

Multimodal Transport Documents in English Law: COGSA 1992, COGSA 1971, and the Hague-Visby Rules

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Abstract

This paper, framed by UK law, focuses on analyzing the provisions of multimodal transport documents under the Carriage of Goods by Sea Act 1971 and 1992, with particular attention to two key legal issues: First, whether multimodal transport bills of lading can be recognized as traditional bills of lading or seaway bill under the current legal framework; Second, whether the Hague-Visby Rules introduced by the 1971 Act can be directly applied to the maritime segment of multimodal transport practices.

This paper analyzes the British legal precedents and legal provisions, and puts forward the following problems that need to be solved: first, the 1992 Act does not clearly define the multimodal transport documents and whether they can be applied to this law, and the 1971 Act does not make clear provisions on the scope of application.

In order to deal with the practical challenges brought by the above defects, this paper will analyze the relevant content and put forward suggestions for legal modification: the law should clearly cover multimodal transport.

1. Introduction

1.1 The Background of Multimodal Transport

As global transport continues to evolve, the international transportation system has gradually taken on a more diversified structure. In order to meet the needs of accurate and flexibility cargo transportation, many cross-border transactions requires goods to be transported across multiple jurisdictions by multiple modes. Concurrently, with the development of containerised shipments which typically performed under integrated “door-to-door” contracts of carriage, it has made multimodal transport to operate as a coherent

and commercially viable system.¹ Containers allow goods to be transferred between different modes of transport without being repackaged, thus reducing transportation costs, reducing transportation time and reducing physical risks.

1.2 The Role of Multimodal Transport Documents

In multimodal transport practice, carriers and freight forwarders commonly issue multimodal transport documents in order to standardise the flow of goods. Such documents typically serve multiple functions: the evidence of goods receipt, set out the contractual terms governing carriage, and can also be used as documents of title, enabling the holder to claim delivery of the goods or to transfer rights in the goods by endorsement or delivery of the documents. This multifunctional role demonstrates that multimodal transport documents require a high degree of legal certainty, and their importance in international trade and trade finance should not be underestimated. Banks, insurance companies and commercial parties all place substantial reliance on the certainty of these documents. However, under English law, the criteria for classifying multimodal transport, particularly in terms of their status as document of title remain insufficiently clear.

1.3 The Legislative Gap under English Law

At present, the concept and function of bill of lading have been relatively well articulated under English law. Traditionally, its legal status is defined by three core functions. First, as a receipt for goods, confirming that the carrier has taken delivery of the cargo and assumes responsibility for its carriage.² Secondly, as evidence of the contract of carriage, demonstrating the existence and terms of the contract and clarifying the rights and obligations between shipper and carrier.³ Thirdly, as a document of title, enabling the lawful holder to claim delivery or to transfer constructive possession through endorsement or delivery of the document. English case law has further emphasised that even a non-negotiable bill which requires presentation of the original document may, in functional terms, operate as a bill of lading, thereby underlining the continuing significance of the presentation requirement.⁴

Despite this doctrinal clarity in relation to the traditional bill of lading, English law in the field of maritime transport remains largely anchored in classical, port-to-port models of carriage. The representative regulations, the Carriage of Goods by Sea Act 1971 (COGSA 1971) and Carriage of Goods by Sea Act 1992 (COGSA 1992), were both enacted in the era when multimodal transport was not yet become prevalent. Neither statute expressly defines nor systematically addresses multimodal transport documents, with the result that the existing

¹ Jonathan Gilman and others, *Carver on Bills of Lading* (5th edn, Sweet & Maxwell 2024) para 8–091.

² *Leduc v Ward* (1888) 20 QBD 475.

³ *Pyrene Co Ltd v Scindia Navigation Co Ltd* [1954] 2 QB 402.

⁴ *Motis Exports Ltd v Dampskibsselskabet AF 1912* [2000] 1 Lloyd's Rep 211.

legislative framework struggles to accommodate contemporary shipping practice. As Baughen observes, the current statutory structure was never designed for multimodal or door-to-door transport models, but rather presupposes the conventional bill of lading regime developed for purely maritime carriage.⁵ This legislative silence gives rise to significant legal uncertainty. In particular, under the COGSA 1992, a multimodal transport document may fall outside the statutory definitions of a "bill of lading" or "sea waybill". If so, the holder of such a document may be deprived of the statutory right of suit and be unable to acquire or transfer contractual rights under the Act.

The implementation of the Hague-Visby Rules into English law in 1971 further complicates the position. While the Rules were given the force of law, they did not resolve the question of whether, and to what extent, the sea leg of a multimodal transport contract falls within their scope of application. As a result, the carrier's obligations and liabilities during the maritime segment of a multimodal journey may remain ambiguous. This uncertainty risks fragmenting the legal regime applicable to a single contract of carriage, with different stages governed by different rules, thereby undermining both legal predictability and the efficient operation of international trade.

2. The Carriage of Goods by Sea Act 1992

2.1 Overview of COGSA 1992

In 1992, the UK enacted a new Act, which drove a fundamental transformation in the legal framework for maritime trade. COGSA 1992 clearly defines the legal rights of the three core documents, namely the bill of lading, the sea waybill and the ship delivery order. Rather than relying on notions of privity, the Act provides for the statutory transfer of contractual rights to the holder, while also attaching corresponding liabilities where appropriate. By doing so, the Act established a more coherent basis for determining standing in maritime disputes and contributes to greater certainty and stability in shipping transactions.

