that bill of lading is transferred to him might be mentioned in the endorsement (Najafi Asfand, 2014, P. 109).

The possibility of issuing a bill of lading to the order of the carrier or other person indicates that such bills of lading, by the text of Article the 61 mentioning "like cheque," have effects like trade documents (such as a cheque) that its transaction ability has been recognized in trade customs. Accordingly, bill of lading in Iran's Law can be treated as the document of title to goods, giving ownership possessions rights like other trade documents.

Consideration of the bill of lading as a document of title in Iran's Law would give the right of possession for a bill of lading holder such as any other document of title based on property rights on covered goods in the bill of lading. Therefore, bill of lading holder can use it as collateral or control of carrying goods and sell them along with the transfer of a bill of lading to the other person. Hence, the right of control and exclusive possession that are advantages of a document of title for its holder have been recognized for the holder of the original bill of lading in Iran's Law. According to Clause G of Article 1 of "Executive Procedures of the Law of Transit of Foreign Goods through the Territory of Islamic Republic of Iran" adopted in August 1998, bill of lading has been expressly treated as the document determining ownership of goods. In other words, although Maritime Law of Iran has no explicit text to treat bill of lading as "document of title" and such matter can be understood based on the functions of a bill of lading in Maritime Law of Iran. But Executive Procedures of the Law of Transit have explicitly considered the bill of lading as a document of title. According to Clause G of Article 1 of this Act, Bill of Lading is a document determining ownership of goods, which is issued by the carrier or its representative upon receipt of the goods. It indicates transportation of specific goods from one point (origin of carriage) to another point (destination of the carriage) by the agreed transportation means (ship, truck, train, airplane or a combination of them) against specific transport charges.

On the other hand, maritime bill of lading is considered as trade documents. In general, two types of trade documents have been identified by lawyers. Trade documents with general meaning and trade documents with a specific meaning. Hence, trade document has two general and specific meanings (Eftekhari, 2006, P. 36). According to the definition of trade documents with a specific meaning, these documents include some documents such as a bill of a determined cash with no predicted due date or on demand for payment that are transferable through endorsement. According to this definition, although the bill of lading is transferable through endorsement, bill of lading indicates determined cash also is representative of covered goods by it. Therefore, this bill of lading is not treated as a trade document with a specific concept.

On the other hand, there are two mentioned features for these documents when defining trade documents with the general concept. Many of lawyers consider trade document with the general concept of documents used by businesspersons and commercial companies within the territory of trade (Safaei, 2005). Many other lawyers consider these documents as documents with predicted special regulations by the legislature to adjust and issue them when expressing other features of trade documents in their general meanings; hence, those documents without such conditions are not treated as trade documents (Laryea, 2002).

According to the specifications of trade documents, it seems that maritime bill of lading is treated as a trade document because of having both specifications of trade documents with their general concept regardless of mentioned term "such as cheque" in Article 61 of Maritime Law of Iran. Bill of lading has the first specification because it is usually used by traders and active companies in the territory of trade activities; this document also has the second specification because the legislature has considered specific conditions in this document (maritime bill of lading) in Maritime Law of Iran.

Legal base of ownership of the holder of an issued document in the order of carrier (such as a bill of lading to the order of carrier) can be considered as the sentence appointed by the legislature in the Civil Code (Eftekhari, 2001, P. 259). The legislature has described in Article 35 of the Civil Code, possession of the title of ownership shall be taken as proof of ownership unless the contrary proved. The legal meaning of possession is domination and control over a property to exercise the right (Safaei, 2005, P. 205) and as it was mentioned, bill of lading is included in movable properties as the document indicating ownership. Moreover, the holder of the bill of lading as a trade document issuable to the order of carrier is considered as the owner of it based on Article 320 of Trade law, including "the holder of any document in the order of carrier is the owner with right of demand for payment."

Therefore, bill of lading in Iran's Law is recognized as a document of title seeming that function of ownership of the bill of lading in Iran's Law are possible to be realized by the text of Article 61 and term "such as a cheque." It includes the transfer of possession, transfer of property and transfer of contractual rights, although issuance of an accurate sentence in this field is related to the transfer of ownership of goods under the contract of sale and contractual conditions of between the parties.

#### **4. Conclusion**

The rights raised from the bill of lading will be transferred to the buyer after transferring it. Transfer of these rights in the frame of the bill of lading is considered when the cargo is carrying on board of the ship for a long period during the carriage of goods by sea. Bill of lading is a tool that helps buyers and bill of lading holder can dispose of carried goods covered in the bill of lading to the market. In fact, bill of lading would enable its holder

to have possession raised from property rights of goods if the bill of lading is tradable. This ability causes the consideration that carrying goods on board of the ship have been symbolically transferred to the bill of lading holder making the possibility of property possessions such as symbolic dispose of goods for sale or use covered goods in the bill of lading as collaterals based on this symbolic delivery and recognition of this right by the commercial procedure.

The bill of lading can be treated as a document title if it realizes the functions of every property document such as transfer of possession (or seizure), transfer of property, and transfer of contractual rights. The actualization of these functions is related to ruling legal system on the bill of lading as well as acceptance of these capabilities of International Commercial Procedure. It seems that treatment of bill of lading as a document of title indicating ownership of goods for their holder is possible. However, the transfer of a bill of lading is not equal to the transfer of property of goods that just occurs due to the transfer of a bill of lading. Hence, there should be other agreements between parties of the contract of sale while it is hard to issue a general sentence or verdict based on the point that the bill of lading is treated as the ownership document of goods. The relevant legislating efforts in the field of replacement of paper bill of lading with an electronic bill of lading (considering the electronic bill of lading as a document of title or not) have less than 390 years background facing many objections. Therefore, it is natural if it is not possible to actualize this function of a paper bill of lading or any document that indicates ownership and property in the field of maritime transportation considering electronic documents or bill of lading. Hence, it would be necessary to study different aspects of this replacement, including the transfer of possession (seizure), transfer of property, and transfer of contractual rights within the electronic environment.

Realization of the property function of a bill of lading relates to the intention of the parties and ruling natural and national regulations on the bill of lading so that this matter requires an appropriate field of domestic national regulations in addition to preparing international projects regarding uniform rules and regulations for bills of lading. Hence, a compilation of model laws such as UNCITRAL model laws has been noticed as a pattern in many of considered; on the other hand, training courses at international level can help uniformity of International Trade Law.

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