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A Review of Shipowner's & Charterer's Obligations in Various Types of Charter

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Abstract: The charterparty is a legal contract of employing a vessel. In shipping matters, it is a highly important document since it allocates obligations, rights, duties, liabilities, risks, earnings, costs and profits between the contracted parties, namely, the shipowner and the charterer. The interpretation of the above mentioned matters, as well as the understanding of charterparty terms, is considered of critical importance in chartering practice. Therefore, this paper constitutes a review of the most important aspects arising from charterparties in the main types of charter. The present study is based on shipping practices followed in accordance with the English Common Law throughout the chartering process (pre-fixture, fixture, execution of the charter, post fixture). This is a synopsis about the distribution of the liabilities and expenses between the shipowner and the charterer in the most representative types of charter. The analysis is seen from a commercial stand point. Therefore, it is mostly addressed to the shipping practitioners, maritime economists, academics, students and researchers who seek to form a comprehensive view on the subject. It may also form a basis for further study on chartering aspects (legal, economic, managerial and practical).

Key words: Chartering, shipowner's obligations, charterer's obligations, voyage charter, time charter, bareboat charter.

1. Introduction

A charterparty is a written charter agreement or, in other words, the contract of carriage whereby a shipowner or a disponent owner of a vessel agrees to place his ship, or part of it, at the disposal of a merchant/cargo owner (or a person who acts on behalf of a merchant) known as charterer, for the carriage of goods by sea from one port to another port on being paid freight, or to let his ship for a specified period, his remuneration being known as hire. The terms under which the goods are carried as well as the obligations of contracting parties are set out in the charterparty, which is a legally binding and internationally recognised document. The main types of charter are the voyage charter, the time charter and the bareboat charter, whilst some other chartering forms also may be found (e.g., COA (contract of affreightment), consecutive voyages, trip charter). Charterparties fall into categories in respect to the types of charter or cargoes carried. More specifically, the main categories of charterparties are the following [1]:

- Voyage charterparties where the charterer employs the vessel for a specific voyage or voyages. An example of a voyage charterparty which is used for the carriage of dry bulk cargo is the Gencon 94 charterparty while an example of a voyage charterparty which is used for the carriage of liquid bulk cargo is the Tankervoy 87;
- Time charterparties where the charterer has the use of the ship for a specific trip or most commonly for a period of time. An example of a time charterparty which is widely used in the dry bulk market is the NYPE '93 charterparty while an example of a time charterparty which is used in the tanker market is the Intertanktime 80;
- Bareboat charterparties where the registered owner passes transfers the complete control and management of the ship to the charterer. This form of charterparty is not as common as the first two. An example of a bareboat charterparty which is used in the dry bulk market is the Barecon 2001 charterparty.

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The involved parties to a charterparty have freedom to contract on such terms as they may agree during negotiation. The aim should be clarity of expression and the avoidance of ambiguity and inconsistency of clauses. If disputes arise which eventually come before the court for decision, the judgement will probably reflect the presumed intent of the parties. The case (or unwritten) law thus made represents the common law which may develop according to the changing needs of commerce. An express term of a contract may be [2]:

- A condition, the breach of which entitles an aggrieved party to elect to repudiate the contract (i.e., to be released from further performance of the charter) and claim damages for any loss suffered, or maintain the contract and sue for damages;
- A warranty, the breach of which carries only the entitlement to sue for damages;
- A representation. If the shipowner makes an innocent misrepresentation which induces the charterer to sign the contract, the charterer may sue for damages. The person making the innocent misrepresentation will be liable to pay damages unless he proves that he had reasonable ground to believe and did believe up to the time when the contract was made that the facts represented were true. If the misrepresentation is fraudulent, the charterer may repudiate the charterparty. However, no remedy is, available to him if the misrepresentation, whether innocent or fraudulent, does not induce him to enter the contract;
- An innominate term. Whether the term amounts to a condition or a warranty is a matter of construction, depending on the intention of the parties and the whole of the circumstances.

Both the shipowner and the charterer will be mutually discharged from their obligations under the charterparty (called frustration of the charterparty) in cases such as [3]:

- Impossibility of performance. The fact that a charterparty becomes more expensive for a party to perform is not sufficient to bring about its frustration;
- Delay. The burden of proving that a sufficiently serious interruption has occurred to put an end to the contract is on the party who asserts it;
- Subsequent change in the law. Both parties are released by a supervening change in the law which renders the contract illegal either by English law or by the law of the country in which performance was to have taken place.

2. A Review of Shipowner's & Charterer's Obligations in Voyage Charter

Under a voyage charter, the ship provides transport for a specific cargo between a loading port and a discharging port at terms which specify a rate per carrying ton. In this case, the shipowner undertakes to carry a specific quantity of a particular commodity between two named ports at a fixed freight rate per ton (or other unit of cargo measurement).

The charterer charters whole or part of the carrying capacity of a vessel for the carriage of his cargo by sea. The charterer is obliged to provide the agreed cargo alongside the ship and pay extra for the cargo handling expenses (if "FIOST terms" are agreed at the charterparty). The charterer is also obliged to pay the stipulated amount of freight. All other costs (capital, operating and voyage costs) are for the shipowner's account.