Under the framework of the COGSA 1971, the legal status of bills of lading was limited: contractual rights could only be transferred to the consignee or endorsee before the delivery of goods. It can be observed that once the goods are delivered, the bill of lading ceased to perform any independent legal function as a transferable instrument. As a consequence, the lawful holder of a bill of lading might be left without a clear basis on which to bring an action against the carrier, while parties with a legitimate interest in the goods could find themselves unable to assert claims in the absence of a direct contractual nexus. These structural limitations created gaps in the allocation and enforcement of rights, giving rise to legal uncertainty and practical obstacles in cargo claims.

To address this issue, the COGSA 1992 introduced a series of reforms that partially

⁵ Baughen, S, *Shipping Law* (6th edn, Routledge 2019)

resolved long-standing problems. In particular, where the allocation of rights and liabilities under the contract of carriage had previously been uncertain, the Act provided for the statutory transfer of contractual rights to the holder of certain transport documents without requiring reliance on physical delivery of the goods.⁶ This represented a significant departure from earlier approaches grounded in privity and possession. The Act designated specific documents to function as evidences of property rights, typically including three types: bills of lading, sea waybills, and ship delivery orders, with clear legal provisions governing them. These three types of documents, when transferred, are deemed to effect the delivery of property rights, independent of the physical delivery of goods. By abstracting contractual rights from the physical movement of goods, the COGSA 1992 reduced procedural obstacles to enforcement, enhanced transactional certainty, and contributed to greater predictability in commercial dealings. This framework has also proved particularly conducive to the operation of marine insurance and trade finance, both of which depend heavily on the legal reliability of transport documents.

However, due to the legislative limitations at the time, the Act did not cover multimodal transport bills of lading, reflecting the fact that integrated door-to-door carriage had not yet become a dominant feature of international trade at the time. As global trade has evolved and multimodal transport has become increasingly prevalent, the exclusion of such documents has generated growing practical and doctrinal difficulties. In particular, it remains unresolved whether holders of multimodal transport documents is entitled to the statutory rights and subject to the corresponding liabilities introduced by the Act. To this day, this remains an unresolved dilemma. More importantly, no authoritative body has yet established the rights and obligations of such holders. In a context where trade parties, financial institutions, and insurance companies heavily rely on the legal validity of documents, this uncertainty not only weakens the market liquidity of relevant documents but also leads to inconsistent judicial standards in similar cases.⁷

2.2 Transfer of rights fails under Unclear Status of the Bill of Lading

With the development of shipping industry and the diversification of transportation modes, multimodal transport bill of lading is widely used in international trade. In particular, integrated documents covering sea carriage together with inland legs are capable of consolidating the entire transport operation into a single instrument, thereby enhancing commercial convenience and operational efficiency.

Under the current English legal framework, bills of lading primarily serve three core

⁶ Andrew Tettenborn, '*Bills of Lading, Multimodal Transport Documents, and Other Things*' in Baris Soyer and Andrew Tettenborn (eds), *Carriage of Goods by Sea, Land and Air: Unimodal and Multimodal Transport in the 21st Century* (Informa Law from Routledge 2020) 142: "Symbolic transfer of possession" in this context refers to, aligns with the parties' intentions, possession of the paper bill of lading is treated as equivalent to possession of the goods themselves, without involving the carrier directly.

⁷ Carriage of Goods by Sea Act 1992, s 2.

functions: first, as a carrier-issued receipt for goods; second, as evidence of the contract of carriage, recording its essential terms. Most importantly, it functions as a document of title, enabling the lawful holder to take delivery of the goods. However, the uncertain legal treatment of multimodal transport document has given rise to significant practical difficulties, particularly in the context of cargo handling and the allocation of rights and liabilities.

Firstly, the unclear legal status leads to the failure of the transfer mechanism of rights and obligations. The recognition of such documents as "documents of title" has yet to gain universal recognition, creating significant challenges in liability determination.⁸ Fundamentally, the absence of necessary prerequisites prevents the automatic transfer mechanism for rights and obligations stipulated in Article 3 of the COGSA 1992 from being activated. In theory, upon transfer of the document and delivery of the goods, associated obligations, such as the payment of freight or demurrage, should shift automatically to the party entitled to the goods. In practice, however, this alignment frequently fails. As a result, obligations may remain with the original shipper even after delivery has occurred, leading to a clear misalignment between rights and liabilities.⁹ Such an outcome runs counter to the commercial expectation that risk and reward should transfer concurrently, and raises concerns of both inefficiency and substantive unfairness.

Secondly, the holder's rights are restricted, and it is difficult to obtain relief. Under Section 2(1) of the COGSA 1992, the legal holder of a bill of lading is expressly authorized and may directly pursue claims under the transport contract. Where a document falls outside the scope of the Act, however, the holder may not acquire corresponding rights relating to title, risk allocation or liability. At present, no uniform international standard governs the legal status of multimodal transport bills of lading. Consequently, holders of such documents often cannot determine their rights and obligations, and may even be unable to sue or protect their legal standing in court.

In the absence of statutory rights of suit, parties other than the original contracting parties must resort to alternative mechanisms—such as the assignment of contractual claims or reliance on collateral arrangements—to enforce their interests. The effectiveness of such mechanisms is often limited and commercially inefficient. Moreover, because multimodal transport bills of lading typically engage multiple stages of carriage across different jurisdictions, questions of applicable law and conflicts of laws are likely to arise. This not only increases the cost and complexity of dispute resolution, but also further undermines the predictability and efficiency that multimodal transport documents are intended to achieve.

