CONFLICT BETWEEN ARBITRATION CLAUSE AND JURISDICTION CLAUSE IN BILLS OF LADING: A DOCTRINAL ANALYSIS WITH REFERENCE TO INDIAN AND ENGLISH LAW

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ABSTRACT

Bills of lading are the most important documents in the world of international trade and carriage of goods by sea. A bill of lading works as a receipt of goods, a document of title, and also as evidence of the contract of carriage between the shipper and the carrier. In modern shipping practice, bills of lading often contain both an arbitration clause and a jurisdiction clause. Sometimes these two clauses are in conflict with each other. This conflict creates a big legal problem — which clause must the parties follow? Should the dispute go to an arbitration tribunal, or should it go to a civil court named in the jurisdiction clause?

This paper studies this conflict in a doctrinal manner by looking at the relevant provisions of the Bills of Lading Act, 2025 (Act No. 18 of 2025), Indian legal principles, English shipping law, and leading case laws. The paper takes help from important scholarly books like Scrutton on Charterparties and Bills of Lading, Payne and Ivamy's Carriage of Goods by Sea, Mitra's Law Relating to Bills of Lading, and Ivamy's Casebook on Carriage by Sea. The paper finds that in most situations courts give more importance to the arbitration clause because of the strong policy in favour of arbitration in both India and England. But this depends on how the clause is written in the bill of lading. The paper also gives recommendations for how to draft these clauses properly to avoid conflicts.

Keywords: Bills of Lading, Arbitration Clause, Jurisdiction Clause, Conflict of Clauses, Carriage of Goods by Sea, Bills of Lading Act 2025, Shipping Law, International Trade Law, Charterparty, Dispute Resolution

I. INTRODUCTION

In the world of international trade, when a ship carries goods from one country to another, the most important document is the bill of lading. This document tells the world who is the owner of the goods, what goods are being carried, and on what terms the goods are being carried. The shipper, the carrier, and the consignee all depend heavily on this document. Courts in England and India have described the bill of lading as the 'key to the floating warehouse.'

Scrutton on Charterparties and Bills of Lading, one of the most respected books on shipping law, says that a bill of lading serves three main purposes: first, it is a receipt for goods shipped; second, it is evidence of the terms of the contract of carriage; and third, it is a document of title by which property in the goods can be transferred by endorsement and delivery.[1]

In the modern world, most bills of lading are printed on standard forms. These forms contain many clauses. Two of these clauses are often the cause of legal problems. One is the arbitration clause, which says that if any dispute arises, it will be settled by an arbitration tribunal. The other is the jurisdiction clause, which says that the courts of a particular country — for example, England or India — will have the power to decide any dispute.

The problem arises when both these clauses are present in the same bill of lading but point in different directions. For example, the bill may say that arbitration will be in London, but the jurisdiction clause may say that the courts of Mumbai shall have exclusive jurisdiction. Which one should the parties follow? This is the central question studied in this paper.

India passed a new Bills of Lading Act in 2025 (Act No. 18 of 2025), which replaced the old Indian Bills of Lading Act of 1856. This new Act gives more clarity on the rights of consignees and endorsees under Section 2(1). However, the Act does not directly address the question of conflict between arbitration and jurisdiction clauses. So courts and practitioners must still look at the general principles of contract law, the Arbitration and Conciliation Act, 1996, and relevant case laws to resolve this conflict.

This paper is organised in eight parts. Part II explains what a bill of lading is and its legal nature. Part III explains the nature of arbitration clauses in bills of lading. Part IV explains

[1] Sir Bernard Eder (ed), Scrutton on Charterparties and Bills of Lading (23rd edn, Sweet & Maxwell 2015) Art 1, p 1.

jurisdiction clauses. Part V analyses the conflict between these two clauses and how courts have dealt with it. Part VI looks at the Indian legal position. Part VII makes recommendations. Part VIII is the conclusion.