2.1 Shipowner's Obligations in Voyage Charter

An initial obligation of the shipowner at the voyage charter is the proper description of his vessel. The description of the vessel in the voyage charter is less detailed comparing with the time charter. If the shipowner makes an innocent misrepresentation of the vessel which induces the charterer to sign the contract, the charterer may only sue for damages, without being able to cancel the contract [4]. If the misrepresentation is fraudulent, the charterer may repudiate the charterparty and ask for damages (compensation).

When an innocent misrepresentation has been made, the shipowner will be liable to pay damages unless he proves that he had reasonable ground to believe and did believe up to the time when the contract was made that the facts represented were true [4].

When the voyage begins, the implied undertaking is that the ship shall be seaworthy for that particular voyage and cargoworthy for the cargo to be carried. In reality, the undertaking is twofold [5]:

- The vessel must be seaworthy at the time of sailing;
- The vessel must be fit to receive the particular cargo at the time of loading.

A defect arising after the cargo has been shipped is no breach of this undertaking. The carrier is liable for loss or damage to the goods caused by the vessel's unseaworthiness or uncargoworthiness and the defenses and limits of liability apply whether the action founded in contract or in tort. The defenses and limits of liability are available to the shipowner and his servants or agents.

If the charterer discovers that the ship is unseaworthy before the voyage begins, and the defect cannot be remedied within a reasonable time, he may repudiate the contract. After the voyage has begun, the charterer is no longer in a position to rescind the contract, but he can claim damages for any loss caused by initial unseaworthiness.

Where the ship is seaworthy when she sails, but becomes unseaworthy while at sea, the incidence of liability will be determined by reference to the cause of the loss. If the loss was due to an excepted peril, the shipowner will be protected.

As concern as the execution of the preliminary (ballast) voyage, Common Law implies that the ship shall arrive at the loading port by the date named at the charterparty. If no definite time is fixed in the contract of carriage, the undertaking of the shipowner is to proceed to the loading port in a reasonable time [4]. Delay may occur in the prosecution of the preliminary voyage. The general rule is that the shipowner bears the risk of such delay unless covered by an exception clause. However, the charterer will not be able to terminate the contract unless the delay is so long as to frustrate the object of the contract. There may be a cancelling clause ("lay/can" clause) in the charterparty, in which case the charterer has the option, under the terms of the contract, of repudiating the charterparty.

At this stage of the voyage charter, the shipowner, in order to transfer the risk of delay to the charterer, must accomplish any contractual requirements stipulated at the charterparty, so as to trigger the laytime clock (see page 6). In other words, the shipowner must satisfy the following three conditions: (i) to have his vessel "arrived" at the loading port; (ii) to have his vessel ready to load and (iii) to give a valid NOR (Notice of Readiness). If he is delayed in doing so, no laytime can start. Therefore, delay caused by not being the vessel arrived and ready to load or delay sustained by not giving a valid NOR is at shipowner's risk.

The shipowner must care to put the vessel in the condition of an "arrived ship" [3]. More specifically, in the absence of a different provision, the shipowner must examine whether the contract is a berth or a port charterparty. In the case of a berth charterparty, the approaching voyage will finish when the vessel is at the stipulated berth. In the case of a port charterparty, a vessel may be considered arrived on the following propositions:

- The vessel must be within the geographical and legal area of the port in the sense commonly understood by its users;
- The vessel must be immediately and effectively at the disposal of the charterer in the sense that it can reach the berth quickly when informed that one is vacant;
- The vessel must be anchored at a place where ships usually lie while waiting for a berth. Even if the vessel is anchored elsewhere, the shipowner is allowed to prove that it is equal at the effective

disposal of the charterer.

Therefore, in the case of a port charterparty, once the vessel is inside the port, any delay in reaching the agreed berth caused by bad weather or congestion will be assumed by the charterer, whereas in the case of a berth charterparty, such a situation will be at the shipowner's risk [2].

Before laytime begins to run, the following requirements should be satisfied [6]:

- The vessel must have become an arrived ship;
- The vessel must in fact be ready to load;
- The vessel must have given to the charterer a valid NOR.

Whether or not a vessel is in fact ready to load depends on a variety of factors such as:

- Whether it is physically capable of receiving the cargo;
- Whether it has complied with all port health and documentary requirements.

The contracting parties can modify the risks they are assuming by use of specific contractual provisions [7]. For instance, they can include an "or so near as she may safely get" clause, to allow the shipowner to finish the carrying voyage at an alternative port in case that the initially nominated port cannot be reached. Alternatively, the parties may use a "reachable berth" clause, according to which the shipowner will transfer the risk of delay whenever the charterer is unable to nominate a berth for the vessel to proceed to load due to congestion. Furthermore, they can also agree a "time lost waiting for a berth" clause, the purpose of which is to transfer the risk to the charterer even before the ship is an "arrived ship" whether in a port or a berth charterparty, making thereby the time spent due to unavailability of the berth by congestion to count as laytime. For example, in a berth charterparty, the vessel being at the anchorage while waiting for an available berth is not "an arrived ship", but the "time lost" clause transfers the risk of delay to the charterer by triggering the laytime clock. Additionally, the parties can also agree in a berth charterparty a so called "WIBON" (whether in berth or not) clause, transferring thereby the risk of delay due to congestion, but not due to bad weather, to the charterer.