⁸ Melis Ozdel, 'Multimodal transport documents in international sale of goods' (I.C.C.L.R. 2014) 25(7) *International Company and Commercial Law Review* 243: Whether a document can be regarded as a document of title, a further critical inquiry is whether a consistent commercial practice has emerged in which the transfer of such documents is recognised as effecting the transfer of control over the goods to which they relate.

⁹ *Kum v Wah Tat Bank* [1971] 1 Lloyd's Rep 439, provide a bank's acceptance of a particular type of transport document under a letter of credit does not, on its own, suffice to establish a recognised trade custom.

These shortcomings may undermine the confidence of stakeholders in business practices. In international trade practice, since such documents cannot obtain the same legal status as a bill of lading or a sea waybill, the holder will find it difficult to exercise the litigation rights provided under the COGSA 1992. At the same time, banks and other financial institutions are unable to rely on such documents as documents of title through which proprietary rights may be asserted and control over the goods maintained. The unclear legal status of such document directly results in the holder lacking a lawful basis for possessing the goods, generating significant commercial risk. For example, when settling payments, banks are often reluctant to accept such documents as collateral, since they cannot be sure whether these bills of lading are equivalent to traditional ones. Under current English law, which contains no express provisions governing multimodal transport bills of lading, financial institutions are unable to assess with confidence whether such documents confer enforceable proprietary or contractual rights. The result is a measurable erosion of commercial reliance on these instruments.

The growing disconnect between legal provisions and commercial practice further exacerbates the legal challenges faced by multimodal transport bills of lading. Questions such as how to define their legal status, how to determine the scope of transfer, and how to allocate liability urgently need to be addressed. This situation obviously deviates from the original intention of the COGSA 1992, which is to enhance the certainty of transaction by clarifying the rights and obligations, but fails to regulate the multimodal transport effectively, and instead produces new uncertainty, expands the gap between law and practice, reduces the commercial efficiency, and increases the litigation risk. Accordingly, there is a compelling case for legislative intervention. Clarifying the legal status of multimodal transport documents through targeted statutory reform has become imperative if English law is to remain responsive to contemporary transport practices and to preserve its credibility in international trade and finance.

3. The Uncertain Scope of the COGSA 1971 and Hague-Visby Rules

3.1 Incorporation of the Hague-Visby Rules under the COGSA 1971

Under English law, the Hague–Visby Rules are given effect through the Carriage of Goods by Sea Act 1971 states “shall have the force of law in relation to any contract of carriage of goods by sea.” In practice, the Rules apply whenever a bill of lading or similar document of title is issued under the contract. A sea waybill may also fall within the scope of the Rules, but only where the parties expressly agree to incorporate them.¹⁰

The Hague–Visby Rules establish a comprehensive framework governing the rights and obligations of carriers. They impose duties on carriers to properly and carefully load, handle,

¹⁰ Carriage of Goods by Sea Act 1971, s.1(2).

stow, carry and care for the goods, while also defining the temporal scope of liability.¹¹ At the same time, the Rules recognise a number of exceptions to liability, including perils of the sea, acts of God and navigational fault. Taken together, these provisions seek to strike a balance between the competing interests of carriers and cargo interests, thereby promoting certainty and efficiency in maritime commerce.

Notwithstanding this relatively settled framework for traditional sea carriage, multimodal transport bills of lading have remained in a persistent legal grey area from the enactment of COGSA 1971 through to COGSA 1992. This uncertainty gives rise to two interrelated difficulties. First, it creates gaps in the application of the law; secondly, it leaves unresolved the question of whether, and to what extent, the Hague–Visby Rules apply to multimodal transport arrangements. Importantly, these issues cannot be resolved solely through contractual drafting. Where mandatory rules are engaged, the principle of freedom of contract is necessarily constrained and cannot be used to displace statutory regimes.

Under the Hague-Visby Rules, when goods are transported sequentially by road, rail, and sea, it remains unclear which legal regime should govern the different stages of carriage. Moreover, the Rules themselves do not explicitly cover the maritime component of multimodal transport, and current legislation does not include maritime operations within their mandatory scope. As a result, both a regulatory gap and doctrinal ambiguity persist in the application of the Rules to multimodal transport. Parties cannot rely solely on the principle of private autonomy to determine whether the maritime leg of multimodal transport should be governed by the Hague-Visby Rules or by another legal framework. The current position demonstrates an urgent need for clearer legislative guidance or authoritative judicial interpretation to address these gaps, in order to enhance legal certainty and predictability in the regulation of multimodal transport.

3.2 Application to Contracts “Covered by a Bill of Lading”

The Hague-Visby Rules apply only where the contract of carriage is covered by a bill of lading or a similar document of title. This threshold requirement gives rise to particular difficulties in the context of multimodal transport. In *Pyrene Co Ltd v Scindia Navigation Co Ltd*, Devlin J primarily concerned the scope of carrier's liability and the interpretation of the concept of “shipment” under the Hague Rules. In this case, the court, upon examining the literal meaning of the term “shipment”, adopted a broader interpretation consistent with commercial realities, extending the concept of shipment to cover all operational procedures prior to actual delivery.¹² This interpretation directly affects the commencement and duration of carrier liability.

More significantly, the judgment demonstrated a willingness to move beyond rigid

¹¹ Hague Rules as amended by the Hague–Visby Rules, art III r 2; art II; art I(e).

