



CENTRE  
FOR  
MARITIME LAW  
NATIONAL LAW UNIVERSITY ODISHA

# MariNe

The News of the Sea

## Centre for Maritime Law

The Centre for Maritime Law was established in 2015 with an aim to build a centre of excellence and research in the field of maritime law in India. The Centre identifies first and foremost, that the statutes which govern maritime law were adapted from foreign states and these statutes don't address the concerns pertaining to the field appropriately, as the Indian trade practices are relatively different from those foreign states. Also, under the Indian maritime law regime, there has been a lack of timely amendments and proper implementation and hence most of the laws are out dated and are not equipped to deal with modern complications.

Keeping in mind the complications which perforate the Indian maritime law regime, the Centre has been analyzing the foreign case laws, statutes and their relevancy to the Indian jurisdiction. The Centre is currently working on Indian statutes, case laws, international treaties and conventions pertaining to maritime law and seeks to crystallize the current maritime jurisprudence in India.

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## War, Terror and the High Seas

*Anamika and Avni Sharma*

Terrorism has had a drastic impact in today's world, primarily after the 9/11 attacks in New York in 2001. It has taken shape and sizes that one could not fathom and has not left one arena where it does not exist. Maritime Terrorism has been added in the vocabulary of international terrorism and security not so long ago. Countries have since long been overlooking the issue of piracy with the idea of it having been eradicated, but the breach in maritime security has gone to a whole different dimen-

sion of terrorism.

Since the beginning of the millennium, new faces of terrorism are being seen. It is no surprise the same is also now seen as prevalent in the seas. The international waters now seem to have become a war field with terrorism increasing at a massive level. The article aims to study the international laws as well as regulations and steps taken up by other nations to curb maritime terrorism and ensure peace on the high seas.

[Read more](#)

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***“The dangers of the sea should always take precedence over the violence of the enemy.”***

*Rear-Admiral Ben Bryant CB, DSO and two bars, DSC”*

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### What is Bill of Lading?

To an average citizen the query suggests a printed form, bearing more or less illegible pencil scrawls, which is thrust at him by a pre-occupied freight clerk in exchange for his package. In other words, simply put a bill of lading is required for the shipment of goods.



### Bill of Lading

*Divyansh Nayar and Sandeep Golani*

The bill of lading acts as an evidence of contract for carriage, receipt of goods and document of title to the goods. As an evidence of contract, the bill acts as a proof that the contract of carriage was entered into between 'Ship owner' and 'Carrier' for the transportation of goods. If the goods are damaged before their delivery to the Consignee, the Carrier can claim damages on the basis of bills of lading, an evidence of contract. Starting from the quantity of goods to the discharge port, a bill of lading mentions everything. It also mentions the date on which the goods were received by the carrier. Thus, we can say that a Bill of lading is issued by the carrier to the ship owner as a receipt of goods. It acts as a proof that the carrier has received the goods from the ship owner in good and reasonable condition. Last but not least, the bill of lading also acts as a title to the goods. By way of bill of lading one can claim the title on goods and can freely transfer or exchange the same as one deems fit. What makes bill of lading a document different from others is the fact that upon surrender of bill of lading the rightful owner of the goods get the title to such goods. [Read more](#)

## Incorporation by Reference and Third- Party Rights

*Amit Chawla and Kartikey Bhalotia*



Disputes in International Maritime Arbitration can be categorized broadly in two types – Contractual and Non-Contractual. Though the issue of incorporation arises in contractual disputes, arbitration agreement in International Maritime Arbitration plays a very essential role as it is directly linked to party autonomy. It determines the willingness of the parties to submit to arbitration, the jurisdiction they want their disputes to be subjected to, the choice of law etc. International Maritime contracts are usually embodied in “charter parties” or documents attached to the “bills of lading”.

Incorporation of an arbitration clause into a bill of lading by reference to a charter party, has been a common practice in the realm of maritime contracts. This has been the main point of dispute between parties to a maritime contract on numerous occasions. Another concern which this kind of incorporation brings into picture is the third- party rights. A bill of lading being a negotiable instrument can easily be transferred by the original holder to a third party, who may further transfer the same. This breaks the shackles of privity of contract and brings into picture a third party, who may not be or rather are not the party to the original contract.

Non-liner bills of lading which are issued for the ship under charter, contain a general clause of incorporation of specific terms and conditions existing in a particular charter party into the bill of lading. This general clause incorporates either explicitly or implicitly the arbitration clause as well as the Choice of Law Clause of the charter party to which it refers. Complex nature of these clauses necessitates proper assessment of the intention of parties towards this incorporation. Different from formal dimension of arbitration clauses, a tribunal or court in these cases tries and assesses the nexus between the actual bearer of the bill of lading and a set of terms of certain charter party, which is incorporated through an incorporation clause of a bill of lading.

There are cases wherein the bearer may not have negotiated the terms of the charter party or he may not even know about the terms thus it becomes an important area, where there are different opinions of different courts and even different conventions for that matter. [Read more](#)

### *Maritime Arbitration*

Maritime arbitration has been a practiced method of dispute resolution since remote times, particularly in Ancient Greece.