The shipowner undertakes that the ship shall proceed on the carrying (laden) voyage with utmost despatch. Delay may occur in the prosecution of the carrying voyage. The shipowner bears the risk of such delay unless covered by an exception clause. If the shipowner fails to carry out his responsibility, the charterer's remedy depends on whether the failure is such as to frustrate the venture as a commercial enterprise. If it is, the charterer may repudiate the charterparty. If it is not, he has an action for damages for the delay [8].

At this point, it should be mentioned that delay occurring when performing the carrying voyage can amount to unjustifiable deviation. Deviation is an intentional and unreasonable change in the proper geographical route of the voyage as contracted. A deviation may be justifiable in the cases of saving human life and avoiding danger to the ship or cargo [5]. The proper route may be considered as:

- The agreed route (at the charterparty);
- The direct geographical route;
- The usual route which is followed by similar vessels on similar trades.

In certain cases, deviation will be justified (apart from any express terms of the contract) and therefore, will not expose the shipowner to liability [4]. These cases are the following:

- Necessary purposes for the prosecution of the voyage or for the safety of the adventure;
- To save human life but not to save property at sea unless this is expressly stipulated in the charterparty.

The master is justified in delivering the goods at the defined port or dock, alongside the vessel and to the consignee (or his agents) named in the bill of lading, or to the first person who presents a properly indorsed bill of lading. Where the custom of the port of delivery recognizes another mode of delivery (e.g., to a dock

company), personal delivery is not necessary.

The shipowner will be liable to the cargo owner if:

- The goods have become mixed and unidentifiable on the voyage;
- The delivery of cargo has been delayed due to contractual or geographical deviations;
- The cargo has been delivered without the presentation of the original bill of lading;
- The cargo has been delivered at a port other than that mentioned in the bill of lading.

Limitation of liabilities under the applicable law may be achieved by the use of exception clauses in the charterparties. In addition, an increasing number of shipowners take out an insurance protection in order to be covered for liabilities to indemnify the cargo owner for risks of delay, of lost or of damaged goods.

At Common Law, the master, as representative of the shipowner, has the right to land and warehouse the unclaimed goods. The shipowner continues to be liable as a carrier until, by the contract, or in the usual course of business, the transit is terminated and the goods have been warehoused for their owner until the latter is ready to receive them.

The consignee's refusal to take delivery, or failure to do so within a reasonable time, also puts an end to the shipowner's liability as a carrier. When the shipowner has warehoused the goods (under the Merchant Shipping Act 1894), he is no longer responsible for their safety. The warehouseman is not an agent for the shipowner for the purpose of ensuring the safety of the goods. He is under an obligation to deliver the goods to the same person as the shipowner was by his contract bound to deliver them, and is justified or excused by the same circumstances as would justify or excuse the master. The contract sometimes provides that the shipowner's liability ceases once the goods have been transhipped.

2.2 Charterer's Obligations in Voyage Charter

In a voyage charter, the charterer is under an implied obligation to nominate safe ports for the cargo to be loaded and discharged. In the majority of charters, this implied obligation is reinforced by an express term in the charterparty.

A port is safe when the particular ship can reach it, use it and return from it without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship. Regard must be paid to the type of vessel involved, the work to be done and the conditions pertaining in the port at the relevant time. Thus a port may be safe for one type of vessel but unsafe for another [9].

If the shipowner is aware that the port is inherently unsafe then he has the right to refuse the charterer's nomination in order to minimize the risks arisen from an unsafe port (such as cargoes' damage or loss, personal injury, pollution). Additionally, when on arrival at the port, the master discovers the potential hazard, he is still entitled to refuse to enter. If the charterer nominates an unsafe port and the ship is damaged through going there, he will be liable for the damage.

The charterer must exercise his right to nominate a safe port in due time since delay on his part may cause damages to the shipowner. If he fails to do so, the owner must wait for further instructions, since he cannot immediately withdraw the vessel from the service, unless charterer's delay in exercising the option can amount to frustration of the contract.

Furthermore, under a voyage charter, various duties have to be performed by the charterer [9]:

- He must not ship dangerous goods without first notifying the shipowner of their particular characteristics. The charterer will be liable to indemnify the owner for any property damage or personal injury arising from loading or carriage of dangerous cargo (such as where cargoes are corrosive or explosive);
- He must procure the appropriate quantity and quality of the cargo (described at the charterparty). The charterer must have the cargo in readiness on the quay;

• He must bring the cargo alongside the ship in order to avoid the risk of delays during the loading operations. Where the charterparty stipulates that the cargo is to be brought alongside by the charterer, the expense and risk of doing so are transferred to him;

• He must load a full and complete cargo. Where the charterer fails to load a full and complete cargo, the shipowner has the right to claim deadfreight and obtain other cargo in order to minimize the loss;

