

Draft Uniform Documents of Title Act 1995

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Draft Uniform Documents of Title Act

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[See 1995 Proceedings page 44.]

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INTERPRETATION

Definitions

1(1) In this Act:

- (a) "bailee " means the person who, by a warehouse receipt, bill of lading or other document of title, acknowledges possession of goods and contracts to deliver them.
- (b) "bill of lading" or "bill" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an air consignment note or air waybill.
- (c) "consignee" means the person named in a bill to whom or to whose order the bill promises delivery.
- (d) "consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(e) "delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(f) "document of title" or "document" means a writing

(i) that purports to be issued by or addressed to a bailee,

(ii) that purports to cover goods in the bailee's possession that are identified, or fungible portions of an identified mass, and

(iii) that in the ordinary course of business is treated as establishing that the person in possession of the writing is entitled to receive, hold and dispose of it and the goods it covers.

(g) "fungible goods" means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

(h) "goods " means all things which are treated as movable for the purposes of a contract of storage or transportation.

(i) "holder " means a person who is in possession of a document of title drawn, issued or endorsed to that person or to that person's order or to bearer or in blank.

(j) "issuer " means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver.

(k) "negotiable document of title" means a document of title in which it is stated that the goods therein specified will be delivered to bearer or to the order of a named person.

(l) "non-negotiable receipt" means a document of title other than a negotiable document of title.

(m) "purchase " includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(n) "security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation.

(o) "warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(2) For the purposes of subsection(1)(i) an "issuer" includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated that person's instructions.

(3) A person gives value for rights if that person acquires them

- (i) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection;
- (ii) as security for or in total or partial satisfaction of a pre-existing claim;
- (iii) by accepting delivery pursuant to a pre-existing contract for purchase; or
- (iv) generally, in return for any consideration sufficient to support a simple contract.

Definition of document of title

Legislation

UCC 1-201(15); UPPSA, s.1(g); USGA, s.1(o).

Comment

1. The term "document of title" is defined in both the Uniform Sale of Goods Act and the Uniform Personal Property Security Act. This formulation may be criticized on the basis that it seems to suggest that a non-negotiable document of title falls outside of the definition because possession of it by someone other than the named person is not treated as "establishing that the person in possession of the document of title is ... entitled to receive, hold and dispose of the goods it covers". For this reason, the Personal Property Security Act of Alberta and British Columbia provide a somewhat different formulation:

"document of title" means a writing issued by or addressed to a bailee

- (i) that covers goods in the bailee's possession that are identified or are fungible portions of an identified mass, and
- (ii) in which it is stated that the goods identified in it will be delivered to a named person, or to the transferee of the person, to bearer or to the order of a named person;"

2. Although the Alberta and British Columbia provision is more clear, the clarity it produces does not outweigh the desirability of having a standardized definition in the Uniform Sale of Goods Act, the Uniform Personal Property Security Act and the Uniform Documents of Title Act. Therefore, it is recommended that the definition used in the other Uniform Act be retained. It should also be noted that Article 1-201(15) adopts a substantially similar formulation.

3. The adoption of a single uniform definition of a document of title is not completely effected. A different formulation appears in the Bank Act, R.S.C. 1985, c.B-1 in the definitions in section 2 of a "bill of Lading" and a "warehouse receipt". The Bank Act security provisions should be either repealed or modernized, however, this is not a necessary condition for the enactment of a Uniform Documents of Title Act. See Proceedings of the Uniform Law Conference of Canada, 1991, at page 381.

4. The factors legislation of the various provinces also contain a different definition of a "document of title". This definition could be changed so as to bring it into conformity with the other legislation by substituting the definition of a negotiable document of title. This

would produce a greater conceptual unity. The central idea is that where negotiable documents of title are involved the documents represent title to the underlying goods, but where non-negotiable documents of title are issued the parties essentially deal with the goods rather than with the documents.

Definition of negotiable and non-negotiable documents of title

Legislation

UCC 7-104, UWRA (Can.), ss. 1(e)(f).

Comment

The definitions of "negotiable document of title" represents a departure from the common law position. At common law, only bills of lading were considered to be negotiable in the sense that the transfer of the document operates as a transfer of constructive possession of the goods. This feature was not afforded to warehouse receipts by the common law, and was conferred on them only by statute (See Uniform Warehouse Receipts Act (Can.), Canada Grain Act, R.S.C. 1985, c.G-10, s.111). A document other than a bill of lading could obtain the status of a document of title upon proof of a custom to that effect in relation to that particular kind of document. See, for example, *Merchant Banking Co. of London v. Phoenix Bessemer Steel Co.* (1877), 5 Ch.D. 205. This approach is rejected in favour of the rule that any document of title will be regarded as negotiable if by its terms it indicates that the goods are to be delivered to bearer or to the order of a named person.

Definition of bill of lading

Legislation

UCC 1-201(6); USGA, s. 1(c).

Comment

The definition encompasses freight forwarders' bills and bills issued by contract carriers as well as those issued by common carriers. It also covers air waybills.

Definition of warehouse receipt

Legislation

UCC 1-201(45); UWRA (Can.), ss. 19(j), (k)

Comment

The definition combines the definition of "warehouse receipt" and the definition of "warehouseman" in sections 1(j) and (k) of the Uniform Warehouse Receipts Act (Can.).

Definition of delivery order

Legislation

UCC 7-102(d)

Comment

A delivery order refers to an order given by an owner of goods to a person in possession of them (the carrier or warehouseman) directing that person to deliver the goods to a person named in the order. A delivery order was not regarded as a document of title at common law with the result that the transfer of the delivery order did not effect transfer of constructive possession of the goods. Attornment on the part of the bailee was required (i.e., an acknowledgement that the bailee held the goods on behalf of the transferee). The Uniform Documents of Title Act permits the use of negotiable delivery orders (if the order directs delivery to a named person or order). However, it is still necessary to single out delivery orders for special treatment. Until the delivery order is accepted by the bailee, there is no basis for imposing obligations on the bailee. See discussion under sections 18 and 19. See also the definition of "issuer".

Definition of issuer

Legislation

UCC 7-102(g).

