

SHIPPING 101: A PRACTICAL GUIDE TO SHIPPING CONTRACTS AND DOCUMENTS

Shipping moves International Trade and the Global Economy. The events post 2020 saw how critical shipping was to trade and the daily life of consumers and business worldwide. Shortages of fries at McDonald's, the disruption of International Trade when the Large Container Ship Ever Given got stuck in the Suez Canal a major route. This article proposes to provide a primer to the various contracts and documents used in International Trade.[1]

Shipping Contracts and Documents

Different kinds of contracts and shipping documents are frequently used in the shipping industry to regulate the obligations and interactions of parties engaged in international maritime trade. Typical shipping contracts and documents include charterparty, bills of lading, seawaybills and marine cargo insurance policies.

Charterparty

Shipowners rely on the commercial employment of their ships. They charter their ships to parties who have use of them. The type of charter depends on the nature and use required. These contracts are charterparties. Some of the charterparty examples are bareboat charter, time charter and voyage charter.

First, a shipowner who is an investor who charters or leases their ship fully for a fixed period does so on bareboat terms. A **bareboat charter** also known as a demise charter has a *pro hac vice* effect in which the charterer will have full control over the ship as if they were the shipowner[2] and will be responsible and account for the ship's crew, fuel oil, insurance, maintenance, repair and operation costs.[3] In return, the shipowner will receive charter hire for the use and possession of the ship. An example of this is the cruise ships which are run by operators who charter the cruise ships on bareboat/demise charters. The ship is chartered out on a bare basis and the charterer will maintain and operate the ship as well as employ the crew.

The underlying purpose of a bareboat/demise charter is to create a win-win situation for the shipowner and charterer where the shipowner can increase the use of its unemployed ship, and charterer can fully control and use the ship without purchasing it.[4]

Second, when the ship is required for certain or several voyages, then **Voyage Charters** will be used. Under this charter, the charterer must provide a full and complete cargo, or a certain quantity of cargo as stated in the contract and remains responsible for all freight, dead freight and demurrage charges.[5] The goods need to be promptly loaded by the charterer within the specified laytime at the designated port of shipment. It is the shipowner's responsibility to ensure that the vessel is seaworthy and ready at the agreed-upon time to transport the goods from the loading port to the designated discharge port. The main elements in the basic framework of a voyage charter are:

- (i) Introductory clauses that identify the contracting parties, the vessel and the agreed voyage;[6]
- (ii) Cargo clauses that describe the type and quantity of cargo;
- (iii) Owners' responsibility clauses, e.g. The shipowner is under an absolute obligation to embark on the loading voyage at a time when, by proceeding with reasonable despatch, the ship will arrive at the loading port by the expected date (*Monroe Brothers Ltd v Ryan (the "Wythburn")* [1935] KB 28 (CA))[7];
- (iv) Freight clauses that specify the freight rate, how freight will be calculated, when it must be paid, and the arrangements for payment[8]; and
- (v) Laytime provisions i.e., the amount of time allowed for loading and discharging of cargo. [9]

Besides, the charterer who requires the ship for a period of time will charter the ship on a **Time Charter**. A time charter is a time-bound agreement, as opposed to a voyage charter. The shipowner leases a vessel to a charterer for a fixed period of time, granting them the freedom to navigate to any port and transport any cargo, subject to legal regulations.[10] In other words, throughout this charter period, the ship will be at the disposal and employment of the charterer.

The charterer shall remain responsible to the shipowner for loss or damage caused to the vessel as a result of goods being loaded contrary to the terms of the charter.[11] Under the time charter, the charterer may sell shipping space, accept additional cargo and collect freight for their own account.

The earnings of the ship are called **freight**. When the voyage is completed and freight earned, the shipowner can **lien** the cargo as security for the freight payment. When the Charter provides for a minimum quantity of cargo, then the shipowner can charge for the shortfall of that quantity as **deadfreight**.

These are commercial Contracts and Charters and often the parties using these Charters will use standard forms of Charters. **BIMCO** Charters are commonly used with customized amendments.

The method of chartering can be fairly simple by having **fixtures** setting out the key terms and referring to the commonly used BIMCO forms of charter. These forms of charter carry out incidental duties. For instance, a shipowner chartering his ship on a Voyage Charter will want to see that charter performed and completed promptly so that the ship can be freed for the next charter. That is why the Charterer is allocated limited time to load and discharge called **laytime**. Beyond this time, the Charterer will be charged demurrage. Demurrage claims can be expensive and form the most common type of disputes in **Maritime Arbitration**.

Bills of Lading

Besides Charterparty, the Bill of Lading is also one of the main shipping documents used in international trade. It sets out the terms of carriage between a shipper and a carrier detailing the types, quantity and predetermined destination of the cargoes and it also functions as a document of title and a receipt.[12] Bills of Lading are used when the cargo owners require shipment of smaller quantities. As chartered vessels often carry large volume of cargoes, therefore bills of lading will be issued for different cargo owners.

In some instances, the document used will be Seawaybill which is an alternative to the traditional bill of lading.[13] The differences between the two is that the Seawaybill is a non-negotiable document and cargoes can be claimed or collected upon production of appropriate identification without presenting the Seawaybill.[14] In contrast, as the Bill of Lading also functions as a document of title it must be surrendered at the predetermined destination for cargo collection.[15] In fact, there is an extra step in the process, which is to surrender the original bill of lading in exchange for a deliver order in which it is used to collect the cargoes.[16]

This process is commonly done by forwarders on behalf of the cargo owners. The new development in these documents is that they now have electronic versions.

The exporters who ship will often employ intermediaries called forwarders and forwarding agents. These forwarders will contract with the carriers on their behalf. Sometimes the forwarders will issue their own bills of lading and when they do, they will act as NVOCCs (Non-Vessel Operating Common Carriers), and the bills of lading issued by them are called House Bills of Lading[17] and those issued by the Ocean Carrier are called Master Bills of Lading.[18]

Marine Cargo Insurance

There are incidents of the maritime adventure which have no land equivalent. When the ship encounters a situation affecting the ship, cargo and freight, there will be a situation of general average i.e. stranding without the fault of the shipowner. The expenses incurred to rescue the ship, cargo and freight will be shared and the parties involved in this will need to give security for general average otherwise the shipowner can exercise a lien.

Cargo owners wishing to insure the cargo will obtain marine cargo insurance which benefits is transmissible in the course of international sales. The shipowner can insure the ship by obtaining a Hull and Machinery Insurance. To protect against liability and operational risks, the shipowner will obtain a Protection and Indemnity cover from a Protection and Indemnity Club.

Conclusion

These documents may appear lifeless when contrasted to the crash of collision cases or the turbulence of personal injuries or the drama of a ship disaster. However, these documents encapsulate the very essence of Admiralty Law.[19] To understand or interpret a charter party or bill of lading, one must be at least familiar with the fundamentals of Admiralty and Maritime Law. Each clause and each phrase carries a nuanced significance and has a critical role in shaping the maritime commerce.

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