• He must load in the stipulated time (known as laytime), otherwise the charterer will have to pay demurrage or damages for detention as the case maybe. If cargo takes longer than the allowed time to load or discharge, the risk of delay is shifted to the charterer and therefore, he must compensate the owner for the time so lost. This compensation can be either "damages for detention" or "demurrage". The main difference between these terms is that the former is "unliquidated damages", that is, the rate of compensation is not agreed in advance by the parties and may be determined by an arbitrator or judge, while the latter is "liquidated damages" agreed in advance [10]. Demurrage shall not be subject to laytime exceptions and this is known as "once on demurrage, always on demurrage" [11]. However, if cargo is loaded faster than the allowed laytime, the vessel is considered to be released earlier to the owner's control. That is, an advantage for the shipowner who has to pay an amount of money to the charterer. This compensation is called "despatch" or "dispatch" and it is usually agreed as half of the demurrage rate [12]. In some cases, for example, in tanker charters, no despatch is payable unless an additional clause ("rider clause") is agreed to the charterparty.

The charterer is primarily liable for the payment of freight [4]. There are different types of freight. When there is no provision to the contrary, freight is payable on the delivery of goods at the discharging port and is calculated on the amount of cargo actually delivered. Freight will not be payable unless the goods are delivered in such condition that they are substantially and in mercantile sense the same goods as those shipped.

The freight rate is determined by general market conditions and particular aspects of each charter, i.e., the current state of the charter market, positioning of vessel and availability of tonnage of the right type and size of ship for use, the cost of any ballast movement to the loading port or the possible need for a ballast voyage after discharge, the negotiating power of the parties (shipowner vs. charterer) etc. The rules about when the freight is earned and payable are often modified in charterparties. The freight may be paid in advance or on delivery of the cargo, at the discharging port or with a combination of the above.

The freight risk is the risk which lies with the owner when he, fully or partly, fails to fulfill his obligation to carry the cargo and thereby lose his right to collect freight [13]. If the vessel sinks and together with the cargo, be a total loss, the owner is not entitled to freight even if the vessel has almost reached her destination (however, in case of an agreed freight prepaid, there is no refund to the charterer if the vessel and cargo become a total loss). When the freight risk lies with the shipowner, he can take out a special freight risk insurance which covers the situation where the cargo is lost during the transportation. Sometimes the shipowner, in order to minimize the freight risk, uses specific contractual stipulations. In this case, the owner is entitled to "distance freight", proportionate to the distance actually carried as compared with the total distance. Additionally, if the part of the cargo is delivered at the port of destination, the owner is entitled to proportionate freight for the cargo actually delivered. If the cargo reaches the port or place of destination in a damaged condition, the owner is entitled to freight only if the cargo is in a merchantable condition and if it is still the same kind of cargo. At this point, it should be mentioned that the shipowner's right to

collect freight must not be mixed with his obligation to pay compensation for the damaged cargo [2]. If lumpsum freight is agreed, the shipowner is entitled to full freight if some part of the cargo reached the port of delivery. But if all cargo is lost, the shipowner is not entitled to freight. Delay in making the payment according to the express contractual terms will normally imply a breach of contract on the part of the charterer.

If there are "FIOST terms" (Free in out Stowed Trimmed) at the charterparty, the charterer is responsible for the payment of cargo handling expenses. However, a charterparty may stipulate "liner terms" or "gross terms", in which case the loading and discharging costs are covered by the freight (paid by the shipowner).

3. A Review of Shipowner's & Charterer's Obligations in Time Charter

In the case of a time charter, the charterer hires the vessel for a specified period of time, to employ it within certain trading and geographical limits. The length of the charter may be the time taken to complete a single voyage (trip time charter) or a period of months or years (period time charter).

In this case, the charterer, undertakes the commercial employment of the vessel, while the ownership and the commercial operation (i.e., operational management) of the vessel remain with the shipowner. This means that master and crew are appointed by the shipowner who is responsible for all costs appertaining to the running and manning of the vessel plus the capital cost. The charterer determines the trading voyages of the ship and he nominates the ports (safe ports obligation). The charterer pays for all voyage expenses (port charges, canal dues, pilotage, light dues, ballast) and cargo handling costs (stevedoring, dunnage, cleaning of the holds, loading and discharging costs). Most of all, the charterer is responsible for arranging and paying for bunkers (except the bunkers remained onboard at redelivery of the vessel as well as lubricants which are for owner's account). The remuneration payable by the charterer is called hire and is usually paid in a fixed amount of US$ per day every 15 days, 30 days, or monthly. If the vessel is unable to trade for a period of time due to some fault of the ship and/or owners or due to an accident, the charterer does not pay for such "off-hire" periods.

3.1 Shipowner's Obligations in Time Charter

The initial obligation of the shipowner under a time charter is the proper description of his vessel [3]. In this case, the description of the vessel is more detailed comparing with the voyage charter. Since during the time charter period, the charterer undertakes the commercial employment of the vessel, he has to form an opinion about the commercial value of the vessel and it is therefore important for him to have correct and sufficient information about her. In most cases, the time charterer does not know beforehand what cargo he will carry with the ship and which ports and areas she will visit and he cannot therefore accept, as in a voyage charter, only a few major details about the ship. In this type of charter (especially in the case of a long time charter period), the charterer asks from the shipowner a detailed description of the vessel as well as the vessel's plans (such as the General Arrangement of the Vessel) which give necessary information about the construction of the ship.