Comment

1. The definition designates the owner of the goods as the issuer in respect of an unaccepted delivery order. Once the bailee accepts the delivery order, the bailee is treated as the issuer and the document is treated as an ordinary warehouse receipt or bill of lading for all intents and purposes.
2. The definition is designed to reverse the common law rule first laid down in *Grant v. Norway* (1851), 10 C.B. 665, 20 L.J.C.P. 93. See the discussion under section 8.

Other definitions

Comment

The definitions of "bailee", "consignee" and "consignor" simply set out the normal commercial meaning of these terms. The definitions of "purchase", "security interest" and "value" are consistent with those used in the Uniform Personal Property Security Act.

PART 1 - WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

Form of warehouse receipt (1) A warehouse receipt need not be in any particular form.

(2) Notwithstanding subsection (1), unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

- (a) the location of the warehouse where the goods are stored;
- (b) the name of the person by whom or on whose behalf the goods are deposited;

- (c) the date of issue of the warehouse receipt;
- (d) a statement that the goods received will be delivered to the holder thereof, or that the goods will be delivered to bearer or to the order of a named person;
- (e) the rate of storage and handling charges;
- (f) a description of the goods or of the packages containing them;
- (g) the signature of the warehouseman or of an authorized agent of the warehouseman;
- and
- (h) a statement of the amount of any advance made and of any liability incurred for which the warehouseman claims a lien.

(3) A warehouseman may insert in the warehouseman's warehouse receipt any other terms which are not contrary to the provisions of this Act and do not impair the warehouseman's obligation of delivery.

Legislation

UWRA (Can.), s.2; UCC 7-202.

Comment

This provision is substantially the same as section 2 of the Uniform Warehouse Receipts Act (Can.), except that the information requirements extend to non-negotiable warehouse receipts as well (the UWRA provision only applied to negotiable warehouse receipts).

Liability for non-receipt or misdescription

3 (1) A party to or purchaser for value in good faith of a document of title, other than a bill of lading, who relies on the description of the goods contained in the document may recover from the issuer damages caused by the non-receipt or misdescription of the goods, except where the document conspicuously indicates that the issuer does not know whether any part or all of the goods were received or conform to the description, and that indication is true.

(2) Where a description on the goods or on the packages containing the goods indicates that the goods are said by the depositor to be goods of a certain kind, or by a statement of similar import, the statement does not impose any liability on the warehouseman in respect of the nature, kind or quality of the goods.

Legislation

UCC 7-203, UWRA (Can.), ss.11 and 12.

Comment

The provision is similar to sections 11 and 12 of the UWRA (Can.) except that it extends to purchasers for value of documents of title and to a party to the document of title (whereas the sections of the UWRA (Can.) are limited to holders of negotiable warehouse receipts). This expansion in scope will allow the consignee of a non-negotiable warehouse receipt to sue for damages caused by non-receipt or misdescription on the part of the warehouseman. This would apply where the owner stored goods and had the warehouse receipt made out in

the name of a bank which would thereby obtain a possessory security interest in the goods. It is unlikely that the owner of the goods could invoke this provision because the owner does not typically rely upon the description of the goods contained in the warehouse receipt.

Ordinary course of business of fungible goods 4. A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman, who is also in the business of buying and selling fungible goods, takes free of any claim under a warehouse receipt even though it has been duly negotiated.

Legislation

UCC 7-205

Comment

The comment to UCC Art. 7-205 indicates that the typical case covered by the provision is that of an insolvent warehouseman dealer in grain. The issue is whether the receipt holder can trace and recover grain shipped to farmers and other purchasers from the elevator. The provision resolves the conflict in favour of the ordinary course buyer, and in this respect is similar to the ordinary course buyer rule found in personal property security legislation.

Termination of storage at warehouseman's option

5(1) A warehouseman may, on notifying the person on whose account goods are held and any other person known to claim an interest in the goods, require payment of any charges and may require removal of the goods from the warehouse

(a) at the termination of the period of storage fixed by the document; or

(b) if no period is fixed, within a stated period not less than thirty days after the notification.

(2) If a notification is given under subsection (1)(b) and the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the Uniform Warehouseman's Lien Act.

(3) Where a warehouseman, in good faith, believes that the goods are about to deteriorate or decline in value to less than the amount of the warehouseman's lien within the time prescribed in subsection (1), then the warehouseman may specify in the notification any reasonably shorter time for removal of the goods.

(4) If the goods are not removed within the time specified in the notification under subsection (3), the warehouseman may sell them at public sale held not less than 10 days after a single advertisement or posting.

(5) Where, as a result of the quality or condition of the goods of which the warehouseman had no notice at the time of deposit, the goods are a hazard to other property or to the warehouse or to any person, the warehouseman may sell the goods at public or private sale without advertisement, on reasonable notification to all persons known to claim an interest in the goods.

(6) The warehouseman may, after a reasonable effort is unable to sell the goods under subsection (5), dispose of the goods in any lawful manner and shall incur no liability by reason of that disposition.

(7) The warehouseman may satisfy the warehouseman's lien from the proceeds of any sale or disposition under this section but must hold any balance remaining for payment on the demand to any person to whom the warehouseman would have been bound to deliver the goods.

Legislation

UCC 7-206, UWRA (Can.), s.17.

Comment

1. This provision is an expanded version of section 17 of the UWRA (Can.). The provision defines the power of the warehouseman to terminate the bailment. This is important because warehousing is often contracted for an indefinite term. The 30 day period provided when the document does not carry its own period of termination corresponds to commercial practice of computing rates on a monthly basis (see Official Comment to UCC 7-206).

2. The UWRA (Can.) did not distinguish between the case where the warehouseman knowingly undertook to store perishable or hazardous goods and the case where the warehouseman did not have such knowledge until after storage of the goods. The provision distinguishes between these two situations and provides that the summary power of removal and sale only applies to the latter.

Separation of goods: fungible goods

6 (1) Unless a warehouse receipt otherwise provides, a warehouseman must keep the goods covered by each warehouse receipt separate and apart so as to permit the identification and delivery of those goods.