¹² *Pyrene Co Ltd v Scindia Navigation Co Ltd* [1954] 2 QB 402, 419–421.

formalism in contractual analysis. Emphasising the commercial purpose of the transaction, Devlin J held that a seller who had not formally entered into the contract of carriage could nonetheless be treated as being sufficiently connected to the contractual relationship. This approach reflects the court's respect for actual commercial transactions, broadens the scope of contractual relationships, and provides judicial support for disputes concerning legal rights and obligations in indirect contractual contexts. The underlying interpretative approach in *Pyrene* reflects a judicial preference for substance over form. Rather than confining itself to the literal wording of contractual documents, the court attached greater weight to the commercial function and practical effect of the transaction, thereby aligning legal doctrine with the operational needs of contemporary maritime commerce.

However, in practice, the legal nature of multimodal transport bill of lading is far more complex than the issues involved in the above case. Unlike the circumstances in *Pyrene*, most multimodal transport documents expressly provide for door-to-door carriage, identifying both the place of receipt and the place of delivery, often extending beyond the port area to the warehouse of the seller or buyer. Such documents typically function both as receipts and as evidence of the entire transport contract, thereby blurring the traditional legal boundary between the contract of carriage and the bill of lading.

Accordingly, under the COGSA 1971, the applicability of the Hague–Visby Rules depends not on the label attached to the document, but on the manner in which it operates in practice. If a document does not operate as a bill of lading in the statutory sense, the Hague–Visby Rules do not apply. This functional approach may result in different segments of a single multimodal shipment being subject to different legal regimes, creating inconsistencies in liability standards, uncertainty in risk allocation, and a significantly higher likelihood of disputes.

3.3 Determination of Liability fails under Uncertain Scope of Law Adaptation

Unlike Section 2 of the COGSA 1992, the Hague-Visby Rules deal not with the transfer of contractual rights but with the carrier's substantive liabilities. Therefore, the uncertainty surrounding multimodal transport documents therefore manifests at a second and distinct level: even when such documents serve as transport documents, the liability regime applicable to the maritime segment of multimodal carriage remains insufficiently defined under English law.

The primary issue in this section lies in the uncertainty surrounding the scope of application of the Hague–Visby Rules, which raises doubts as to whether these Rules can apply to the sea leg within a multimodal transport bill of lading. This problem highlights the inherent tension between the traditional structure of maritime law and the operational realities of modern multimodal transport. Conventional bills of lading are premised on a “port-to-port” model, under which both the place of receipt and the place of delivery are located at seaports,

leaving little doubt as to the applicability of the Hague–Visby regime. By contrast, modern multimodal transport typically operates on a door-to-door basis, departing fundamentally from the assumptions underlying the traditional maritime bill of lading. As a result, it remains legally unresolved whether a multimodal bill of lading may be treated as equivalent to a traditional bill of lading for the purposes of the Hague–Visby Rules, and whether the maritime leg of such transport should automatically fall within that regime.

This difficulty is not merely a matter of legislative technique, but reflects a more fundamental deficiency in the delineation of the Rules’ scope of application. In practice, even if parties to a contract seek to apply the Hague-Visby Rules to maritime transport through contractual agreements, such clauses may be rendered ineffective by reason of the mandatory nature of the Rules. The scope of the Hague–Visby regime is tightly circumscribed, and any attempt to extend its application by agreement risks contravening the legislative intent underlying its mandatory provisions. Compounding this problem is the absence of clear legal criteria for identifying the point at which liability shifts between inland and maritime stages of carriage. Even where the Hague–Visby Rules are found to apply, it remains difficult to determine with precision the temporal boundaries of the “sea leg” and, in particular, the moment at which the carrier’s obligations under the Rules are triggered.

In practice, precisely because the applicability of the Hague–Visby Rules remains uncertain, a number of situations may arise. Depending on the circumstances, the maritime leg of a multimodal transport operation may be governed by common law principles, by bespoke contractual arrangements, or by standard terms incorporating devices such as Himalaya clauses, network liability clauses or uniform liability clauses. Even when the Hague–Visby Rules is incorporated into a contract, the onshore transport phase may still be governed by the CMR Convention or local domestic transport laws, while the contractual dispute itself may be subject to the cyber liability regime and local conflict rules.¹³ As a result, a single multimodal transport contract may be subject to multiple and overlapping legal regimes, each governing different stages of the same shipment. This regulatory fragmentation results in divergent standards of liability, varying limitation thresholds and inconsistent liability structures, making it difficult for parties to anticipate *ex ante* which regime will ultimately apply. The resulting lack of predictability undermines the coherence that transport documents are intended to provide.

Ultimately, this situation will result in a lack of legal certainty throughout the multimodal transport process. For shippers, risk allocation becomes increasingly opaque; for banks, trade finance arrangements, particularly those relying on letters of credit, are exposed to heightened risk due to the uncertain legal status and enforceability of transport documents; for insurers,

¹³ Convention on the Contract for the International Carriage of Goods by Road (CMR), arts 1(1) and 17: The application of the CMR Convention is mandatory and cannot be excluded by agreement, which means that parties may find themselves subject to distinct compulsory liability regimes for different stages of the same multimodal carriage.

the inability to accurately assess maritime risks inevitably leads to higher coverage amounts. Simultaneously, contracting parties face are compelled to engage in increasingly complex drafting, address a broader range of legal contingencies, and incur higher transaction and compliance costs, all of which diminish the efficiency of international trade flows.

Taken together, these effects demonstrate that, under the current English legal framework, multimodal transport remains characterised by a lack of certainty and uniformity. The absence of clear legislative guidance, liability determination in multimodal transport risks becoming detached from commercial expectations and economic rationality, instead turning on technical debates over document classification and the selection of applicable legal regimes. Such an outcome is difficult to reconcile with the demands of modern international trade and underscores the need for a more coherent regulatory response.

