

USE OR HIRE OF ANY SHIP

The maritime industry, particularly the realm of chartering ships, is a multifaceted domain governed by a complex interplay of legal statutes, contractual agreements, and market dynamics. Central to this arena is the Admiralty Act (2017), which encompasses various provisions pertinent to maritime claims, including those concerning the use or hire of vessels, as delineated under Section 4(1)(h) of the Act.

Chartering, an integral aspect of maritime commerce, involves the leasing of vessels for the transportation of cargo or passengers. This contractual arrangement entails a charterer, who may either own cargo or act as an intermediary between cargo owners and shipowners, engaging a vessel from its owner for a specified period or voyage. The terms of such agreements, often documented in charter parties, delineate crucial aspects such as freight rates, duration, and terms of engagement.

In practical terms, chartering entails a spectrum of arrangements tailored to meet diverse logistical and commercial needs. At its core, it represents a rental agreement wherein the charterer compensates the shipowner, typically in the form of freight, for the use of the vessel. The complexity of chartering manifests in various charter types, each catering to specific requirements and market conditions.

Voyage Charter: This arrangement involves the hiring of a vessel for a single voyage between designated load and discharge ports. The charterer remunerates the shipowner on a per-ton or lump-sum basis, covering the vessel's use while the owner assumes responsibility for port, fuel, and crew expenses. Laytime, the stipulated duration for

cargo operations, holds significance in determining demurrage or despatch charges.

Contract of Affreightment: Similar to a voyage charter, this contract entails the carriage of multiple cargoes over a specified period along a predetermined route. The shipowner commits to transport a predetermined volume of cargo within the agreed timeframe, potentially necessitating the engagement of multiple vessels.

Time Charter: Under this arrangement, the charterer leases the vessel for a fixed duration, retaining control over itinerary selection while the owner manages vessel operations. The charterer assumes responsibility for fuel, port charges, commissions, and a daily hire fee to the owner.

Trip Time Charter: This variant constitutes a short-term charter restricted to a specific route, deviating from the broader operational freedom granted in standard time charters.

Bareboat Charter (Demise Charter): In this comprehensive agreement, the charterer assumes full possession and operational control of the vessel, along with associated legal and financial obligations. Operating as a form of hire-purchase, the charterer covers all operational expenses, including crew, maintenance, and insurance, with the potential for ownership transfer at the charter's conclusion.

The dynamics of the charter market are influenced by supply and demand dynamics, market volatility, and external factors such as geopolitical events and economic fluctuations. While traditional chartering transactions were facilitated through physical exchanges like the Baltic Exchange, modern practices leverage digital platforms and electronic contracts, reflecting the evolution of the maritime industry in response to technological advancements.

Throughout the realm of chartering, adherence to legal frameworks such as the Admiralty Act (2017) is paramount, ensuring the equitable resolution of disputes and the protection of stakeholders' rights. Case law and legal precedents further elucidate the application of maritime law in chartering contexts, providing guidance on matters ranging from contractual interpretation to liability issues.

The chartering of ships epitomizes the intricate interplay of legal, commercial, and operational elements within the maritime domain, underscoring its pivotal role in facilitating global trade and commerce. As the industry continues to evolve, stakeholders must navigate a dynamic landscape shaped by regulatory frameworks, market forces, and technological innovations to ensure the efficient and sustainable conduct of maritime operations.

Section 4 (1) (h) of the Admiralty Act (2017) deals with the above maritime claims pertaining to agreement relating to the use or hire of the vessel, whether contained in a charter party or otherwise.

Chartering is an activity within the shipping industry. In some cases a charterer may own cargo and employ a shipbroker to find a ship to deliver the cargo for a certain price, called freight rate. Freight rates may be on a per-ton basis over a certain route or alternatively may be expressed in terms of a total sum - normally in U.S. dollars - per day for the agreed duration of the charter. A charterer may also be a party without a cargo who takes a vessel on charter for a specified period from the owner and then trades the ship to carry cargoes at a profit above the hire rate, or even makes a profit in a rising market by re-letting the ship out to other charterers. Depending on the type of ship and the type of charter, normally a standard contract form called a charter party is used to record the exact rate, duration and terms agreed between the shipowner and the charterer.

The chartering of a ship, in its simplest terms, is a rental agreement in which a charterer agrees to hire a ship from its owner. Typically it is the charterer who will be the owner of the cargo, which he needs to move to some other part of the world, and unless he has ships of his own, he will depend on others to move the cargo for him. The hire money for this transaction is known as 'freight' and is the reward to the shipowner for the use of his vessel.