If the shipowner makes an innocent misrepresentation which induces the charterer to sign the contract, the charterer may sue for damages. If the misrepresentation is fraudulent, the charterer may repudiate the charterparty. When an innocent misrepresentation has been made, the shipowner will be liable to pay damages unless he proves that he had reasonable ground to believe and did believe up to the time when the contract was made that the facts represented were true.

Another important obligation of the shipowner concerns the delivery of his vessel [3]. The port or place of delivery can be more or less specified.

Sometimes a certain port is mentioned and sometimes a certain area or range of ports are determined (e.g., "vessel to be delivered in the Mediterranean"). When only an area or a range is mentioned, it is usually the charterer who chooses the place of delivery. Delivery may not necessarily take place when the ship is inside the port or at berth. Sometimes, the charterparty contains a clause of the following type: "vessel to be delivered on APS (arrival first pilot station) at x-port". In such a case, the vessel may be delivered outside the port bounds.

Where the charterparty does not expressly provide for the time when the charterers have to give directions for the berth of delivery, necessary inference is that directions have to be given either on arrival at the port or before arrival of the vessel.

If the vessel arrives too early at the port of delivery, the charterer is not obliged to take delivery before the layday (the earlier date of delivery in accordance with the lay/can term of the charterparty). If the vessel arrives too late (later than the cancelling date as agreed at the lay/can term of the charterparty), the charterer is entitled to cancel the agreement. The charterer may also be entitled in some cases to damages.

Furthermore, the shipowner has to deliver the vessel to the charterer in a seaworthy condition. The ship also must conform to the requirements of the contract. For the charterer, it is important not only that the vessel is delivered in accordance with the agreement and in seaworthy condition, but also that she will be kept and maintained in the same good order and condition during the charter period. The shipowner is not under a duty to see that the vessel is absolutely fit at all periods of her service under the charterparty, but he must take reasonable steps to rectify defects as soon as they are brought to his notice. If the shipowner does not keep the vessel in an efficient state, this entitles the charterer to sue him for damages, and not to repudiate the charterparty. The shipowner has to use due diligence to deliver the vessel "in every way fitted for cargo service".

Under a time charterparty, the shipowner also undertakes that the ship shall proceed at all the voyages with utmost despatch [9]. The shipowner bears the risk of delays unless covered by an exception clause. If the shipowner fails to carry out his obligation, the charterer's remedy depends on whether the failure is such as to frustrate the charterparty. If it is not, the charterer has an action for damages for the delay although the shipowner can be exempted if he is able to show that the delay was caused by an event covered by an exception clause. In English (Common) Law, the shipowner's warranty of reasonable despatch is implied unless anything to the contrary is stated in the charterparty.

3.2 Charterer's Obligations in Time Charter

The traditional way to describe the time charter period is to fix a certain period known as "flat period" [14]. Both the flat period and the redelivery date are often described together with the word "about". It is also possible to state a flat period or a certain redelivery date with the addition "15 days in charterer's option" or a similar wording.

Sometimes the charterer has the right to prolong the charter period. Charterer is not entitled to an extension of the flat period because of off-hire periods which occurred during the charter, unless this is expressly stated in the charterparty. In this case, a clause must be inserted in the charterparty defining the latest time by which the charterer must notify the shipowner that he intends to use his option to extend the period. Furthermore, the hire for the additional period should be determined in the charterparty. If the market rate goes down during the charter period, the charterer will probably not use his option and the shipowner must find new employment for his vessel. If the market rate goes up during the charter period, the charterer will probably use his option as he thereby gets the vessel at a rate lower than the prevailing market rate.

Sometimes the vessel is redelivered before and

sometimes after the agreed redelivery date or period [3]. The first case is called an "underlap" situation and the latter an "overlap" situation. The shipowner cannot refuse to take the ship if the charterer redelivers her earlier than he is entitled to, in spite of this being a breach of contract on the charterer side. The owner has to minimize the risk of loss by seeking alternative employment for his vessel but if he fails or if he gets lower revenue compared with the previous charter, he is entitled to compensation from charterer.

When the charterer is planning the last voyage, he must take into consideration that the vessel has to be redelivered in accordance with the agreement in the charterparty [14]. It must be pointed out that clauses including a phrase such as "charterers have further option to complete last voyage within below trading limits" are not entitling the charterer to give an illegitimate last voyage order, but only to exempt him from paying damages if accidently, the vessel is lately redelivered. In order to shift the risk of such a delay back to the owners, parties can agree in clear words that the charterer will be given the right to order the vessel to proceed in an illegitimate last voyage. In such a case, the parties may further use a "without guarantee" clause in the contract, whose purpose is to remove the obligation on the charterer to redeliver the vessel before the expiration of the agreed period. The only requirement of the charterer is to provide the estimated date of redelivery in good faith.

The shipowner is entitled to the market rate for the overlap period if the market rate is higher than the rate stipulated in the charterparty [13]. If the market rate is lower than the charterparty rate, the latter rate will apply also for the overlap period. The above do not mean that the charterer is free to prolong the charter period. The above-mentioned deal with the situation where in planning the last voyage, it could be reasonably calculated that the last voyage will not be illegitimate and would allow redelivery of the vessel about the time fixed.