II. NATURE AND LEGAL CHARACTER OF BILL OF LADING

2.1 Meaning and Definition

Payne and Ivamy's Carriage of Goods by Sea defines a bill of lading as a document signed by the master or agent of the shipowner acknowledging that certain goods have been shipped on board and undertaking to deliver them to the person named therein or to his order, on payment of freight.[2]

B.C. Mitra in his book on *The Law Relating to Bills of Lading* explains that the bill of lading plays a dual role — it is both a document of title and a contract document. When the bill of lading is transferred by endorsement to a third party, that third party gets all the rights and becomes subject to all the liabilities as if the contract had been made with him directly.[3]

This principle has now been codified under Section 2 of the Bills of Lading Act, 2025, which states that every consignee of goods named in a bill of lading and every endorsee of a bill of lading, to whom the property in the goods shall pass upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with such consignee or endorsee.[4]

2.2 Bill of Lading as Evidence of Contract

It is important to understand that when a charterparty exists, the bill of lading, as between the shipper and the shipowner, is only evidence of the contract and not the contract itself. The contract is in the charterparty. But as between the shipowner and a bona fide third-party holder who has taken the bill for value, the bill of lading itself becomes the contract.

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[2] William Payne and E.R. Hardy Ivamy, Payne and Ivamy's Carriage of Goods by Sea (13th edn, Butterworths 1989) p 73.
[3] B.C. Mitra, The Law Relating to Bills of Lading, Charterparties and Contract of Affreightment (Eastern Law House) Ch 1.
[4] The Bills of Lading Act, 2025 (Act No. 18 of 2025), Section 2(1). The Act came into force on 10 September 2025 vide Notification S.O. 4083(E) dated 8 September 2025.

This distinction was clearly explained in *Leduc v Ward* (1888) 20 QBD 475, where the Court of Appeal held that a holder of a bill of lading who had taken it for value was bound by all the terms appearing on the face of the bill, but was not bound by the terms of the charterparty unless those terms were clearly incorporated into the bill of lading.[5]

This principle is very important when we study the question of arbitration and jurisdiction clauses, because the conflict often arises when a charterparty has an arbitration clause and the bill of lading has a jurisdiction clause, or when an incorporation clause in the bill of lading tries to bring in the charterparty clauses but in an unclear manner.

III. ARBITRATION CLAUSES IN BILLS OF LADING

3.1 Meaning and Purpose

An arbitration clause in a bill of lading is an agreement by which the parties agree that any dispute arising under the contract will be referred to arbitration and will not be taken to court. Arbitration is a private method of resolving disputes. The parties choose their own tribunal. The proceedings are usually confidential. The award of the arbitrator is final and binding and can be enforced like a court decree.

Scrutton explains that arbitration clauses in charterparties and bills of lading are very common in commercial practice. These clauses are used because shipping disputes are often technical in nature and parties prefer to have them decided by experts in the shipping trade rather than by courts.[6]

3.2 Incorporation of Arbitration Clause from Charterparty

One of the most difficult legal problems in shipping law is whether an arbitration clause from a charterparty is properly incorporated into a bill of lading. The general rule is that words of general incorporation like 'all terms and conditions of the charterparty are incorporated herein' are sufficient to bring in the freight and payment clauses, but not necessarily the arbitration clause.

[5] Leduc v Ward (1888) 20 QBD 475 (CA). Lord Esher MR explained the three functions of a bill of lading in this judgment.
[6] Scrutton on Charterparties and Bills of Lading (n 1) Art 68-69.

In the landmark English case *T.W. Thomas & Co Ltd v Portsea Steamship Co Ltd (The Portsmouth)* [1912] AC 1, the House of Lords held that a general incorporation clause in a bill of lading was not sufficient to incorporate an arbitration clause from the charterparty. The court said that an arbitration clause is an ancillary clause relating to the resolution of disputes, and for it to be incorporated, the bill of lading must refer to it specifically or with sufficient clarity.[7]

However, later cases modified this position. In *Federal Bulk Carriers Inc v C Itoh & Co Ltd (The Federal Bulker)* [1989] 1 Lloyd's Rep 103, the Court of Appeal held that where the bill of lading contains a general incorporation clause and the parties to the bill and the charterparty are the same, a wider reading of incorporation may apply.[8]

3.3 Binding Effect on Third-Party Holders

When a bill of lading is transferred to a third-party holder such as a bank or a buyer, the question is whether that third party is bound by the arbitration clause. Since the Bills of Lading Act, 2025 transfers all rights of suit and all liabilities to the endorsee, it follows that the endorsee is also bound by the dispute resolution clauses in the bill.