It is, of course a good deal more complicated than this in practice. The type of charter varies considerably. The cargo owner may wish to hire the ship to move his cargo from A to B and no more, and will hire the ship on the 'spot' market for a single voyage charter. The market may however be tight, with few ships and the price will be accordingly high, so the cargo owner may elect to take a ship for a longer period, giving him in this time charter, at least the security of a known price for subsequent voyages. Indeed, he may have a long term demand for tonnage, over many years, so he may virtually take over the ship from its owner, subsequently arranging its crewing, management and maintenance in a bareboat charter. And there are derivations of all these types of charter to suit the trades and the demands of the market, which is what shipping remains.

Like any market, prices, indicated as the freight levels that will be paid and earned, depend entirely on supply and demand. A shortage of ships and freights will be high; a seller's market that will keep shipowners happy and cargo owners shrouded in gloom. But if there are too many ships chasing too little cargo, the boot is on the other foot, and the shipowner will be hard pressed to earn sufficient freight to pay for his running and capital costs. And the market is known for its volatility, subject to seasonal fluctuations and influenced by so many external factors, such as a hard winter that uses up oil stocks, or political uncertainty, or poor harvests.

The market is also relatively inelastic, with the passage of years being required to contract for and build a new ship, which once delivered, will be around for 20 to 30 years. Shipping is a service industry and one of 'derived' demand, with owners (other than those moving passengers) unable to do much to actively promote greater use of their ships.

So the balance of supply and demand, and the fluctuations in freight rates form a fascinating and dynamic backdrop to the charter market which was once more 'physical' than it is today, with bourses like the Baltic Exchange, where brokers representing owners met those with cargo interests, every day of the week. Today these chartering transactions take place globally, over screens, facilitated by the internet and brilliant communications we all take for granted. Even the charter parties - the contracts which are used for the hire of ships are, undertaken in electronic form. But that is the modern charter market.

Charter types

a. A voyage charter is the hiring of a vessel and crew for a voyage between a load port and a discharge port. The charterer pays the vessel owner on a per-ton or lump-sum basis. The owner pays the port costs (excluding stevedoring), fuel costs and crew costs. The payment for the use of the vessel is known as freight. A voyage charter specifies a period, known as laytime, for loading and unloading the cargo. If laytime is exceeded, the charterer must pay demurrage. If laytime is saved, the charter party may require the shipowner to pay despatch to the charterer.

b. A Contract of Affreightment is a contract similar to a voyage charter, but ship-owner undertakes to carry number of cargoes within a specified period of time on a specified route. Agreed frequency of cargoes may require more than one ship.

c. A time charter is the hiring of a vessel for a specific period of time; the owner still manages the vessel but the charterer selects the ports and directs the vessel where to go. The charterer pays for all fuel the vessel consumes, port charges, commissions, and a daily hire to the owner of the vessel.

d. A trip time charter is a comparatively short time charter agreed for a specified route only (as opposed to the standard time charter where charterer is free to employ the vessel within agreed trading areas).

e. A bareboat charter or demise charter is an arrangement for the hiring of a vessel whereby no administration or technical maintenance is included as part of the agreement. The charterer obtains possession and full control of the vessel along with the legal and financial responsibility for it. The charterer pays for all operating expenses, including fuel, crew, port expenses and P&I and hull insurance. In commercial demise chartering, a subtype of bareboat chartering, the charter period may last for many years and may end with the charterer acquiring title (ownership) of the ship. In this case, a demise charter is a form of hire-purchase from the owners, who may well have been the shipbuilders. Demise chartering is common for tankers and bulk-carriers.

The maritime industry, particularly in the realm of chartering, is governed by a complex web of legal frameworks and contractual obligations. Chartering arrangements, a critical aspect of global shipping, involve the lease or hire of vessels for the transportation of goods or passengers. The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (hereinafter referred to as the “Admiralty Act, 2017”), under Section 4(1)(h), encompasses maritime claims that arise from agreements relating to the use or hire of a vessel, whether contained in a charter party or otherwise.

This provision underscores the legal significance of chartering agreements within admiralty jurisdiction, subjecting them to claims and enforcement actions. Courts, both in India and the United Kingdom, have extensively dealt with disputes arising out of charter party agreements, providing valuable judicial interpretation and precedent.

Chartering Overview

Chartering refers to the contractual arrangement whereby a shipowner leases a vessel to a charterer for a specified period or voyage. The charterer could be a cargo owner seeking to transport goods or an intermediary arranging for the transport. The terms of the charter party agreement, which typically include freight rates, duration, and conditions of use, govern the relationship between the shipowner and the charterer.

The various types of charters include:

Voyage Charter: The vessel is hired for a single voyage between designated ports. The shipowner assumes responsibility for operating expenses, while the charterer pays freight on a per-ton or lump-sum basis.