4 Legal Practice and the Inherent Limitations of English Law

4.1 Authoritative Judicial Precedents in England

The decision in *The Rafaela S* addressed directly the legal treatment of multimodal transport documents and, in particular, the question whether a non-negotiable document could nevertheless qualify as a bill of lading. The House of Lords held that a document which requires presentation of the original for delivery falls within the statutory concept of a bill of lading, notwithstanding its non-negotiable character.¹⁴ The court applied a functional approach focusing on the practical operation of the document rather than its formal label. Where presentation of the original document is a precondition for delivery, the document performs the essential function of a bill of lading and should therefore be treated as such. *The Rafaela S* supports the proposition that multimodal transport documents may fall within the legal category of bills of lading where, in practice, they perform the same documentary function. The case is thus of particular relevance to the application of the COGSA 1992, reinforcing the view that the statutory concept of a bill of lading should be interpreted functionally rather than through rigid formalism.

By contrast, *The Hollandia (The Morviken)*, concerned the applicability of the Hague–Visby Rules in the context of cargo loss and raised the question of whether those Rules could be displaced by contractual agreement. The House of Lords held that, under English law, the Hague–Visby Rules have mandatory force. Pursuant to the COGSA 1971, the Rules form part of domestic law and cannot be contracted out of in circumstances where they apply.¹⁵ The judgment confirmed that contractual provisions purporting to exclude or circumvent the Hague–Visby regime are ineffective.

The decision in *The Happy Ranger* further illustrates the mandatory character of the

¹⁴ *The Rafaela S* [2005] UKHL 11.

¹⁵ *The Hollandia (The Morviken)* [1983] 1 AC 565 (HL)

Hague–Visby Rules under English law. The question was whether a foreign law could apply, or if the Hague-Visby Rules were mandatory. The House of Lords held that, notwithstanding the parties’ choice of a foreign governing law, the Rules would apply where the bill of lading was issued in a contracting state.¹⁶ This judgment reaffirmed that the applicability of the Hague–Visby Rules is determined by objective statutory connecting factors rather than by party autonomy. In doing so, it reinforced the mandatory force of the Rules and promoted consistency and predictability in international carriage.

In *The Jordan II*, represents the countervailing principle of contractual freedom operating outside the mandatory scope of the COGSA 1971. The dispute concerned the allocation of responsibilities between carrier and shipper under a contract to which the Hague–Visby Rules did not apply compulsorily. The court held that the Rules could still be incorporated through contractual clauses, supporting contractual freedom.¹⁷ Therefore, even if a contract is outside the statutory mandatory scope, parties may agree to incorporate the Rules. Parties are free to allocate responsibilities for loading, stowage, and discharge by agreement. Court also emphasized that the purpose of the Hague-Visby Rules is to ensure that the carrier properly performs the operations it actually undertakes, rather than invalidating contractual allocation of responsibilities. The case therefore demonstrates that party autonomy may operate to supplement the statutory regime, but only in circumstances where the mandatory application of the Rules is not triggered.

4.2 Limitations in English Judicial Practice

The UK judicial practice, when confronted with the challenges posed by multimodal transport documents, inevitably exposes the structural limitations of the existing legal framework. A step-by-step analysis reveals that, although English courts have made incremental progress in addressing multimodal transport through the adoption of a functional approach to transport documents, this development remains constrained by deeper systemic features of the common law tradition. However, it still lags behind international precedents due to fundamental differences between common law and civil law systems, particularly in their approaches to segmented liability and unified liability frameworks. The decision in *Quantum Corp v Plane Trucking Ltd*, the goods were transported by road from the UK to Belgium, then by air to their destination, constituting multimodal transport. However, since the goods were damaged during the road transport phase, the damages incurred at this stage should be governed by the CMR (Convention on International Carriage by Road).¹⁸ This reflects the English courts’ adherence to a damage localisation approach, under which liability is determined by identifying the specific segment of transport during which the loss occurred.

¹⁶ *The Happy Ranger* [2002] EWCA Civ 694, [2002] 2 Lloyd’s Rep 357

¹⁷ *The Jordan II* [2003] 1 Lloyd’s Rep 87

¹⁸ *Quantum Corporation Inc v Plane Trucking Ltd* [2002] 1 All ER (Comm) 66 (QB).

Rather than treating the multimodal transport contract as a single, integrated legal relationship, English law continues to apply mode-specific liability regimes to discrete stages of carriage. This approach stands in marked contrast to the unified liability models adopted in certain other jurisdictions. For example, Singaporean law has shown a greater willingness to recognise uniform liability frameworks for multimodal transport, while civil law systems more generally tend to adopt highly institutionalised solutions that emphasise continuity of responsibility across transport stages.

A further contrast emerges from a comparison between English and French judicial reasoning, as illustrated by *Munch v Agence Maritime*. French courts have demonstrated a greater inclination to recognise a form of joint and several liability arising from an overall contract of carriage. Once a carrier accepts responsibility for the entire transport operation, it is treated as assuming a continuous duty of care for the goods, irrespective of the particular mode of transport involved at each stage.¹⁹ English courts, by contrast, continue to insist on segmented attribution of liability, differentiating obligations according to the mode of carriage and the applicable legal regime.