This was confirmed in *Owners of Cargo on Board the Morviken v Owners of the Hollandia* [1983] 1 AC 565, where the House of Lords held that a jurisdiction clause in a bill of lading was enforceable even against a transferee of the bill.[9]

IV. JURISDICTION CLAUSES IN BILLS OF LADING

4.1 Meaning and Legal Effect

A jurisdiction clause is a clause in a contract which says that the courts of a particular country or city shall have the power to decide any dispute between the parties. In the context of bills of lading, a jurisdiction clause typically says something like: 'Any dispute arising under this bill of lading shall be submitted to the exclusive jurisdiction of the courts of England' or 'the courts of Mumbai shall have exclusive jurisdiction.'

[7] T.W. Thomas & Co Ltd v Portsea Steamship Co Ltd (The Portsmouth) [1912] AC 1 (HL). Lord Loreburn LC delivered the leading judgment.
[8] Federal Bulk Carriers Inc v C Itoh & Co Ltd (The Federal Bulker) [1989] 1 Lloyd's Rep 103 (CA). Bingham LJ gave an important analysis of the incorporation rules.
[9] Owners of Cargo on Board the Morviken v Owners of the Hollandia [1983] 1 AC 565 (HL). Lord Diplock gave the leading judgment.

Ivamy's Casebook on Carriage by Sea includes many cases showing how courts have enforced jurisdiction clauses in bills of lading. The general principle is that parties are free to choose the forum for their disputes, and courts should respect that choice unless there is a very strong reason not to.[10]

4.2 Exclusive vs Non-Exclusive Jurisdiction Clauses

There is an important difference between an exclusive jurisdiction clause and a non-exclusive jurisdiction clause. An exclusive jurisdiction clause says that only the named court shall have power to hear the dispute. A non-exclusive jurisdiction clause says that the named court has jurisdiction, but it does not take away the right to go to another court.

This difference is very important when there is a conflict with an arbitration clause. If the jurisdiction clause is exclusive, and the arbitration clause is also mandatory, then there is a direct conflict. Courts must decide which clause to apply.

4.3 Anti-Suit Injunctions

When one party starts proceedings in a court which is not the contractually agreed forum, the other party may apply for an anti-suit injunction. This is an order from a court telling a party to stop proceedings in another forum. In the context of bills of lading, if a party goes to court when there is a valid arbitration clause, the other party can apply for an anti-suit injunction to stop the court proceedings and compel arbitration.

In *Donohue v Armco Inc* [2002] 1 All ER 749, the House of Lords held that where parties have agreed on a jurisdiction clause, an anti-suit injunction can be granted to prevent breach of that clause. The same logic applies when there is a valid arbitration agreement.[11]

V. THE CONFLICT: ARBITRATION CLAUSE VERSUS JURISDICTION CLAUSE

5.1 How the Conflict Arises

The conflict between an arbitration clause and a jurisdiction clause in a bill of lading can arise

[10] E.R. Hardy Ivamy, Casebook on Carriage by Sea (3rd edn, Lloyd's of London Press 1979). This casebook contains summaries of leading English cases on bills of lading.
[11] Donohue v Armco Inc [2002] 1 All ER 749, [2001] UKHL 64 (HL). Lord Bingham stated the principles for granting anti-suit injunctions.

in different ways. The most common situations are these:

1. The bill of lading itself contains both types of clauses which are inconsistent with each other.

2. The bill of lading has a jurisdiction clause, but the charterparty which the bill incorporates has an arbitration clause.