If during the planning it has become obvious that the vessel cannot be redelivered in accordance with the charterparty, there may be a breach of contract and if the charterer decides nevertheless to send the vessel on a new trip then the owner has an opportunity to claim additional damages and not only the prevailing market rate.

If the charterer redelivers the ship too late, the shipowner may be entitled to damages from the charterer. The general rule is that the risk of this kind of delay is borne by the charterer. If it becomes evident that at the time the vessel was ordered on her last voyage, the charterer realized that it would not be possible for him to redeliver the ship in accordance with the contract, the shipowner may sue for damages. When the redelivery has been delayed by a reason outside the charterer's control, the shipowner demands hire for the extra days.

A provision is normally made in the charter for the vessel to be redelivered to its owner at a specified port or range of ports in "like good order and condition, ordinary wear and tear excepted" [9]. In other words, the charterer is obliged to redeliver the vessel in the same good order and condition as it had been delivered to him, enabling the shipowner to start immediate commercial trading for his own account [13]. On failure to fulfill this obligation, the charterer will be liable in damages caused from such a breach. Moreover, the obligation will extend to cover any damage to the vessel for which the charterer is responsible under the employment and indemnity clause.

Under a time charter, the charterer also has an obligation to trade the vessel only among safe ports and always within the agreed trading limits [14]. The "safe port" concept is the same for any type of charter. Sending the ship to an unsafe port could result in liabilities such as cargo loss or damage, personal injury, pollution, or even wreck removal. But if the master has acted unreasonably e.g., knowing of the danger in the port, he has still proceeded to enter it,

and damage occurs, the charterer will not be liable.

Where the charterparty requires the vessel to use safe ports only, the port at the time when the order is given, must be prospectively safe for her to get to, stay at, so far as necessary, and in due course leave [14]. But if some unexpected and abnormal event thereafter suddenly occurs which creates conditions of unsafety (where conditions of safety previously existed) and as a result that the ship is delayed, damaged or destroyed, the charterer is not liable. When the charterer has performed his primary obligation by ordering the ship to a port which at the time of the order was prospectively safe, and while she is still proceeding to that port new circumstances arise which render the port unsafe, he is under a secondary obligation to cancel his original order and order her to go to another port which, at the time when the fresh order is given, is prospectively safe.

Where the vessel has entered the port and new circumstances arise which render the port unsafe, the charterer is under no secondary obligation to nominate another port, if it is impossible for the vessel to avoid the danger by leaving the port [9]. But if it is possible for her to avoid the danger by leaving the port, the charterer must order her to leave forthwith, whether or not she has completed loading/discharging and order her to go to another port.

The master is under the orders of the charterer as regards employment, agency or other arrangements [3]. The risk of damage to the vessel caused by the employment orders (in contrast to the navigational orders) lies on the charterer. Moreover, the charterer must cover any damage to the vessel for which he is responsible under an "employment and indemnity" clause of the charterparty. That means the charterer has to indemnify the shipowner against all consequences or liabilities arising from the master signing bills of lading or otherwise complying with such orders. However, the shipowner, is entitled to compensation only if he can show that there was a causal connection between the loss and vessel's compliance with the charterer's instructions.

The charterer may instead of presenting the bills of lading to the master for signature by him on behalf of the shipowner, sign them by himself on the shipowner's behalf. In either case, the signature binds the shipowner as principal to the contract contained in or evidenced by the bills of lading.

The vessel shall only be used for lawful cargo in lawful trades [14]. This means that the trade and the cargo must be lawful not only in the countries where the loading and discharging take place, but also in the country where the ship is registered and by the law governing the charterparty. The charterparty may state that the charterer has the privilege of breaching the trading limits by paying the respective extra insurance premium.

The charterer will be liable to indemnify the owner for any property damage or personal injury arising from loading or carriage of dangerous cargo. Furthermore, the charterer will be liable to indemnify the owner for any damage to the ship caused by the nature of the cargo itself, such as where cargoes carried on board are corrosive or explosive.

Most time, charterparties provide that the charterer has to load, stow, trim and discharge the cargo at his expense under the supervision and responsibility of the master [14]. The words "and responsibility" relate to the entire operation of loading, stowing, trimming and discharging the cargo. Specifically, they cover not only the mechanical process of handling the ship's gear and cargo, but also matters of stevedores' negligence in the strategic planning of loading and discharge of the cargo. Consequently, the words "and responsibility" transfer the risk of damage or personal injury caused by stevedores' negligence from the charterer to the shipowner. Most time charters, particularly in the bulk and general cargo trades, have a stevedore damage clause which makes the charterer liable, in certain circumstances, for stevedore damages. If the charterer's intervention in loading and discharging operations causes the loss, the charterer will be liable to indemnify the owner for such damage or injury. Time charterer has to indemnify owners

under the charter for cargo damage caused by bad stowage or defective lashing or securing carried out by the charterer's stevedores.