The foregoing analysis points to several structural limitations within the UK legal framework in its treatment of multimodal transport. First, English courts still tend to uphold the segmented liability approach in their rulings. As the case law demonstrates, this method artificially disaggregates what is, in commercial reality, a single and continuous transport operation into discrete stages, each governed by a different legal regime. Such an approach departs from the civil law emphasis on the unity of the transport contract and stands increasingly at odds with broader international legislative trends. More significantly, it introduces complexity and uncertainty into liability determination and the identification of applicable law in international cargo transport governed by English law. Secondly, English judicial practice remains cautious in applying the functionalism principle, with multiple considerations at play. While occasional cases have demonstrated the potential to adopt functionalist approaches, the principle has yet to be systematically and consistently applied by courts to the overall legal characterization of multimodal transport documents. The judiciary as a whole has exhibited conservatism, failing to provide the much-needed legal certainty and stability through flexible interpretation to support the rapidly evolving shipping market and international trade that heavily relies on document circulation.

It is true that English case law has made incremental progress in clarifying certain aspects of the legal nature and operation of multimodal transport documents. Nevertheless, the courts have not expressly confirmed that such documents fall within the scope of the COGSA 1971. As commentators such as Gaskell and Girvin have persuasively observed, the existing statutory framework continues to leave the legal status of multimodal transport bills of lading

¹⁹ *Munch v Agence Maritime* (Cour de Cassation, 22 January 1980) DMF 1980, 181.

unresolved. Notably, this uncertainty is not inevitable. It could be substantially mitigated through authoritative judicial interpretation or targeted legislative reform. The fact that a coherent solution lies within reach suggests that meaningful alignment between commercial practice and legal norms remains achievable. Absent such clarification, however, the current framework risks perpetuating a gap between law and practice that undermines the effectiveness of English law in governing modern multimodal transport.

5 Reform Recommendations

5.1 A Functional Approach to Multimodal Transport Documents

The COGSA 1992 introduced significant reforms and resolved a number of longstanding difficulties within the law governing bills of lading. Nevertheless, notable shortcomings remain in its treatment of multimodal transport documents. Although judicial interpretation has shown a certain degree of flexibility, the inherent complexity of such documents means that their legal effect in practice remains uncertain. In addition, multimodal transport documents have not been explicitly brought within the scope of the current English legislative framework, and their legal nature continues to be debated in academic discourse. Without clear legislative reform, the rights and obligations of holders of such documents cannot be definitively established.²⁰ In *The Rafaela S*, the House of Lords held that a straight (non-negotiable) bill of lading which made out to a named consignee and not transferable by endorsement could nevertheless qualify as “a bill of lading or any similar document of title” within the meaning of Article I(b) of the Hague–Visby Rules. The court adopted a functional test, focusing on the manner in which the document operated in practice rather than on its formal designation. However, the decision was confined to the context of maritime carriage and did not address the distinct legal issues raised by multimodal transport arrangements. Similarly, in *Motis Exports Ltd v Dampskibsselskabet AF 1912*, the Court of Appeal reaffirmed a fundamental principle of the bill of lading system: delivery of the goods cannot be effected without presentation of the genuine original bill of lading. By refusing to recognise forged documents and insisting on strict compliance, the court reinforced the security and reliability of the bill of lading as a document of title. Although the case did not concern multimodal transport as such, it is instructive in underscoring the importance of confirming the legal validity of transport documents before attaching legal consequences to them.

The most crucial approach here is to adopt the functionalist principle. As previously noted, English courts have, in appropriate cases, determined the legal status of transport documents by reference to their practical commercial functions rather than their nomenclature or formal characteristics. This interpretative technique could be extended to the context of

²⁰ Treitel & Reynolds, *Carver on Bills of Lading* (2nd edn, 2005) 142.

multimodal transport through a purposive reading of the COGSA 1992, which presently safeguards the rights of holders of traditional bills of lading, sea waybills and ship's delivery orders. On this basis, the three core functions traditionally associated with bills of lading, namely, serving as a receipt for goods, evidencing the contract of carriage, and operating as a document of title, could be employed as functional criteria for determining whether a multimodal transport document should fall within the statutory regime. Where it performs these functions in substance, its holder should be entitled to the rights and subject to the obligations provided under the COGSA 1992. Such an approach would enhance legal certainty while preserving the commercial utility and transferability of multimodal transport documents.

In developing a functional approach, English law may draw useful guidance from comparative experience. Through the enactment of the Sale of Goods (United Nations Convention) Ordinance, Hong Kong has inherited and evolved its traditional common law system, placing particular emphasis on substance over form in the interpretation of commercial documents. The judicial practice in Hong Kong clearly demonstrates that the legal validity of a document as a bill of lading depends on its fulfillment of three essential functions: serving as a receipt for goods, proof of transportation contract, and evidence of property rights, rather than merely being labeled as a 'multimodal transport document.' This functionalist principle has been firmly embedded within Hong Kong's legislative and judicial framework and offers a persuasive model for addressing the legal uncertainties surrounding multimodal transport documents under English law.

Notwithstanding its appeal, the application of functionalism is not without difficulty. The principal challenge lies in the uncertainty inherent in its operation. Determining whether a document actually fulfills the core function of a bill of lading in practice often requires comprehensive consideration of multiple factors. For instance, in commercial practice, a document titled "multimodal transport document" may explicitly state "submit original documents for cargo pickup," indicating that the document is formally designed as a property right certificate, allowing lawful holders to claim goods. Yet, in practice, delivery may occasionally be effected without presentation of the original document, in a manner inconsistent with its written terms. In such circumstances, difficult questions arise as to whether the document should still be regarded as fulfilling the essential functions of a bill of lading, how rights should be asserted by the parties, and how courts ought to characterise the document.