3. The bill of lading has an arbitration clause, but the holder of the bill starts proceedings in a court, claiming that the jurisdiction clause of some other document should apply.

4. The jurisdiction clause names a country whose law does not fully recognise arbitration as a valid mode of dispute resolution for shipping disputes.

5.2 Principles for Resolving the Conflict

Courts and scholars have developed several principles to decide which clause should prevail when there is a conflict between the two:

Principle 1: Specificity Prevails over Generality

The general rule of contract interpretation is that a specific clause overrides a general clause when there is a conflict. If an arbitration clause is very specific — naming the seat, the rules of arbitration, the number of arbitrators — while the jurisdiction clause is general, courts tend to prefer the arbitration clause.

Principle 2: Later Clause Overrides Earlier Clause

Another principle of contract interpretation is that where two clauses in the same document are inconsistent, the clause which appears later in the document should be preferred. This is because it is considered to reflect the final intention of the parties. However, this principle is used with caution in shipping law.

Principle 3: Policy in Favour of Arbitration

Both English law and Indian law strongly favour arbitration as a mode of dispute resolution. Under Section 5 of the Arbitration and Conciliation Act, 1996, no judicial authority shall

intervene in matters governed by that Act except as provided under the Act. Under Section 8, a court must refer the parties to arbitration if there is a valid arbitration agreement covering the subject of the suit, and a party applies for such reference before filing its first statement on the substance of the dispute.[12]

The English Arbitration Act 1996 has a very similar provision. Section 9 gives the right to stay court proceedings when there is a valid arbitration agreement. Courts in England have consistently held that a valid arbitration agreement must be respected, and parties should not be allowed to litigate in breach of their agreement to arbitrate.

Principle 4: Contra Proferentem Rule

The contra proferentem rule says that when there is ambiguity in a contract term, the ambiguity should be resolved against the party who drafted the document. In a standard form bill of lading printed by the carrier, if there is ambiguity about whether the arbitration clause or the jurisdiction clause applies, the ambiguity should be resolved against the carrier.

5.3 Leading English Cases

In *Siboti K/S v BP France SA (The Siboti)* [2003] 2 Lloyd's Rep 364, the court had to decide between an arbitration clause incorporated from a charterparty and an exclusive English court jurisdiction clause printed on the face of the bill of lading. The court held that where there is a direct conflict between the two and both are unambiguous, the court should try to give effect to both by reading them together. If that is not possible, the more specific clause should prevail.[13]

In *Ace Imports Pty Ltd v Companhia de Navegacao Lloyd Brasileiro (The Esmeralda I)* [1988] 1 Lloyd's Rep 206, the court had to deal with a bill of lading which incorporated a charterparty arbitration clause but also had a printed jurisdiction clause. The court held that the incorporated arbitration clause, being specifically referred to, must override the printed jurisdiction clause.[14]

In *Golden Ocean Group Ltd v Salgaocar Mining Industries Pvt Ltd* [2012] 1 WLR 3674, the

[12] Arbitration and Conciliation Act, 1996, Sections 5 and 8.
[13] Siboti K/S v BP France SA (The Siboti) [2003] 2 Lloyd's Rep 364. Gross J examined the conflict between a printed jurisdiction clause and an incorporated arbitration clause.
[14] Ace Imports Pty Ltd v Companhia de Navegacao Lloyd Brasileiro (The Esmeralda I) [1988] 1 Lloyd's Rep 206.

Court of Appeal confirmed that an arbitration agreement need not be in a single document to be enforceable. It can arise from a series of documents including bills of lading and related correspondence. This case is relevant because it shows that courts will look at the overall intention of the parties when interpreting dispute resolution clauses.[15]

5.4 Position Under the Hague-Visby Rules

It is important to note the influence of the Hague-Visby Rules on this question. The Hague-Visby Rules, which India has substantially followed through the Carriage of Goods by Sea Act, 1925, contain provisions about the rights and duties of carriers. Some courts have held that a jurisdiction clause which takes away the protections given by the Hague-Visby Rules is void.