The payment of hire to the shipowner in advance or on the due date is considered an "absolute obligation" of the charterer [14]. Payment should be made in advance at monthly or semi-monthly intervals in accordance with the charterparty. Payment is required before performance and may be made on or before the date due. Where the due date falls on a Sunday or other non-banking day, then payment must be made not later than the immediately preceding banking day, otherwise the charterer will be in default. On the other hand, the charterer is permitted the full period up to midnight of the day in which the installment of hire is due in which to make the payment. In the absence of provision to the contrary, the final installment of hire due under the charter is payable in full even though it is clear that the vessel will be redelivered to its owner before the expiry of the relevant period. Any overpayment will be refunded by the owners after the return of the vessel [13].

Delay in making the payment according to the express contractual terms will normally imply a breach of contract on the part of the charterer. When it is established that the payment was not made on the due date due to charterer's mistake or oversight, the shipowner can claim damages and also terminate the charter and withdraw the vessel from services [5].

However, if the lateness of the payment is due to a situation approved by the shipowner, the withdrawal of the vessel seems not to be possible "unless and until a reasonable notice has been given to the charterers that strict compliance to hire payments will in future be required". On the other hand, once the late payment has been made by the charterers, unreasonable delay on the part of the shipowner in exercising the right to withdraw the vessel "may amount to a waiver of that right".

Hire will not be payable by the charterer during any period when full use of the vessel is not available to him because of an accident or deficiency falling within what might broadly be termed the shipowner's sphere of responsibility. When that occurs, any risk of delay will be allocated on the shipowner. The precise events which take the vessel "off-hire" and the period for which hire is not payable vary with each form of charter and are dependent on the wording of the relevant "off-hire clause". A typical off-hire clause includes events such as vessel's dry-docking, deficiency of owner's stores, breakdown of machinery, damage to hull or other accident which prevents the working of the vessel and lasts for more than 24 consecutive hours etc. [13].

4. A Review of Shipowner's & Charterer's Obligations in Bareboat Charter

What is known as a bareboat charter is typically a more long term charter agreement where the owner of the ship delivers the commercial employment and operation of his vessel to a charterer, who will then operate the ship during the agreed period as if he owned it. The charterer appoints the master (subject to the owner's approval) and is responsible for all costs appertaining to the running of the vessel, while the owner is only responsible for asset (ship) depreciation and capital cost amortization (i.e., payment of capital and interest), and perhaps he may also bear the survey costs of the ship depending on the terms of the charterparty. The shipowner is further responsible for the brokerage payable to the shipbroker, as it occurs in all types of charter. The charterer provides the stores, bunkers and lubricants, undertakes the ship's repairs, the insurance and the dry docking, appoints the master and crew, pays for port/canal costs and gives the navigational instructions. The remuneration payable by the charterer is called hire and is usually paid every 15 days, 30 days, or monthly. If the vessel is unable to trade for a period of time due to some fault of the owners, the charterer does not pay for such "off-hire" periods. The charterer is responsible for paying all

operating expenses, voyage and cargo handling cost, whilst the shipowner undertakes only the capital cost. A typical example of this charter is provided by a shipping person (entity) who wishes to have the full commercial and operational control of a vessel, but does not wish to own it.

4.1 Shipowner's Obligations in Bareboat Charter

In a bareboat charter, the shipowner is only responsible for asset (ship) depreciation and capital cost amortization (i.e., payment of capital and interest), and perhaps he may also bear the survey costs of the ship depending on the terms of the charterparty. The shipowner is further responsible for the brokerage payable to the shipbroker [15].

A bareboat charter may become an extremely risky type of chartering business for a shipowner [2]. Even though he retains the ownership of his ship, he "assigns" the vessel's commercial operation to the charterer, who becomes "quasi-owner" and issues his own bills of lading. That may cause insurmountable problems to the shipowner. For example, in the case of an insolvent bareboat charterer who at the same time is a bad operator, the shipowner may be found to a difficult situation where the hire amount is not paid to him, but furthermore, his ship has been burdened with huge trade payables and debts, therefore being threatened by arrests, liens, auctions and other means of legal enforcement. In such circumstances and under certain law regimes, the owner may even be endangered in losing the ownership of his own ship.

4.2 Charterer's Obligations in Bareboat Charter

Since the charterer has the commercial and operational management of the vessel, he is responsible for the manning, maintenance, repair, insurance, navigation and employment of the vessel. Therefore, he is responsible for all costs appertaining to the operation of the vessel, the voyage expenses and the cargo handling costs. More specifically, the charterer provides the stores, bunkers and lubricants, undertakes the ship's repairs, the vessel's insurance and the dry dockings, appoints the master and crew (subject to the owner's approval), pays for port/canal costs and gives the navigational instructions. In a bareboat charter, the charterer is considered "quasi-owner".

The remuneration payable by the charterer is called hire and is usually paid every 15 days, 30 days, or monthly. If the vessel is unable to trade for a period of time due to some fault of the owners, the charterer does not pay for such "off-hire" periods.

The most important area of risk is the liability for loss of or damage to cargo. The bareboat charterer is directly liable to the cargo owner, because he issues his own bills of lading and under the relevant law he is determined by the courts as the "carrier" [16]. The charterer also faces exposure to fines imposed in respect of cargo, as well as claims for cargo loss or damage.