The core dilemma of functionalism lies in determining whether evaluation criteria should be based on the document's written provisions or its practical effects. This gap between form and substance poses a critical challenge in applying functionalism. While the principle emphasizes functional substance, it remains difficult to fully avoid the interference of formal

requirements in specific cases. Furthermore, the three core functions defined by functionalism are not always fully realized. A document may be widely accepted as a receipt for goods or proof of a transportation contract, but its validity as a property right certificate might be incomplete or subject to additional conditions imposed by the parties. In such cases, does the document still meet the functionalist requirements? Courts must further determine the extent to which these functions should be fulfilled before recognizing the document as legally valid for a bill of lading.

Against this background, this paper argues that legislative reform is required. The COGSA 1992 should be amended to expressly bring multimodal transport document within its scope. Consistent with existing judicial authority, a functional approach should be adopted as the guiding principle for determining the legal character of transport documents, particularly in light of the continued emergence of new documentary forms that do not fit neatly within traditional statutory categories. From a legislative perspective, such documents should be required to possess the essential functions of a traditional bill of lading: they must serve as a receipt for the goods, operate as evidence of the contract of carriage, and be capable of transfer so as to function as a document of title. At the same time, the adoption of a functionalist framework must be accompanied by appropriate regulatory safeguards. If English law is to rely on functionalism, it must articulate more concrete and verifiable criteria for assessment. Courts should be required to undertake objective and consistent evaluations of transport documents, combining functional analysis with clearly defined indicators of documentary effectiveness. Only through the development of such a structured and principled approach can the legal system preserve interpretative flexibility while avoiding the introduction of new forms of uncertainty. Where these core requirements are satisfied, the document should properly fall within the scope of the COGSA 1992, thereby ensuring legal certainty, commercial predictability and the effective circulation of transport documents in multimodal trade.

5.2 Clarifying the Application of the Hague-Visby Rules

A more effective response to the legal uncertainty surrounding multimodal transport documents lies in direct legislative or regulatory clarification. In particular, the scope of application of the Hague-Visby Rules should be expressly extended to the maritime segment of multimodal transport. Such an approach would eliminate ambiguity at the level of liability allocation, while preserving the integrity of mandatory maritime rules. A useful comparative model can be found in Singapore. In 2021, Singapore enacted the Multimodal Transport Act, legally regulating multimodal transport under its domestic law. The Act stipulates that even when contracts cover multiple transport modes (e.g., sea, road, rail), the carrier (multimodal transport operator) assumes full responsibility for the entire transportation process, provided

that a multimodal transport contract (MTC) is issued with a multimodal transport document.²¹ Regarding the sea segment, the law explicitly stipulates that if the multimodal transport document specifies the maritime component, maritime rules (including international conventions or mandatory provisions such as the Hague-Visby Rules) shall apply. Consequently, even if the entire contract is classified as multimodal transport, the maritime rules' jurisdiction over the sea segment will not be waived due to "mixed transport."

Singapore addressed the legal applicability and liability implementation issues in maritime mixed transport within multimodal transport through legislation. The current UK law could also draw on this legislative experience to clarify the legal applicability of the maritime phase, thereby resolving practical challenges such as discrepancies in documents, liability gaps, and confusion in legal applicability.²² The United Kingdom could draw on this approach to further clarify the mandatory application of the Hague-Visby Rules to the sea leg of multimodal transport through legislation or judicial interpretation, limiting the parties' ability to contract out of these mandatory provisions for that segment. This could effectively prevent carriers from circumventing the compulsory legal liabilities associated with maritime carriage by concluding multimodal transport contracts (i.e., "door-to-door" contracts).

Comparable guidance may also be drawn from Hong Kong. The Carriage of Goods by Sea Ordinance gives domestic effect to the Hague–Visby Rules, while Hong Kong courts have consistently adopted a purposive approach to their interpretation. Rather than adhering rigidly to the literal wording of the provisions, the courts focus on the essential nature of the transport arrangement. Where maritime carriage constitutes a central and indispensable element of the overall contract, the sea leg may be characterised as a contract of carriage of goods by sea and subjected to the mandatory application of the Hague–Visby Rules, even where the transport document also covers inland or other non-maritime stages. This approach reflects a strong emphasis on commercial reality and the true substance of the parties' agreement.²³

The adoption of such a framework offers several advantages. First, it effectively reduces contractual complexity arising from cross-border jurisdictional issues. Secondly, it establishes clear expectations of responsibility for all parties involved. Third, it ensures that the United Kingdom's maritime legal framework remains aligned with contemporary multimodal transport practices. Ultimately, the vitality of the law lies in its ability to adapt to changing times. As trade practices evolve and multimodal transport gradually becomes the standard mode of transportation, the legal framework must be adjusted accordingly. Such adjustments are not only crucial for maintaining the competitiveness of UK maritime law but also constitute a fundamental prerequisite for preserving the international trade order.

Taken together, the legislative and judicial practices of Hong Kong and Singapore offer

²¹ *Maritime Transport Act 2021* (Singapore), ss 13–16.

²² *The Shipping Company v XYZ Logistics* [2011] SGHC 12.

²³ Carriage of Goods by Sea Ordinance (Cap 462) s 3.

concrete reference points for addressing the limitations of the COGSA 1992 and the continuing ambiguity surrounding the application of the Hague–Visby Rules to the maritime segment of multimodal transport.