(2) Notwithstanding subsection (1) fungible goods covered by a warehouse receipt may be commingled.

(3) Fungible goods that are commingled are owned in common by the persons entitled to them and the warehouseman is severally liable to each owner for that owner's share of the goods.

(4) Where a mass of fungible goods is insufficient to meet all of the warehouse receipts which the warehouseman has issued against those goods, then each holder of a warehouse receipt is entitled to such proportion of the mass as the quantity shown by that person's warehouse receipt to have been deposited bears to the whole.

Legislation

UCC 7-207, UWRA (Can.) s. 14.

Comment

This is an expanded version of section 14 of the UWRA (Can.), which only dealt with commingled goods. The provision establishes the duty to keep the goods separate and apart unless the contract provides otherwise.

Altered warehouse receipts

7 (1) Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the blank filled in as authorized.

(2) Subject to subsection (1), where there is an unauthorized alteration of a warehouse receipt, the warehouse receipt is enforceable against the issuer according to its original tenor.

Legislation

UCC 7-208

Comment

The provision deals with the situation where a warehouse receipt is issued in blank or where an unauthorized alteration is made. There is no similar provision in the UWRA (Can.). The inclusion of the provision is desirable because warehouse receipts were not regarded as documents of title under the common law and therefore the issue of altered warehouse receipts is not addressed in the decisional law.

PART 2 - BILLS OF LADING: SPECIAL PROVISIONS

Liability for non-receipt or misdescription

8 (1) Subject to subsection (2),

(a) a consignee of a non-negotiable bill who has given value in good faith; or
(b) a holder of a non-negotiable bill to whom a negotiable bill has been duly negotiated who relies upon the description of goods contained in the bill of lading may recover from the issuer damages caused by the misdating of the bill or the non-receipt or misdescription of the goods.

(2) A consignee of a non-negotiable bill shall not recover damages from the issuer

(a) where the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt; or

(b) the description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or the like, if that indication be true.

(3) Where goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight.

(4) A shipper

(a) shall be deemed to have guaranteed to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by the shipper; and

(b) shall indemnify the issuer against damage caused by inaccuracies in any of the particulars mentioned in paragraph (a).

(5) The right of the issuer to an indemnity mentioned in subsection (4) shall in no way limit the issuer's responsibility and liability under the contract of carriage to any person other than the shipper.

(6) In the circumstances mentioned in subsection (2) "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

Legislation

UCC 7-301; Carriage of Goods by Water Act (Can.), Article III.

Comment

1. The provision attempts to rationalize the law relating to misdescription of the goods contained in a bill of lading. At common law, a bill of lading is evidence of the facts stated in it. The provision will not protect the shipper if it is proved that the described goods were not in fact delivered to the issuer. Rather, it applies in favour of third parties who rely upon the description of the bill. In this respect, the provision codifies the common law position. See *Smith v. Bedouin Steam Navigation Co.* [1896] A.C. 70; *Compania Naviera Vasconzada v. Churchill & Sim*, [1906] 1 K.B. 237. It provides some further guidance where terms such as "shipper's weight, load and count" are used.

2. At common law, it was held that the master of a ship has no authority, real or apparent, to sign a bill of lading where the goods that have not been put on board. See *Grant v. NorNay* (1851) 10 C.B. 665; *Erb v. Great Western Railway Co. of Canada* (1881) 5 S.C.R. 367. This meant that the carrier was not liable either to the shipper or an endorsee of the bill. A similar rule prevailed in the United States. Section 4 of the Bills of Lading Act (Can.) provides that a bill of lading is conclusive evidence in favour of a consignee or endorsee for valuable consideration of the shipment as against the master or other person signing the bill of lading, notwithstanding that the goods or some part thereof may not have been shipped. However, this does not give the holder or consignee any right against the carrier. The Uniform Documents of Title Act changes the law by making the issuer of the bill responsible for non-receipt. This is made clear by the definition of "issuer" which provides that an issuer "includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue

documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions."

3. The provision remains subject to other federal law which may alter the position in relation to certain kinds of bills of lading. See Proceedings of the Uniform Law Conference of Canada, 1991, at pages 378 and 379. For example, the

Schedule of Rules Relating to Bills of Lading under the Carriage of Goods by Water Act, R.S.C. 1985, c.C-27 provides similar rules governing bills of lading in relation to the carriage of goods by water in ships carrying goods from any port in Canada to any other port, whether in or outside Canada.

4. The shipper's erroneous report to the carrier concerning the goods may cause damage to the carrier. The indemnity provision which is found in Article 111(5) of the Schedule to the Carriage of Goods by Water Act and in UCC 7-301(5) should be included so that it will extend to all types of bills of lading.

Through bills of lading

9 (1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by a person acting as the issuer's agent or by connecting carriers is, subject to any agreement to the contrary, liable to anyone entitled to recover on the document for any breach by any person acting as the agent of the issuer or by the connecting carrier of its obligation under the document.

(2) Where a person, other than the issuer, is to perform an undertaking contained in a through bill of lading or other document, that person is subject, with respect to that person's own performance while the goods are in that person's possession, to the obligation of the issuer.

(3) A person is discharged from an obligation under subsection (2) by delivery of the goods to another person pursuant to the document, and is not liable for breach of an undertaking contained in the bill of lading by any other person or by the issuer.

(4) The issuer of a through bill of lading or other document shall be entitled to recover from the connecting carrier or any other person in possession of the goods when the breach of the obligation under the document occurred:

(a) the amount required to be paid to any person entitled to recover on the document for the breach; and

(b) the amount of any expense reasonably incurred by the issuer in defending any action brought by any person entitled to recover on the document for the breach.