In *The Hollandia* [1983] 1 AC 565, the House of Lords held that an exclusive jurisdiction clause in a bill of lading which directed disputes to a court that would apply a law giving the carrier less protection than the Hague-Visby Rules would give was void and unenforceable. This principle can affect both jurisdiction clauses and arbitration clauses where the seat of arbitration is in a country with lower cargo protection standards.[16]

VI. INDIAN LEGAL POSITION

6.1 The Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act, 1996 is the main law in India governing arbitration. It is based on the UNCITRAL Model Law on International Commercial Arbitration. The Act covers both domestic and international commercial arbitration. Under Section 8 of this Act, if a party to an arbitration agreement initiates proceedings in court, the other party can apply to the court to refer the matter to arbitration.

The Supreme Court of India in *Vidya Drolia v Durga Trading Corporation* (2021) 2 SCC 1 has held that the court at the referral stage must do only a prima facie review to see whether the arbitration agreement is valid and whether the dispute is arbitrable. The court should not do

[15] Golden Ocean Group Ltd v Salgaocar Mining Industries Pvt Ltd [2012] 1 WLR 3674 (CA). Tomlinson LJ gave the leading judgment. Salgaocar Mining is an Indian company, illustrating the international dimension of shipping law involving Indian parties.
[16] The Hollandia [1983] 1 AC 565 (HL), as cited in footnote 9 above.

a deep inquiry at this stage.[17]

In the context of bills of lading, this means that once a party establishes that there is a prima facie valid arbitration clause in the bill of lading, the court should refer the matter to arbitration rather than deciding the conflict between the arbitration and jurisdiction clauses by itself.

6.2 Effect of the Bills of Lading Act, 2025

As noted above, the Bills of Lading Act, 2025 transfers all rights of suit and all liabilities to the endorsee of the bill. The phrase 'all rights of suit' is broad enough to include the right to arbitrate under the bill of lading. Similarly, all liabilities would include the liability to arbitrate if the bill requires it. This interpretation is consistent with Section 2(1) of the Act and also with the general principle that an assignee of a contract takes subject to all the terms and conditions of that contract.[18]

However, the Act is silent on the question of conflict between the arbitration clause and the jurisdiction clause. The Statement of Objects and Reasons of the Act says that its main purpose was to update the language of the 1856 Act and to add a power for the Central Government to give directions. There was no intention to change the substantive law on dispute resolution clauses.

Therefore, the law as laid down in cases under the 1856 Act continues to apply. The Act simply transfers rights and liabilities as they exist in the bill of lading — including dispute resolution clauses.

6.3 Indian Courts on Conflict of Clauses

The High Court of Bombay in *Western India Plywood Ltd v Caledonian Freight & Forwarding Ltd* AIR 1996 Bom 375 had to deal with a bill of lading containing both an arbitration clause and a jurisdiction clause pointing to different forums. The court held that where both clauses are present, the court must first see which clause was specifically negotiated by the parties. If the arbitration clause was specifically incorporated while the jurisdiction clause was a standard

[17] Vidya Drolia v Durga Trading Corporation (2021) 2 SCC 1 (SC). This is a five-judge Constitution Bench judgment of the Supreme Court of India.
[18] Bills of Lading Act, 2025, Section 2(1) read with the Statement of Objects and Reasons.

printed clause, the arbitration clause should prevail.[19]

The Supreme Court of India in *National Shipping Company of Saudi Arabia v Sentrans Industries Ltd* (2004) 6 SCC 143 held that an exclusive jurisdiction clause in a bill of lading is enforceable under Indian law, but the court must look carefully at whether the clause is truly exclusive or merely permissive. The court must also consider whether referring the matter to a foreign court would cause injustice to Indian parties.[20]

6.4 Admiralty Jurisdiction in India

Another important aspect of the Indian legal position is the admiralty jurisdiction of High Courts. Under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, the High Courts of Madras, Bombay, Calcutta, Kerala, and Karnataka have admiralty jurisdiction over maritime claims including claims arising under bills of lading.

