

## Voyage Chartering Curriculum

### Learning objectives

Voyage chartering is a complex business. The ship owners promise to make the ship and the crew available to the charterers to carry an agreed cargo on an agreed voyage in exchange for the payment of freight. The ship owners remain responsible for the execution of the agreed voyage and, therefore, bear most of the operational risks that are associated with such performance. The ship owners also promise to enter into quite separate contracts (bills of lading) with quite separate parties (shippers, consignees etc.) at the request of the charterers and agree to act as carriers under such contracts, thereby agreeing to be responsible for the performance of such contracts.

The voyage charterers promise to provide the cargo that is necessary to enable the ship owners to earn the freight and also promise in most cases that such cargo will not be dangerous. The charterers will also often promise that the ports to which the vessel is required to go will be safe for the vessel. The charterers promise that they will ensure that the cargo is loaded and/or discharged within an agreed time (the laytime) and that they will pay an agreed compensation (demurrage) to the ship owners if they fail to do so. Finally, the charterers will usually promise to indemnify the ship owners should they incur liability to third parties pursuant to contracts such as bills of lading.

These are the basic obligations of each party to the voyage charters. However, since voyage charters are not regulated by any compulsory international conventions, the principle of freedom of contract reigns supreme. Therefore, voyage charters will often include terms that are intended to minimise each party's obligations or even transfer some, if not all, of such responsibility to the other party.

The aim of this module is to highlight the various problem areas and to consider ways in which parties attempt to allocate risk *inter se* and thereby, provide the student with a balanced understanding of the relevant legal principles and practise.

### Module Content

This module will cover the following topics:

### **1. The Nature of a Voyage Charter**

Voyage charters are contracts for the use of the ship and her crew to carry an agreed cargo on an agreed voyage regardless of time in exchange for the payment of freight and other remuneration such as demurrage. They must be contrasted with time charters which are contracts for the use of the ship and her crew for a specified period of time within agreed trading limits as directed by the charterer in consideration for the payment of hire. This difference in nature gives rise to substantial difference in the allocation of risk between the ship owners and the charterers. For example, under the voyage charter, the ship owner is normally obliged to pay for all the operating costs of the ship, whereas under a time charter, the cost allocation is more balanced – the ship owner pays for the crew and the cost of insuring the ship and the charterer normally pays for bunkers, port and stevedoring costs, agencies, pilotages and “all other usual expenses.”

Similarly, there is an important difference between the two types of charter in relation to the allocation of risk for delay. Under a voyage charter the ship owner is paid an agreed freight for the voyage regardless of the time spent to perform it. Therefore, if the performance of the voyage is delayed, the ship owner’s overhead costs increase but his income remains the same.

Consequently, the risk of delay under a voyage charter is borne to a large extent by the ship owner. Under a time charter, the charterer is obliged to pay hire continuously for the use of the ship. Therefore, if performance is delayed, the charterer is obliged to pay more hire and more voyage operation costs such as bunkers etc. Consequently, the risk of delay under a time charter is borne to a large extent by the charterer.

To protect themselves against such risks, ship owners and charterers will normally seek to introduce clauses which are intended to balance or even overturn the risk e.g. demurrage provisions.

The aim of this chapter is to comment on the differences between different types of charter parties and the allocation of risk between the ship owners and charterers under such charter parties.

### **1. The Relationship Between Voyage Charters and Other Trading and Carriage Contracts**

A voyage charter party is not a contract that exists in isolation. Fundamentally, it is the transportation arm of an underlying international contract to buy and sell goods or to supply goods and equipment. Therefore, the kind of voyage charter that is needed, the terms of the particular charter and the identity of the charterer (cargo seller or buyer) is determined by the needs of the underlying contract. Furthermore, the terms of the underlying contract will normally provide that payment for the goods will be made against bills of lading proving that the goods have actually been shipped, and therefore, the charter will require the ship owners to provide

such bills at the request of the charterer. Such bills represent a quite separate commitment of the ship owners to the receivers of the cargo who may not be the charterers.

Therefore, there is a close relationship between the charter party and both the underlying trading contract and the bill of lading, and the aim of this chapter is to explain and analyse that relationship and how that relationship affects the relationship of the ship owners and charterers inter se under the voyage charter.

## **2. The Negotiation and Fixing of a Voyage Charter Party**

It is very important to establish exactly when it can be said that there is a binding contract between the ship owners and the charterers since it is only at that point in time that the parties are legally bound to each other. Once that point has been reached neither party can refuse to perform and are liable in damages to the other party if they purport to do so. However, up until that point, either or both parties can refuse to complete the negotiations and are free to discuss alternative terms with other parties.

Therefore, it is important to establish at what point it can be said that there is a binding contract. However, this issue is complicated by the manner in which parties normally negotiate terms either directly or through brokers. Therefore, the aim of this chapter is to identify common problems that can arise during the process of negotiation and to explain the significance and impact of various common broking terms.