Legislation

UCC 7-302

Comment

1. Through bills of lading are used when the initial carrier uses the services of other carriers in delivering the goods. When this involves more than one mode of transport the bill is sometimes referred to as a "combined transport bill of lading".
2. The common law position is far from clear as "[t]he multiplicity of different types of through bills of lading makes it difficult to lay down hard and fast principles governing the liabilities and relationships of the various parties involved" (*Scrutton on Charterparties*, (19th ed. 1984) at p. 377). At common law, the rule in relation to successive railway companies was that the company receiving the goods from the shipper was *prima facie* liable as carrier for the whole distance, but it was less clear whether this rule applied to other kinds of through bills of lading (*Scrutton on Charterparties*, (19th ed., 1984) at pp. 377-8). The provision adopts the rule that the issuer of the through bill of lading is responsible, unless it is excluded by the terms of the bill.
3. The provision also makes it clear that any connecting carrier holds the goods on the terms which are set out in the bill of lading even though the connecting carrier did not issue the document. Accordingly, the connecting carrier must honour a proper demand for delivery and obtain the benefits or the excuses for non-delivery and limitations of liability provided for the original bailee. At common law, the connecting carrier could not obtain the benefit of such clauses unless an agency relationship was established between the carriers. See *Gill Manchester Ry. Co.* (1873) L.R. 8 Q.B. 186.
4. The issuer of a through bill of lading may become liable for the fault of another person, and the provision gives the issuer a right of recourse against that person.

Diversion; reconsignment change of instructions

10(1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from

- (a) the holder of a negotiable bill,
- (b) the consignor on a non-negotiable bill notwithstanding contrary instructions from the consignee,
- (c) the consignee on a non-negotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill, or
- (d) the consignee on a non-negotiable bill if the consignee is entitled as against the consignor to dispose of them.

(2) Unless the instructions referred to in subsection (1) are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms.

Legislation

UCC 7-303

Comment

1. At common law, the bill of lading was not regarded as a contract of carriage, but only evidence of its terms. Where, however, a negotiable bill of lading was negotiated to a holder, the bill of lading was regarded as the contract of carriage and the holder could therefore hold the carrier to its terms. See *Leduc v. Ward* (1888), 20 Q.B.D. 475. This feature of the law is codified in the provision.
2. The position at common law in relation to non-negotiable bills of lading is less clear. Although the non-negotiable bill of lading may name someone other than the consignor, the contract is concluded between the consignor and the carrier. The uncertainty will place the carrier at considerable risk if a conflict arises between the consignor and the consignee. The provision contains rules which indicate the extent to which the carrier may follow the instructions of the consignor or the consignee.

Bills of lading in a set

- 11** (1) No person shall, except where customary in overseas transportation, issue a bill of in a set lading in a set of parts.
- (2) Any issuer who issues a bill of lading in contravention of subsection (1) is liable to a holder of a bill of lading for any damages caused thereby.
- (3) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.
- (4) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of that holder's part.
- (5) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to the holders of that part as if it were the whole set.
- (6) The bailee is obliged to deliver against the first presented part of a bill of lading lawfully drawn in a set.
- (7) A bailee who makes a delivery in accordance with subsection (6) shall be discharged from any obligation as a bailee on the whole bill.

Legislation

UCC 7-304

Comment

1. The use of bills of lading in a set arose when communications were slow and the risk of loss of a bill of lading was not inconsiderable. As early as 1882 the practice was criticized by Lord Blackburn as unnecessary in light of speedier forms of communication (*Glyn, Mills, Currie & Co. v. East and West India Dock Co.* (1882), 7 App Cas. 591 at 605). The practice greatly increases the potential for fraud since the parts may be transferred to different persons. The provision attempts to discourage the practice by permitting it only where it is customary in overseas trade.

2. Where a bill in sets is lawfully issued, the provision codifies the common law rule that the holders take priority in the order in which the parts were negotiated (*Barber v. Meyerstein* (1870), L.R. 4 H.L. 317) and the rule that the carrier may, in ignorance of the fact that a part had been transferred to some other party who would be entitled to priority, deliver the goods against another part of the set (*Glyn, Mills, Currie & Co. v. East & West Dock Co.* (1882) 7 App. Cas. 591).

Destination bills

12(1) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier may, at the request of the consignor, procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon the request of anyone entitled as against the carrier to control the goods while in transit and on the surrender of any outstanding bill of lading or other receipt covering the goods, the issuer may procure a substitute bill to be issued at any place designated in the request.

Legislation

UCC 7-305

Comment

The provision relating to "destination bills" is designed to resolve problems associated with high speed air or truck transportation in which the goods may arrive at their destination before the bill of lading can arrive by mail. This can be particularly inconvenient for carriers by truck or by air who do not have terminal facilities where shipments can be held to await the consignee's appearance. The provision authorizes the carrier, at the request of the consignor, to arrange for the issuance of the bill at the destination or some other point.

Altered bills of lading

13 Where in a bill of lading there is an unauthorized alteration or filling in of a blank, the bill shall be enforceable according to its original tenor.

Legislation

UCC 7-306

Comment

1. There is some common law authority to the effect that an alteration of a bill of lading will render it a nullity if the alteration goes to the essence of the contract but less fundamental alterations the instrument remains alive. (*Kwei Tek Chao v. British Traders and Shippers Ltd.*, [1954] 2 Q.B. 459.) The provision adopts the rule that an alteration does not void the bill, but leaves it enforceable according to its original tenor.
2. The provision should be contrasted with the treatment of warehouse receipts in which a *bona fide* purchaser may treat the filling in of a blank in a negotiable warehouse receipt as authorized. A similar rule is not provided in the case of bills of lading on the theory that they must often be prepared by truck drivers and others away from the issuer's place of business. The validity of the completion of the blanks would, therefore, depend upon an agency analysis.

PART 3 - WAREHOUSE RECEIPTS AND BILLS OF LADING:

GENERAL OBLIGATIONS

Duplicate warehouse receipt or bill; overissue

14(1) Neither a duplicate warehouse receipt, a duplicate bill of lading nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer, confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents.

(2) An issuer of a duplicate document is liable for damages caused by the issuer's overissue or failure to identify the duplicate document as a duplicate by a conspicuous notation on the face of the document.

Legislation

UCC 7-402; UWRA (Can.), s.4.

Comment

1. This provision continues the policy found in section 4 of the UWRA (Can.) and extends its application to bills of lading. A duplicate which is not properly identified as such is treated like any other overissue of documents: a purchaser of the

document acquires no title but only a cause of action for damages against the person who made the deception possible. If the document conspicuously indicates that it is a duplicate, it follows that no deception is possible, and the bailee is not liable for preparing it.