Maritime arbitration belongs to the genus of international commercial arbitration but it differs from the general model for a number of reasons, which make it somehow “special”: from the sources of law, to the kind of arbitrated disputes, to the characteristics of the maritime arbitral proceedings. Nowadays arbitration is widely used among international shipping operators to solve almost every kind of dispute and, consequently, arbitral clauses are included in many maritime contract forms.

This is due to its remarkable advantages over litigation, such as flexibility, specialization, confidentiality and, possibility for the parties to determine every aspect of the procedure as per their needs.

## Types of Maritime Lien

According to the International Convention on Maritime Liens and Mortgages 1993 following claims can be considered as maritime liens:

- Claims regarding wages and other sums due to the master, officer and other members of the vessel.
- Claims regarding loss of life or personal injury occurring whether on land or on water which is in direct connection with the vessel.
- Claims for reward for the salvage of the vessel.
- Claims regarding canal, Port and other waterways.
- Claims which arise out of physical loss or damage caused by the operation of the vessel.

## Maritime Lien

*Rishabh Tiwari and Shashank Chaturvedi*

A maritime lien is often described as “the barnacle” attaching to a ship’s hull. This description is due to the fact that a maritime lien in respect of a particular ship, travels with that ship, irrespective of whether or not that ship changes ownership. Ultimately, it is the ship itself which owes obligations which may be breached. The phrase “maritime lien” was first used in United States in the Nestor case. The word “lien” is derived from a Latin word “ligament” which means binding. In common law, a lien is considered to be the right to hold or retain property which belongs to another person as a security for the performance of an obligation or for the payment of a debt. “Possessory liens” are usually contract based, whereas “maritime lien” may arise outside of contractual relationships. Therefore “maritime lien” has very different characteristics from the “common law lien”. When it comes to a common law lien the creditor is required to have an actual or constructive possession of the property and also require consent of the lienee. On the other hand, maritime lien arises automatically and once it is executed it arises without the holder of the lien ob-

taining possession of the res.

Maritime lien and maritime claim both overlap each other at various levels, however both the terms are essentially different from each other. A maritime lien depends on the vessel, irrespective of any change in the ownership and it usually favors the claimant. On the other hand, a maritime claim ceases to exist if the vessel is sold to a third party. Therefore, in case of maritime claim, the claimant has a right *in personam*, which means that the claimant can only claim against a particular person. However, in case of maritime lien, there is right *in rem*, i.e. the claimant’s rights is protected against the world at large.

A maritime lien is a quasi-proprietary right and it usually provides many advantages to the plaintiff. Some basic characteristics of Maritime Lien is that it arises automatically, the jurisdiction cannot be questioned and it takes priority over any other form of security. These features differentiate a maritime lien from a common law lien and further as the res is seized it reduces the chance that the judgement will be frustrated and thus increases the scope of recovery.

Most of the jurisdictions today have provided for the use of the action *in rem*. To explain the concepts of action *in rem* and maritime lien, scholars have focused on two different theories which are “personality theory” and the “procedural theory”. [Read more](#)



## ***CML BLOG***

The Indian Maritime Industry is growing at a fast rate and it has been predicted to be one of the most important contributors to the Indian economy in the times to come.

The Blog intends to provide the latest developments in the Indian Maritime industry as well as the recent updates about the admiralty law in India. The blog exists as a specialist research and professional platform in order to support and promote research and teaching of the highest standard in international shipping and trade law. The blog intends to act as an outlet not only for the Centre but also for the legal community and viewers of the blog as a whole willing to express their views and interests on important or trending maritime legal issues.

Centre for Maritime Law

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## **Contribute to our Blog**

If you would like to contribute to the blog, we'd be thrilled to receive your submission! Please email it to [cml@nluo.ac.in](mailto:cml@nluo.ac.in), with the subject **Blog Submission: <contribution title> and <author(s) name>**. If you would like your blog piece to include a photo and a short biography, please include this information in your submission email.

Once you have submitted your draft post, the Editors will be in touch. We endeavour to respond quickly to Blog submissions and you can anticipate a response within a fortnight.

If the contribution is rejected, the same shall be communicated with a brief feedback.

If it is considered that your post has potential to be published, but is not currently of the required standard, then we will send back your work with editorial suggestions in tracked changes. However, the same does not amount to acceptance of the post.

### **Submission Guidelines:**

The write-up shall be in English only and should not exceed more than **2000 words**.

Co-authorship to a **maximum of two** is permitted.

The write-up shall have **no plagiarism** and should be the original work of the contributors.

### **Formatting Criteria:**

Main Body: Font: Times New Roman, Font Size – 12, Line Spacing – 1.5 and Alignment – Justified.

Footnotes: Font: Times New Roman, Font Size – 10, Line Spacing – 1.0 and Alignment – Justified.

The contributor shall follow a Uniform mode of Citation.

### ***Members, Centre for Maritime Law:***

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