Under the bareboat charter, the charterer remains also responsible in whole or in part for arranging and paying for stevedoring and other loading and discharging operations. As a consequence, the charterer may be held liable for death or injury sustained by any person engaged in those operations, whether it is a stevedore or other port worker or a member of the ship's crew. Charterers may also be liable for death or injury caused during loading, carriage and discharge of dangerous goods.

Charterer's liability for loss of or damage to the chartered vessel can range from relatively small claims for routine damage caused by stevedores, to the total loss of the ship [2]. As with serious claims for oil pollution, a charterer may be liable to indemnify the owner for the total loss of the ship as a result of ordering the vessel to an unsafe port. An equally serious risk for any charterer is the loss of or the serious damage to the vessel and all or part of its cargo, caused by the dangerous properties of the cargo loaded by the charterer.

Table 1 presents the distribution of obligations and

Table 1 Shipowner's & charterer's obligations/liabilities in the main types of charter.

Type of charter / Liabilities & costs	Voyage charter	Time charter	Bareboat charter
Description of the vessel	S	S	S
Delivery of the vessel	~	S	S
Redelivery of the vessel	~	C	C
Chartered & substituted vessel	~	S	~
Seaworthiness	S	S	S
Maintenance	S	S	C
Cargoworthiness	S	S	S
Preliminary voyage	S	S	S
Reasonable despatch	S	~	~
Deviation	S	~	~
Arrived ship	S	~	~
Notice of readiness to load	S	~	~
Loading operation	S	S/C	C
Carrying voyage	S	C	C
Notice of readiness to unload	**S** (not compulsory)	~	~
Discharging operation	S	S/C	C
Delivery of the cargo	S	C	C
Right for lien	S	C	C
Warehousing unclaimed goods	S	C	C
Claims against third parties	S	S	C
Nomination of ports	C	C	C
Description of the cargo	C	C	C
Provision of cargo	C	~	~
Quantity & quality of cargo	C	~	~
Bringing the cargo alongside	C	~	~
Load in the stipulated time (laytime)	C	~	~
Discharge in the stipulated time (laytime)	C	~	~
Payment of freight	C	~	~
Safe ports	C	C	C
Lawful merchandise	C	C	C
Not to ship dangerous goods	C	C	C
Trading limits	~	C	C
Employment and indemnity	S	C	C
Payment of hire	~	C	C
Commercial operation	S	S	C
Manning of vessel	S	S	C
Equipment and provision	S	S	C
Insurance	S	S	C
Administration duties	S	S	C
Navigation/salvage/towage	S	S	C
Operating costs	S	S	C
Capital costs	S	S	S
Voyage costs	S	C	C
Inspection & dry-docking costs	S	S	C
Cargo handling costs	S/C	C	C

S stands for the shipowner and C for the charterer.

liabilities between the shipowner and the charterer at the main types of charter (voyage charter, time charter and bareboat charter).

5. Conclusion

The charterparty is a legal contract of chartering (employing) a vessel. It is a crucial shipping document since it allocates obligations, rights, duties, liabilities, earnings, risks, costs and profits between the shipowner and the charterer. Therefore, this paper constitutes a review of the most important aspects arising from charterparties in the main types of charter. The present study is based on shipping practices followed in accordance with the English Common Law throughout the chartering process (pre-fixture, fixture, execution of the charter, post fixture). This is a synopsis about the distribution of the liabilities and expenses between the shipowner and the charterer in the most representative types of charter. The main types of charter are: the voyage charter, the time charter and the bareboat charter.

In the case of a voyage charter, the charterer charters whole or part of the carrying capacity of a vessel for the carriage of his cargo by sea and the shipowner on the other hand undertakes to carry the charterer's cargo between two named ports at a fixed freight rate per carrying ton. The charterer is obliged to provide the agreed cargo alongside the ship and undertakes the cargo handling expenses if there are "FIOST terms" at the charterparty. The shipowner undertakes the commercial operation as well as the commercial employment of his vessel. This means that the shipowner takes on the risk and the responsibility for manning, maintenance, repair and navigation of the vessel and consequently, he is responsible for all costs appertaining to the running and manning of the vessel (operating expenses) plus the voyage and capital cost.

In the case of a time charter, the charterer hires the vessel for a specified period of time, to employ it within certain trading and geographical limits. The charterer in this case undertakes the commercial employment of the vessel, while the ownership and the commercial operation (i.e., operational management) of the vessel remain with the shipowner. The time charterer takes on much of the risk and responsibility for the commercial employment of the ship. He makes a number of major decisions about trading the ship and thus assumes responsibility for matters such as when, where, how and what cargo is loaded, carried and discharged from the vessel. The charterer pays for all voyage expenses and cargo handling costs. Additionally, the charterer is responsible for arranging and paying for bunkers and in so-doing he is exposed to commercial risks (bunker prices, bunker quantity optimization, bunker quality, etc.). The charterer has to indemnify the shipowner for damage to ship's engines if inferior bunkers have been provided by him.

In a bareboat charter, the owner of the ship delivers the commercial operation of his vessel to a charterer, who will then operate the ship during the agreed period as if he owned it. This means that the charterer becomes the disponent owner of the vessel and undertakes operating as well as voyage expenses of the vessel, whereas only the capital cost remains to the shipowner.

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