2. The provision does not apply to a case where two valid documents of different issuers are outstanding for the same goods at the same time. The Official Comment to UCC 7402 gives the example of freight forwarders who issue bills of lading to their customers for small shipments to be combined into carload shipments for which the railroad will issue a bill of

lading to the forwarder. Similarly, a warehouse receipt may be outstanding and the holder of the receipt may issue delivery orders against the same goods. In these cases, a dealing with the subsequently issued document may be effective to transfer title, and a further provision of the Uniform Documents of Title Act provides for rules governing conflict between such valid documents. See section 19.

Obligation of warehouseman or carrier to deliver; excuse

15 (1) In this section "person entitled under the document" means the holder in the case of a negotiable document, or the person to whom delivery is to be made by the or pursuant to written instructions under a non-negotiable document.

(2) The bailee of goods must deliver the goods to a person entitled under the document who complies with subsections (3) and (4), unless the bailee establishes any of the following:

- (a) delivery of the goods to a person whose receipt was rightful as against the claimant;
- (b) damage to or delay, loss or destruction of the goods for which the bailee is not liable;
- (c) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;
- (d) the exercise by a seller of the seller's right to stop delivery;
- (e) a diversion, reconsignment or other disposition pursuant to the provisions of this Act;
- (f) release, satisfaction or any other fact affording a personal defence against the claimant; or
- (g) any other lawful excuse.

(3) Any person claiming goods covered by a document of title, at the request of the bailee, shall satisfy the bailee's lien.

(4) Unless a person claiming goods is a person against whom the document confers no right, the bailee shall surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods and the bailee shall cancel the document or conspicuously note the

partial delivery on the document.

(5) Any bailee who fails to comply with subsection (3) shall be liable for damages to any person to whom the document is duly negotiated.

Legislation

UCC 7-403; UWRA (Can.), ss. 6, 8, 18.

Comment

1. This provision revises and simplifies the obligation on the part of the bailee to deliver goods set out in section 6, 8 and 18 of the UWRA (Can.) and extends these obligations to bailees under bills of lading. The provision codifies the excuses justifying non-delivery by the bailee. A number of the references simply incorporate common law concepts. For example, clause (a) restates the common law rule that a bailee, although generally estopped from denying the bailor's title, is entitled to deliver the goods to a person who has evicted the bailee by title paramount (where the bailee has had to surrender the goods) or where the bailee is acting on behalf of and with the authority of a person with superior title: *Biddle v. Bond* (1865), 6 B. & S. 225; *Rogers, Sons & Co. v. Lambert & Co.*, [1891] 1 Q.B. 318 (C.A.). Clause (b) amounts to a reference to the law of torts, as modified by statute, that determines the varying responsibilities and standards of care applicable to commercial bailees. Clause (d) is a cross reference to the seller's right to stop delivery (s.104 of the Uniform Sale of Goods Act; the reference would also encompass the seller's right of stoppage in transit under existing provincial sale of goods legislation). Clause (f) provides a defence to the bailee where the authority to deliver was conferred orally or otherwise informally.

2. The rule regarding cancellation of negotiable warehouse receipts, and notation of partial deliveries on negotiable warehouse receipts is extended to bills of lading. See UWRA (Can.), s. 8.

No liability for good faith delivery pursuant to warehouse receipt or bill

16 (1) A bailee who, in good faith, including the observance of reasonable commercial standards, has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this Act, is not liable for the delivery of the goods.

(2) Subsection (1) applies to a bailee notwithstanding that the person from whom a bailee received the goods had no authority to procure the document or to dispose of the goods and though the person to whom a bailee delivered the goods had no authority to receive them.

Legislation

UCC 7-404; UWRA (Can.), s.7.

Comment

1. This provision restates the rule in section 7 of the UWRA (Can.) and extends its application to bills of lading. The provision also provides that liability for conversion by innocent intermeddling with another person's property is not applicable to the operations of commercial carriers and warehousemen.

PART 4 - WAREHOUSE RECEIPTS AND BILLS OF LADING:

NEGOTIATION AND TRANSFER

Form of negotiation and requirements of "due negotiation"

17. The following principles govern the negotiation of a document of title:

- (a) A negotiable document of title running to the order of a named person is negotiated by the endorsement of the named person and delivery;
- (b) After the endorsement of a negotiable document mentioned in paragraph (a) by the named person in blank or to bearer, any person can negotiate it by delivery alone;
- (c) A negotiable document of title may also be negotiated by delivery alone when by its original terms it runs to bearer;
- (d) When a document running to the order of a named person is delivered to that named person, the effect is the same as if the document had been negotiated;
- (e) Negotiation of a negotiable document of title after it has been endorsed to a specified person requires endorsement by the special endorsee as well as delivery;
- (f) A negotiable document of title is "duly negotiated" when it is negotiated to a holder who purchases it in good faith without notice of any defence against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation;
- (g) Endorsement of a non-negotiable document neither makes it negotiable nor adds to the transferee's rights;
- (h) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of that person in the goods.

Legislation

UCC 7-501; UWRA (Can.), s. 19

Comment

1. This provision sets out the rules governing negotiation of a negotiable document of title. Paragraphs (1), (2) and (4) restate the contents of section 19 of the UWRA (Can.) and extend its application to all negotiable documents of title. In addition, paragraph (3) makes it clear that a negotiation results from a delivery of the document of title to a banker or buyer to whose order the document has been taken by the person making the bailment. The position under the present law is not entirely clear: under negotiable instruments law, a distinction is drawn between issuance of a bill and negotiation of it. See *R.E. Jones Ltd. v. Waring and Gillow Ltd.*, [1926] A.C. 670. If this position were extended to the UWRA (Can.), it would follow that a bank to whom a negotiable warehouse receipt is transferred by the

person who warehoused the goods would not be considered to have obtained a negotiation of it. As a consequence, the bank would not obtain the benefits of negotiability: i.e., the insulation from defect of title defences that exist between other parties. This result is contrary to the common law position which regarded the purchaser as a remote party who could take the bill free from such defences even though the purchaser may have been named as an immediate party on the instrument. See *Munroe v. Bordier* (1849), 8 C.B. 862.