Time Charter: The charterer leases the vessel for a specified period, assuming responsibility for fuel and port charges while the owner retains control over operations.

Trip Time Charter: Similar to a time charter, but limited to a specific voyage.

Contract of Affreightment: The shipowner agrees to transport a specific quantity of cargo over a set period, often necessitating multiple voyages and possibly multiple vessels.

Bareboat (Demise) Charter: The charterer takes full possession and control of the vessel, covering all operating expenses and assuming full legal responsibility. This arrangement often leads to ownership transfer at the end of the charter period.

Each of these chartering arrangements presents its own unique legal challenges, particularly in the event of disputes. Courts have developed a body of case law that elaborates on various aspects of chartering, from contractual obligations to the enforcement of maritime liens.

Legal Framework under Admiralty Law

Section 4(1)(h) of the Admiralty Act, 2017, explicitly includes claims relating to the use or hire of a vessel within the jurisdiction of admiralty courts. This provision provides charterers and shipowners with a legal avenue to resolve disputes concerning charter agreements. The jurisdiction to arrest a ship as security for a maritime claim under Section 5 of the Act further strengthens the enforcement of such claims.

For instance, in *Poompuhar Shipping Corporation Ltd. v. ARC Line & Ors.*, the Madras High Court dealt with a claim under a time charter agreement. The court upheld the charterer's right to invoke the admiralty jurisdiction under Section 4(1)(h) for non-payment of hire, allowing for the arrest of the vessel to secure the claim.

In the United Kingdom, the landmark decision in *The "Global Santosh"* [2016] UKSC 20 reiterated the significance of the contractual terms in charter party agreements. The Supreme Court clarified that a charterer's entitlement to damages depends on the precise wording of the charter party, emphasizing the importance of clear contractual drafting.

The Admiralty Act, 2017, aligns closely with international conventions, such as the International Convention for the Unification of Certain Rules of Law Relating to Maritime Liens and Mortgages, 1926, and the International Convention on Arrest of Ships, 1999. These conventions influence the legal regime governing ship arrests, maritime liens, and the priority of claims, which are critical in chartering disputes.

Case Law Analysis

The courts, both in India and the UK, have contributed to a robust body of case law concerning chartering agreements. The interpretation of charter party agreements often hinges on the specifics of the contract, including laytime provisions, demurrage, and freight obligations.

The "Achilleas" [2008] UKHL 48: This House of Lords decision addressed the issue of consequential losses under a time charter. The court held that a charterer could not be held liable for losses that were not within the contemplation of the parties at the time of contracting, setting a precedent for the limitation of liability in charter party disputes.

The "Ocean Victory" [2017] UKSC 35: In this case, the Supreme Court examined the allocation of risk under a bareboat charter. The court emphasized the importance of the allocation of risk and liability in charter parties, particularly in cases of marine casualties.

M.T. Signe v. TCI Seaways Ltd.: An Indian court dealt with a dispute arising out of a voyage charter, wherein the charterer claimed damages for late delivery of cargo. The court reaffirmed the principle that the charterer's right to damages depends on the proof of breach of the terms of the charter party.

These cases illustrate the intricate legal considerations that arise in charter party disputes. The courts have consistently emphasized the need for clear contractual terms and the importance of adhering to the specific obligations outlined in the charter party.

Modern Chartering Practices and Legal Considerations

The maritime industry has evolved with the advent of digital platforms and electronic contracts, which have transformed traditional chartering practices. Modern chartering transactions are often conducted through online platforms, and electronic charter parties are increasingly prevalent. This shift necessitates an understanding of electronic contract formation and the implications of digital signatures in maritime law.

Moreover, the volatility of the shipping market, influenced by factors such as geopolitical events, economic fluctuations, and supply chain disruptions, adds another layer of complexity to chartering. These factors can significantly impact the performance of charter parties, leading to disputes over freight rates, demurrage, and delays.

In *The "Maestro Diamond"* [2019] EWHC 2226 (Comm), the Commercial Court addressed the issue of electronic evidence in a dispute over a time charter. The court upheld the validity of electronic documents, recognizing the growing role of digitalization in the maritime industry. This case underscores the importance of adapting legal practices to the realities of modern chartering.

Chartering remains a cornerstone of the maritime industry, facilitating the global movement of goods and passengers. The legal framework provided by the Admiralty Act, 2017, and the corresponding case law in both India and the UK, ensures that disputes arising from charter

party agreements are adjudicated within a structured and predictable legal regime.

As the maritime industry continues to evolve, with technological advancements and market fluctuations, stakeholders must remain vigilant in drafting clear and comprehensive charter party agreements. The legal principles governing chartering, as elucidated by courts, will continue to play a crucial role in shaping the future of maritime commerce.