## **3. The Ship Owners' Duties**

The ship owners have the following important duties under a voyage charter:

- to provide a seaworthy ship
- to properly and carefully carry and deliver the cargo
- to proceed to the load port with reasonable dispatch
- to proceed on the laden voyage with reasonable dispatch without deviation

Each of these duties places a heavy responsibility on the ship owners and breaches can be very costly. Therefore, the aim of this chapter is to analyse each of these duties in detail and to identify recurring problems and provisions that are designed to modify the rigour of such duties.

The chapter also examines the impact that the Hague or Hague-Visby Rules may have in relation to these duties since, although the Rules do not apply compulsorily to charter parties, they are very often incorporated by agreement through the medium of a Paramount Clause (see below).

## **4. The Charterers' Duties**

The charterers' have the following important duties under a voyage charter:

- to provide a cargo
- not to ship dangerous goods

- to nominate loading and discharging ports and places
- to nominate safe ports and places
- to load and discharge the cargo within the agreed laytime, or failing which, to pay demurrage (or earn dispatch if they use less time than the laytime)
- to pay freight

This chapter is the mirror image of the chapter that deals with the ship owners' duties and the chapter has a similar aim to analyse each of these duties in detail, to identify recurring problems and provisions that are designed to modify the rigour of such duties.

#### **5. Liens**

The courts have repeatedly emphasised the importance to ship owners of ensuring that they receive sufficient and regular cash income to enable them to continue to provide a transportation system and the importance of ensuring that such income is received promptly. A lien on cargo provides ship owners with a very effective form of self-help remedy in that regard since it puts pressure on a cargo owner to settle debts in order to obtain possession of the cargo. However, liens are not available to the ship owners in all circumstances, and should the ship owner purport to exercise a lien when there is no right to do so, the ship owner is likely to face a substantial counter-claim.

This chapter considers the nature and purpose of a lien both on cargo and on sub-freights and examines the legal and practical problems that often arise when a ship owner purports to exercise a lien.

#### **6. Defences to liability**

Both ship owners and charterers will wish to escape or minimise liability for breaches of the various duties that they have as itemised above. Pursuant to the principle of freedom of contract both parties are free to include clauses that are designed to provide them with such protection. Ideally, the parties will wish to avoid liability completely and the charter will normally include many clauses (exception or exemption clauses) to that effect. However, such clauses are rigidly construed by the courts and, should there be any doubt about the precise extent of the protection that such clauses provide, this will be construed against the party that seeks to rely upon it. If the clause gives complete protection against liability, there will be no need for that party to look for further protection. However, should the charter clauses not give such protection, the ship owners or charterers may wish to limit their liability to the other to a sum that is less than the loss that has actually been incurred by the injured party. However, it must not be assumed that such right to limit liability is always available.

The aim of this chapter is to consider the nature and extent of common exception clauses and to consider when (if at all) they provide protection, and to examine when limitation is available and the manner in which limitation is calculated both under The Hague and Hague-Visby Rules (if they apply) and the various international limitation convention.

#### **7. Paramount clauses**

The Hague and Hague-Visby Rules do not apply compulsorily to voyage charters. However, parties will very frequently incorporate the Rules into the charter by agreement through the medium of the Paramount Clause. Such incorporation can have a major impact on the defence mechanisms that a carrier may wish to include in the charter since Article III Rule 8 of the Rules may render such clauses “void and of no effect” if they aim to provide the ship owners with greater protection than that to which they are entitled under the Rules.

This chapter considers the nature and effect of various kinds of Paramount Clauses and explains that different versions of the clause can have quite different results.

#### **8. Law and jurisdiction**

There is no one system of law and jurisdiction in all countries and the laws of different countries can be very different. Therefore, the merits of disputes between ship owners and charterers can be very different depending on where the dispute will be heard. This problem is compounded by the fact that countries can have “threshold” in rem jurisdiction which may be established when a vessel enters their territorial waters and is arrested there notwithstanding the fact that the dispute may, on the face of it, have very little to do with that country. In some cases, that court will then proceed to determine the merits of the claim, whereas in other cases, the court may decide to stay its own proceedings and order the parties to proceed in another country. In any event, the court that determines the merits will have to decide whether to do so in accordance with its own law or the law of some other country.

This chapter considers the importance of law and jurisdiction issues and how courts may decide how to proceed if their jurisdiction is challenged. Such challenge may arise compulsorily as a result of the provisions of international conventions or as a matter of discretion as a result of the terms of the charter party. The chapter also considers how parties can proceed if they wish to challenge or maintain the jurisdiction of a court or arbitration tribunal.

#### **Training language**

English

#### **Module prerequisites**

Students should have already obtained basic knowledge of the maritime sector through their educational background and/or daily work, which includes employment by owners, charterers, brokers, law firms, insurance companies, maritime authorities and classification societies etc.

Otherwise, basic knowledge of shipping can be obtained by joining the “Introduction to Shipping” module.

**Training methods:**

This online course is based the following key elements: interactive textbook (main learning materials), quizzes, resources section and final test.

**Assessment and certificates**

At the end of the course, there is an online final assessment which will be graded by the system. It allows multiple attempts and pass grade is 50% or higher. Once you passed the assessment, a BIMCO Certificate of Completion will be issued and e-mailed to you.