2. Paragraph (4) introduces a new requirement of negotiation in the ordinary course of business or financing. The requirement can be derived from the whole purpose behind the negotiability of documents. The principle of negotiability emerged out of the need to protect dealings in the ordinary course of trade. There is no good commercial purpose to be satisfied if the transaction in question is one that does not take place in the ordinary course of business. The Official Comment to UCC 7-501 indicates that there are two aspects to the usual and normal course of mercantile dealings. The first centres around the person making the transfer and requires that the transferor be a person who ordinarily deals in such documents. The second aspect centres around the nature of the transaction itself and requires that the transaction be one that occurs in the regular course of business.

Rights acquired by due negotiations

18 (1) Subject to section 19 and to section 4, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

- (a) title to the document;
- (b) title to the goods;
- (c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and
- (d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defence or claim by the issuer, except those arising under the terms of the document or under this section.

(2) In the case of a delivery order, the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any endorser will procure the acceptance of the bailee.

(3) Subject to section 20, title and rights acquired under this section are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though

- (a) the negotiation or any prior negotiation constituted a breach of duty;
- (b) any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion; or
- (c) a previous sale or other transfer of the goods or document has been made to a third person.

Legislation

UCC 7-502; UWRA (Can.), ss.22, 26-28.

Comment

1. This provision largely restates the substance of sections 22 and 26 to 28 of the UWRA (Can.) and extends their application to all forms of negotiable documents of title. The provision will substantially change the law as it relates to negotiable bills of lading in two major areas: (1) effect of the transfer on the obligation of the issuer; and (2) introduction of a true notion of negotiability to bills of lading.

2. Under the common law, contracts were not assignable. Accordingly, although the transfer of a bill of lading could effect a transfer of property in the goods, it did not operate as an assignment of the contract of carriage. As a result, the transferee could not claim damages from the carrier for breach of contract in failing to deliver the goods. In order to overcome this problem, the Bills of Lading Act, 1855 (U.K.) was enacted. The equivalent provisions can be found in the Bills of Lading Act, R.S.C. 1985, c.B-5; The Mercantile Law Amendment Act, R.S.O. 1980, s.265, ss.7-8; the Bills of Lading Act, R.S.N.S. 1967, c.22. In other provinces (such as Alberta and Saskatchewan) it is possible that legislation is in force as an Imperial statute. See *The Status of English Statute Law in Saskatchewan*, Law Reform Commission of Saskatchewan (1990) at pp. 156-7.

The statute provided that the transferee of a bill of lading to whom the property in the goods has passed "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 himself". This provision not only made the carrier liable to the transferee for any default under the contract of carriage; it also made the transferee liable on the contract for freight. The provision has created difficulties because the Act will not apply where property passes either before or after the consignment or endorsement (which is a persistent problem in the case of bulk cargo) and does not apply at all if a document other than an order bill of lading is issued. This aspect has been criticized by a number of commentators who have called for reform of the legislation. See *B.J. Davenport* (1989) 105 L.Q.R. 174; *F.M.B. Reynolds*, (1990) 106 L.Q.R.1.

The Uniform Documents of Title Act resolves this problem by providing that the person to whom the document of title is negotiated obtains the direct obligation of the issuer. The provision does not render the consignee or endorsee liable on the contract, presumably on the theory that the carrier has a lien on the goods. The enactment of the Uniform Documents of Title Act would operate to supplement the Bills of Lading Act. The Uniform Documents of Title Act would give an additional remedy to a person to whom a document of title was negotiated and likely would not result in an operational conflict. If it were determined that there was a conflict between the two provisions, the federal provision would govern by virtue of federal paramountcy and by the provision of the Uniform Act which subordinates it to federal legislation. See section 27. In any case, the provision would operate in any situation falling outside the scope of the Bills of Lading Act. Provinces which

have enacted a provincial version of the Bills of Lading Act could repeal the legislation upon adoption of the Uniform Documents of Title Act.

3. The provision also changes the law pertaining to the negotiability of documents of title in two ways ("negotiability" is used here to denote the ability of a transferee to obtain a better title than the transferor had). First, the notion of negotiability is extended to bills of lading. Under the UWRA (Can.), negotiable warehouse receipts are afforded negotiability in the true sense, whereas bills of lading, which remain governed by the common law, are transferable by delivery and any necessary endorsement but are not negotiable in the strict sense. This difference in treatment is unjustified. At common law, only bills of lading were considered transferable (i.e., they did not require attornment on the part of the bailee: possession of the goods was locked up in the document). It was only by virtue of statute that warehouse receipts became acquired the same attribute. However, section 26 of the UWRA (Can.) went even further and provided that the validity of a negotiation of a warehouse receipt is not impaired by the fact that "the negotiation was a breach of duty on the part of the person making the negotiation" or "the owner of the receipt was induced by fraud, misrepresentation or duress to entrust the possession or custody of the receipt to such person". It makes no sense to afford negotiability to warehouse receipts but not to bills of lading - the same principle should be applied to both kinds of documents of title.

The second change involves a slight expansion in the notion of negotiability itself.

The American Uniform Warehouse Receipts Act (U.S.), upon which the UWRA (Can.) was modelled provided that negotiation was not impaired by "breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was deprived of the same by loss, theft, fraud, accident, mistake or conversion". The Uniform Law Conference of Canada adopted in its place a somewhat watered down version of negotiability found in the Washington Warehouse Receipts Act and restricted the concept by eliminating the reference to "loss", "theft", "accident" and "conversion". The Uniform Documents of Title Act employs the full notion of negotiability. There are good policy reasons for not maintaining the restricted version of negotiability found in the UWRA (Can.). First, it is easy for the parties to minimize the risk of loss through theft or conversion of the document of title simply by ensuring that the document is made out to the order of a named person. If a party takes a document of title made out to bearer or endorses a document of title in blank thereby rendering it a bearer instrument, the risk of loss is properly placed on that party and not upon an innocent transferee for value without knowledge.