5.3 The Proper Reference to Rotterdam Rules

Beyond drawing on the legislative and judicial experiences of jurisdictions such as Hong Kong and Singapore, as well as the unified liability models developed in civil law systems, the common law framework may also look to more comprehensive international instruments, most notably the Rotterdam Rules. Any such reference, however, must be guided by a fundamental principle: to maintain the internal coherence of the legal system while enhancing its foresight. The moderate reference to the Rotterdam Rules is precisely an important way to demonstrate legal foresight. Although Rotterdam Rules has yet to achieve widespread practical application or international acceptance, its legislative approach deserves our careful study. Their most significant contribution lies in the incorporation of multimodal transport contracts within a unified liability framework, offering a “one-stop” solution to the fragmentation of legal regimes discussed above.²⁴

First, the Rotterdam Rules established a unified liability framework and modernized document system, providing a reference for English legal reforms. The convention explicitly holds carriers accountable for the entire transportation chain, regardless of whether the transport segment involves maritime, road, or air transport. This unified liability concept fundamentally resolves the legal fragmentation caused by the segmented liability system in current English law. The convention also recognizes electronic bills of lading and transferable electronic multimodal transport documents, incorporating electronic documents into its scope of application from a forward-looking perspective. On one hand, this accommodates the rapidly evolving electronic bill of lading industry; on the other hand, it ensures the legal validity of cargo transfers and financing, avoiding transaction risks and remedial difficulties arising from non-compliant documents.

Nevertheless, the limited international acceptance of the Rotterdam Rules has prompted a cautious response from both states and industry participants. Accordingly, any consideration of expanded carrier liability, contractual restructuring or documentary standardisation must be approached with prudence. Overly ambitious legislative reform risks departing from commercial realities and may create inconsistencies between English law and the legal regimes applied in major trading jurisdictions, thereby increasing uncertainty and dispute resolution costs. This concern is particularly acute given that existing legislation, including the COGSA 1992 and the surrounding case law, remains firmly grounded in segmented liability and traditional bill of lading concepts. The wholesale adoption of the Rotterdam

²⁴ United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (adopted 23 September 2008, not yet in force) (“Rotterdam Rules”).

Rules, without careful integration, could therefore generate doctrinal conflict and undermine legal certainty.

Of course, we must be clear-eyed that directly transplanting the Rotterdam Rules is not feasible. However, the legislative philosophy and core values they embody—such as the pursuit of unified legal application and enhanced predictability of rules—provide crucial insights for our legal reforms. We cannot focus solely on immediate problems. We must also consider how legal rules can adapt to future trade practices. After all, a sound legal framework should not only resolve current disputes but also remain responsive to future developments.²⁵

6. Conclusion

In summary, the legal framework governing multimodal transport under English law remains structurally incomplete. The COGSA 1992 and related case law still focus on traditional maritime shipping, with bills of lading covering only three basic categories and excluding multimodal transport bills. This legal gap creates two major issues: First, it disrupts the smooth operation of rights transfer mechanisms, leaving bill holders unable to claim rights or assume obligations. Second, it introduces ambiguity in liability determination, particularly in cross-regional jurisdiction and cross-modal transport scenarios. When disputes arise, parties often struggle to identify responsible parties or compensation claimants, preventing bill holders from exercising litigation rights under multimodal transport bills. Furthermore, financial institutions and insurers cannot fully rely on multimodal transport bills for financing or letter of credit settlements. The uncertainty surrounding these bills not only increases operational risks for banks and insurers but also reduces document credibility, thereby raising transaction costs and operational risks. These issues severely undermine legal predictability, contradicting the core objective of international trade to achieve efficiency and convenience.

To address these deficiencies, this paper advocates the adoption of a functional approach to the legal characterisation of transport documents. By integrating English case law with Hong Kong's legal framework, this principle would extend the protection of bills of lading that fulfill three core functions, namely, receipt, contract proof, and property transfer, to existing legal provisions. This approach evaluates the applicability of a bill of lading based on its functional significance rather than its traditional designation. Such expansive interpretation helps prevent legal rigidity, safeguards the legitimate rights of multimodal transport bill holders, and establishes forward-looking provisions for emerging document formats like electronic bills of lading.

Meanwhile, the ongoing controversy regarding the applicability of the Hague-Visby Rules to the maritime component of multimodal transport bills of lading has resulted in a lack of clear legal basis for maritime transport protection. This paper argues that enacting

²⁵ UNCITRAL, *Rotterdam Rules: Travaux Préparatoires* (2008).

legislation to explicitly apply the COGSA 1992 to the maritime segment of multimodal transport would help ensure consistency in liability and compensation for maritime operations, thereby reducing legal fragmentation and related disputes arising from different jurisdictions across various transport modes. Drawing on Singapore's multimodal transport legislation, this paper proposes establishing carriers' comprehensive liability for the entire transport journey through legislative measures. Additionally, by examining judicial precedents and incorporating the common law countries' tendency toward unified liability principles and mainstream practices, this study provides a reference framework and case law source for the UK.

Building on these reforms, the continued application of bill of lading principles should be complemented by the gradual development of a more coherent liability framework, the formal recognition of electronic transport documents, and the establishment of end-to-end accountability mechanisms. These measures would provide theoretical references and institutional arrangements for future legal development. Additionally, the paper highlights key considerations for applying the bill of lading rules: on one hand, avoiding excessive conservatism; on the other, preventing overly radical reforms that could deviate from international practices.

In conclusion, this paper submits that English law should be reformed to expressly incorporate multimodal transport bills of lading within the scope of the COGSA 1992 and related legal instruments. In parallel, the progressive introduction of functional interpretation, unified liability principles and an electronic bill of lading regime would enhance legal predictability and commercial confidence in multimodal transport. Grounded in functionalism, such a framework would ensure that legitimate holders are able to transfer both documents and the goods they represent with legal certainty. Ultimately, these reforms would close existing institutional gaps in the regulation of multimodal transport and reinforce the position of English law as a reliable and competitive legal framework for global trade and carriage.

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