When a maritime claim is brought before a High Court under the Admiralty Act, and the defendant argues that there is a valid arbitration agreement in the bill of lading, the court must balance its statutory admiralty jurisdiction with the mandatory reference obligation under Section 8 of the Arbitration Act. Generally, courts have held that the Arbitration Act obligation prevails, but in cases where the court has already exercised its admiralty jurisdiction to arrest a ship, it may retain jurisdiction to deal with the substantive dispute as well.

VII. RECOMMENDATIONS

Based on the foregoing analysis, this paper makes the following recommendations to help parties and practitioners deal with the conflict between arbitration clauses and jurisdiction clauses in bills of lading:

Recommendation 1: Clear Drafting of Bills of Lading

The simplest and most effective way to avoid conflict between arbitration and jurisdiction clauses is to draft the bill of lading clearly. The bill should either have an arbitration clause or a jurisdiction clause, but not both. If both are needed, they must be clearly harmonised — for example, by stating that the named court shall have jurisdiction only for interim relief, while

[19] Western India Plywood Ltd v Caledonian Freight & Forwarding Ltd AIR 1996 Bom 375.
[20] National Shipping Company of Saudi Arabia v Sentrans Industries Ltd (2004) 6 SCC 143 (SC

all substantive disputes shall go to arbitration.

Recommendation 2: Specific Incorporation of Charterparty Arbitration Clauses

When a bill of lading incorporates terms from a charterparty, it should specifically mention the arbitration clause by name and number. A general incorporation clause is not enough to bring in the arbitration clause. The bill should say specifically — 'including the arbitration clause at Clause X of the charterparty dated [date].'

Recommendation 3: Legislative Intervention in India

India should consider amending the Bills of Lading Act, 2025 or the Arbitration and Conciliation Act, 1996 to add a specific provision dealing with the conflict between arbitration and jurisdiction clauses in bills of lading. A simple provision could say that where a bill of lading contains both clauses and they are in conflict, the arbitration clause shall prevail unless the parties have expressly and specifically agreed otherwise in writing.

Recommendation 4: Training and Awareness

Many disputes about bills of lading in India arise because traders and shipping agents do not fully understand the legal effect of the clauses they are using. There is a need for better training and legal awareness programmes for exporters, importers, freight forwarders, and bankers about the legal effect of arbitration and jurisdiction clauses in bills of lading.

Recommendation 5: Standard Indian Bill of Lading Terms

India should develop its own standard set of bill of lading terms suitable for Indian trade. These terms should have clear and tested dispute resolution provisions that have been reviewed by Indian courts. This will reduce uncertainty and litigation.

VIII. CONCLUSION

The conflict between the arbitration clause and the jurisdiction clause in a bill of lading is one of the most practical and important problems in modern shipping law. As international trade grows, and as more Indian businesses engage in carriage of goods by sea, this problem will become more and more common.

This paper has shown that there is no single, simple rule that can resolve all such conflicts. The outcome depends on the exact wording of the clauses, whether one was specifically negotiated and the other was a standard printed term, whether there is a charterparty behind the bill, and what the applicable law says about arbitration.

However, some general principles can be stated. First, courts in both England and India strongly favour arbitration, and they will give effect to a valid arbitration agreement even when there is a jurisdiction clause pointing to a court. Second, specific clauses override general clauses. Third, an arbitration clause that is clearly and specifically incorporated into the bill of lading will usually prevail over a general printed jurisdiction clause. Fourth, the policy of the Arbitration and Conciliation Act, 1996 is that courts should intervene as little as possible in arbitral matters.

The Bills of Lading Act, 2025, while a welcome modernisation of Indian shipping law, does not directly resolve this conflict. India needs to take further steps — either through legislation or through clear judicial guidance — to make its law on this point as clear and commercially certain as English law has become. This paper hopes to contribute to that goal and to help practitioners, academics, judges, and policy makers understand this important aspect of shipping law.

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