4. The provision regarding the seller's lien and right to stoppage of delivery does not constitute any change in the law. The provision is found in section 28 of the UWRA (Can.) and section 104(a) of the Uniform Sale of Goods Act. A similar provision is found in the provincial Sale of Goods Act. See, e.g., Ontario Sale of Goods Act, R.S.O. 1980, c.462, s.45.

5. The reference to delivery orders is new. Prior legislation in both the United States and Canada failed to deal with the operation of delivery orders despite their widespread use in commercial dealings (particularly in the case of bulk cargo that is split into more parcels than there are bills of lading). A delivery order is a written order to deliver goods addressed

to a warehouseman or carrier (the document is sometimes referred to as a delivery warrant). At common law, a delivery order was not regarded as a document of title. Attornment by the bailee was required when the delivery order was transferred. See *The Julia* [1949] 1 A.C. 293. In addition, a subsequent transfer of the delivery order after an attornment, a fresh attornment is required. The provision rationalizes the law relating to delivery orders. A delivery order may be negotiated if it is by its terms made out to a named person or to bearer, but the transferee does not obtain the direct obligation of the bailee until the bailee accepts the delivery order. After acceptance of the delivery order by the bailee, the legal position of a delivery order is identical to any other document of title.

6. The common law is changed in one other respect. At common law, transfer of an order bill of lading could operate to transfer the transferor's property in the goods if the transfer was made with that intention, but this presumption could be rebutted if it were shown that it was not the intention of the parties that property should pass. See *Lickbarrow v. Mason* (1787), 2 T.R. 64. The provision adopts the rule that a due negotiation of a bill of lading transfers the property in the goods. The passage of property is of much less importance under the Uniform Sale of Goods Act,

and therefore this change will usually not be central to many disputes. This provision coordinates with section 60(3) of the Uniform Sale of Goods Act.

Document of title defeated in certain cases

19(1) A document of title confers no right in goods against a person who, before issuance of the document, had a legal interest or a perfected security interest in the goods and who neither

(a) delivered nor entrusted the goods or any document of title covering them to the bailor or the bailee's nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery or with power of disposition under any statute or law; nor

(b) acquiesced in the procurement by the bailor or the bailor's nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated.

(3) Title to goods mentioned in subsection (2) may be defeated under section 20 to the same extent as the rights of the issuer or a transferee from the issuer.

(4) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated, but delivery by the carrier pursuant to its own bill of lading discharges the carrier's obligation to deliver.

Legislation

UCC 7-503

Comment

1. The concept of negotiability involves the idea that a good faith purchaser of a negotiable document of title cuts off a substantial portion of outstanding equities and claims of prior parties both to the document of title and to the goods it covers. However, not all claims are cut off. This provision recognizes that the simple procurement and negotiation of a document of title will not give the purchaser good title to stolen goods. It is only when the owner of goods introduces the goods into the stream of commerce by authorizing or acquiescing in the issuance of a negotiable document of title that the owner's title may be defeated through the operation of negotiability. This provision incorporates through reference the provision of the Uniform Documents of Title Act that deals with power to direct delivery (section 15) as well as other bodies of commercial law: agency law principles of actual and apparent authority, factors legislation, the ordinary course buyer rule in section 28 of the Uniform Personal Property Security Act and the entrustment provisions in section 64 of the Uniform Sale of Goods Act.

2. This provision contains a rule that an unaccepted delivery order may be defeated by due negotiation of a negotiable warehouse receipt or bill of lading that covers the same goods. Until a delivery order is accepted by the bailee, the bailee is not obligated on it. Therefore, the subsequent negotiation of a negotiable document of title covering the goods will defeat the holder of the unaccepted delivery order.

3. This provision also covers the potential for conflict between a bill of lading that is issued by a freight forwarder to its customer and a bill that is issued by the carrier to the freight forwarder. A bill of lading issued to a freight forwarder by the carrier is subordinated on the theory that the bill on its face gives notice that a freight forwarder is involved. Accordingly, if the forwarder issues a bill which is duly negotiated, the holder will prevail over the holder of a bill issued to the forwarder by the carrier. The carrier is, however, discharged if it complies with the delivery term in the bill it issued.

Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery

20 (1) A transferee of a document, whether negotiable or non-negotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which the transferor had or had actual authority to convey.

(2) In the case of a non-negotiable document, until but not after the bailee **of delivery** receives notification of the transfer, the rights of the transferee may be defeated

(a) by a buyer from the transferor in the ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights; or

(b) as against the bailee by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a non-negotiable bill of lading, which causes the bailee not to deliver to the consignee, defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(4) A bailee honouring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense.

Legislation

UCC 7-503; UWRA (Can.), s.21

Comment

1. This provision covers essentially two kinds of transfers that do not amount to a "due negotiation". First, it applies to the transfer of non-negotiable documents of title, since these can only be transferred and not negotiated. Second, it applies to

negotiable documents of title where any element of due negotiation is lacking. In such cases, the transferee does not take title to the goods free from the equities and defences that may have been available to more remote parties.

2. This provision departs from UCC 7-504(1) which provides that a transferee obtains "the title and rights which his transferor had or had actual authority to give". This creates the anomaly, identified by many American commentators, that the transferee of a negotiable document of title covering the goods will sometimes acquire less of a title than if the transferee had dealt directly in the goods themselves in the first place. No convincing reason has ever been given for this rule, and the better position is to treat a transferee of a non-negotiable document of title (or of a negotiable document of title who does not satisfy the criteria of due negotiation) in the same manner as a purchaser of the goods themselves. See R. A. Riegert, *The Rights of a Transferee of a Document of Title Who is Not a Holder by Due Negotiation* (1978), 9 Cumberland L. Rev. 27. Accordingly, the provision refers to "the title and rights which his transferor had or had actual or apparent authority to convey" (emphasis added).

3. The transferee of a non-negotiable document of title should generally notify the bailee immediately. Failure to do so will place the transferee at risk that the transfer will be defeated by an ordinary course of sale if the bailee has delivered the goods to the buyer or received notification of the buyer's rights. Therefore, in a competition between two transferees of a non-negotiable document of title, priority is given to the first to take delivery of the goods or notify the bailee. Failure to give notice also places the transferee at risk that the transferor will deal with the bailee (for instance, by obtaining delivery of the goods or by obtaining a negotiable document of title in substitution of the non-negotiable document).

4. The provision deals with the case where a carrier delivers or disposes of the goods on the instructions of the consignor under a non-negotiable bill of lading (See section 10). The consignee's rights against the bailee are defeated if the bailee obeys the consignor's instructions to divert.

5. The provision gives the carrier an express right to indemnity where it honours a seller's request to stop delivery. See Uniform Sale of Goods Act, s. 104.

Endorser not a guarantor

21 The endorsement of a document of title issued by a bailee does not make the endorser liable for any default by the bailee or by previous endorsers.

Legislation

UCC 7-505; UWRA (Can.), s.25

Comment

The endorsement of a negotiable document of title differs from the endorsement of a negotiable instrument. Endorsement of a negotiable instrument is regarded as both a contractual act that renders the endorser liable on the instrument, as well as an act of conveyance of a property interest. Endorsement of a negotiable document of title is regarded simply as a conveyance of the property interest with the result that the endorsement does not render the endorsee liable for any default by the bailee or by previous endorsers. This provision simply codifies the common law position, which is also set out in section 25 of the UWRA (Can.)

Delivery without endorsement: right to compel endorsement

22 The transferee of a negotiable document of title has a specifically enforceable right to have the transferor supply any necessary endorsement, but the transfer becomes a negotiation only as of the time the endorsement is supplied.

Legislation

UCC 7-506; UWRA (Can.), s.23.

Comment

Where a negotiable document of title is delivered without a necessary endorsement, the party to whom it is delivered takes as a transferee since the requirements of due negotiation have not been satisfied. However, the transferee obtains the right to obtain an endorsement from the transferor at which time the transfer becomes a negotiation. A similar provision in relation to negotiable instruments is found in section 60(1) of the Bills of Exchange Act, R.S.C. 1985, c.B- 4.

Warranties on negotiation or transfer of warehouse receipt or bill

23 Unless otherwise agreed, a person who negotiates or transfers a document of title for value warrants to the immediate purchaser from that person only, in addition to any warranty made in selling the goods, that

- (a) the document is genuine;
- (b) the person has no knowledge of any fact which would impair its validity or worth; and
- (c) the negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

Legislation

UCC 7-507; UWRA (Can.), s.24.

Comment

The provision is a rewritten version of section 24 of the UWRA (Can.) that is extended to apply to all forms of documents of title. An analogous provision relating to negotiable instruments is found in section 137 of the Bills of Exchange Act, R.S.C. 1985, c.B-4. The reference to the implied terms of merchantability and fitness for purpose that appear in the UWRA (Can.) are omitted because these terms derive from the contract of sale and not from the transfer of the document of title.

PART 5 - WAREHOUSE RECEIPTS AND BILLS OF LADING:

MISCELLANEOUS PROVISIONS

Lost and missing documents

24 (1) If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with that order.

(2) If the document mentioned in subsection (1)

(a) was negotiable, the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of non-surrender of the document, or

(b) was not negotiable, the claimant must post any security that the court, in its discretion may require.

(3) A bailee, who without an order of the court, delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby.

(4) Where delivery by a bailee under subsection (3) is not in good faith, the bailee is liable for conversion.

Legislation

UCC 7-601; UWRA (Can.), s.9.

Comment

1. This provision authorizes a court order for issuance of a substitute document or for delivery of the goods. Section 9 of the UWRA (Can.) provided only for an order for delivery of the goods and only in respect of a negotiable document of title. There is no reason in principle why an order for compulsory issuance of a substitute document should not be available if a continuation of the bailment is desired. Claimants under non-negotiable documents of title are also permitted to invoke this procedure since straight bills of lading and other non-negotiable documents may sometimes provide that the goods shall not be delivered except upon production of the document. Although in the ordinary case no order for security would be needed, in the case of loss of a non-negotiable document, the court has the discretion to do so. This discretion might be exercised where there was some controversy over the negotiability of the document.

2. If the bailee chooses to deliver without a court order, the bailee remains liable for any loss caused but is not liable in conversion unless the bailee acted in bad faith.

Attachment of goods covered by a negotiable document

25 Where goods are delivered to a bailee by the owner or a person with a power of disposition over the goods and a negotiable document of title is issued for them, while they are in the possession of the bailee, the goods cannot be levied under execution, unless the document of title is surrendered to the bailee.

Legislation

UWRA (Can.), s. 15; UCC 7-602.

Comment

The provision is substantially the same as section 15 of the UWRA (Can.) except that it is extended to cover all negotiable documents of title. Once a negotiable document of title is issued, the only way to levy execution against the goods is through seizure of the document of title. The provision does not apply where the goods are attached under legal process prior to the issuance of a negotiable document of title.

Conflicting claims: interpleader

26 If more than one person claims title or possession of the goods, the bailee

- (a) is excused from delivery until the bailee has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead; and
- (b) may compel an interpleader, either in defending an action for non-delivery of the goods, or by original action, whichever is appropriate.

Legislation

UCC 7-603; UWRA (Can.), s. 10

Comment

The provision is simply a restatement of section 10 of the UWRA (Can.) extended to cover all forms of documents of title. It enables a bailee faced with conflicting claims to goods to compel the claimants to litigate with each other.

PART 6 - REPEAL

27 The Uniform Warehouse Receipts Act is repealed.

Comment

This Act repeals the Uniform Warehouse Receipts Act.

TABLE OF REFERENCES

The following abbreviations are used in this Act:

Uniform Commercial Code (U.S.)	UCC
Uniform Bills of Lading Act (U.S.)	UBLA
Uniform Personal Property Security Act (Can.)	UPPSA
Uniform Sale of Goods Act (Can.)	USGA
Uniform Warehouse Receipts Act (Can.)	UWRA (Can.)
Uniform Warehouse Receipts Act (U.S.)	UWRA (U.S.)