Charter Party Contracts

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OVERVIEW

Part II: Types of Charter Parties: Voyage, Time, Demise, etc.
Part III: Key Clauses in Charter Parties
Part IV: Issues of Frequent Litigation
Part V: Recommended Charter Party Literature
**LEGAL DEFINITION:**

A contract by which a ship, or a principal part of it, is leased by the owner, esp. to a merchant for the conveyance of goods on a predetermined voyage to one or more places or for a specified period of time.

*Blacks Law Dictionary, pg. 251 (8th Ed.)*

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WHO USES CHARTER PARTIES?

- Offshore Oil and Gas Companies;
- Mining Companies;
- Freight Forwarders;
- Banks;
- Insurance Companies;
- Seafood Companies;
- Salvage Companies;
- Cruise liners,
- Governments, etc.

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Shipowners: Vessel owner or operators use Charter Parties to outline the terms and conditions of the arrangement between them and the individual or entity who wishes to use his vessel.

Charterers: Cargo owners or entities wishing to move other peoples cargo use Charter Parties to outline the terms and conditions and their respective liabilities associated with the vessel and the cargo.

In a nutshell: if a company needs to move a large amount of product over the water, it is likely a charter party contract is going to be drafted.
WHERE ARE CHARTER PARTIES USED?

- Bering Sea
- Gulf of Alaska
- Western Alaska
- Aleutian Islands
- Prince William Sound
- South East Alaska
- Prudhoe Bay
- Chukchi Sea
- International Waters
WHY ARE CHARTER PARTIES USED?

Primarily to save $$$.

However, a strong charter party agreement provides all parties with a considerable advantage in international trade where the parties may be domiciled in different countries and their negotiations hampered by language problems.

- Contract Uniformity
- Prevent Misunderstandings and Conflicts
- Judicial Certainty
- Risk Transfer

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PART II

Types of Charter Parties

- Voyage Charters
- Time Charters
- Demise Charters

- Hybrid Charters
  - Trip Charters
  - Slot Charters
  - Consecutive Voyage Charters

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**Basics:** Under a Voyage Charter, the carrying capacity of the vessel is engaged to carry a full cargo on a single voyage or a defined number of voyages between specific ports. The shipowner retains control over management and navigation, while the charterer is responsible for arrangements relative to loading and discharging cargo, usually at their expense.

**Key Elements of a Voyage Charter:**
- Vessel Owner retains control over the management and navigation of the vessel
- Charterer is responsible for arrangements relative to loading and discharging cargo
- Payment ("freight") is typically calculated based on the amount of goods moved

**Sample Baltic International Maritime Organization (BIMCO) Voyage Charters**
- AMWELSH 93 (Coal shipments)
- AUSTWHEAT 1990 (Bulk wheat charters)
- BIMCHEMVOY 2008 (Chemical charters)
- CEMENTVOY 2006 (Bulk cement)
- CRUISEVOY (Cruise industry)
- FERTICON 2007 (Fertilizer trade)
**Closer Look: Time Charters**

**Basics:** The time charter is a contract to use a ship in order to ship goods for a specific period of time. Absent an agreement to the contrary, a time charterer has no control over the operation of the vessel and assumes no liability for negligence of the crew or unseaworthiness of the vessel. However, to the extent the time charterer does have control over aspects of the voyage, it may have liability for its negligence. *Dahlen v. Gulf Crews, Inc.* 2002 AMC 566 (5th Cir. 2002).

**Key Elements of a Time Charter:**
- Charterer uses the vessel for a specific period of time
- Vessel Owner retains control over the management and navigation of the vessel
- Charterer has the ability to route the vessel for arrangements associated with the loading and unloading of the cargo

**Sample BIMCO Time Charters:**
- **BOXTIME 2004** (Container Ship Charters)
- **SHELLTIME 4** (Bulk Oil Charters)
- **GASTIME** (LNG Charters)
- **GENTIME** (Conventional Goods/Containers)
- **INTERTANKO 80** (Basic charters)
- **NYPE 93** (Dry bulk cargo)
- **SUPPLYTIME 2005** (Offshore Support Vessels)
- **WINDTIME** (Offshore wind farm installations)
Demise Charters, also known as “bareboat” charters, is an agreement whereby the charterer charters the vessel without any crew and takes over full control of all the vessel and its operation and navigation. Here, the Charterer is responsible for the performance of all agreements between 3rd parties and the vessel. Therefore, the Charterer is liable in instances of collisions, personal injuries to the master or crew, pollution damage, and for loss or damage to the vessel. With respect to liability, shipowners (and banks for that matter) like demise charters because the owners liability is significantly reduced. However, to constitute a demise charter, the owner must go so far as to relinquish “possession, command and navigation” of the vessel as to be “tantamount to, although just short of, an outright transfer of ownership.” Guzman v. Pichirlo, 1962 AMC 1142 (1962).

**Key Elements of a Bareboat Charter:**
- Charterer retains absolute control over the vessel, its navigation, and its crew
- Owner retains legal title

**Sample BIMCO Demise charters:**
- BARCON 2001 (bareboat industry standard)
- BARGEHIRE 2008 (designed for those wishing to charter unmanned, non-self propelled barges for offshore work)
Generally: it is becoming increasingly common to see charters which combine some of the aspects of both time and voyage charters.

- **Trip Charters**: i.e., contracts obliging the charter to pay “Hire” for the time taken by the ship to complete a specified voyage e.g. round trip from Anchorage to Nome.

- **Slot Charters**: Slot charters, which are more common in the container trade, are space sharing agreements which enable liner operations to utilize empty space on their ships by allowing other operators to use some of the empty capacity in their vessels in exchange for the right to use an equivalent amount of space on the ships of such other operations.

- **Consecutive Voyage Charters (CVCs)**: CVCs are used when a charterer contracts a particular vessel for a certain period of time to transport cargo between specified points for a rate that is determined based on the volume of cargo delivered. The charterer bears the risk of delays under CVC arrangements.
-PART III-

KEY CHARTER PARTY CLAUSES

- Ice Clauses
- Trading Warranties
- Bills of Lading/COGSA
- Demurrage
- Lay days, laytime, despatch.
- Expense of consumables (water, food, etc.)
- Lien Clauses
- Bunker Clauses
- Apportionment of any salvage award
- Piracy Clauses
- Hell or High Water Clauses
- Hold Harmless Agreements

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KEY CHARTER PARTY CLAUSES, CONTINUED

INSURANCE CLAUSES
- H&M
- P&I
- CHARTERERS LIABILITY
- POLLUTION
- MGL
- CARGO

GOVERNING LAW CLAUSES
- FORUM SELECTION CLAUSES
- ARBITRATION CLAUSES

!!!MOST IMPORTANT CLAUSES!!!

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-Part IV-

Issues of Frequent Litigation

Owners

- Owner’s Warranty of Seaworthiness
- Owner’s Liability for Damaged Cargo
- Owner’s Liability for the Negligence of the Ships Officer and Crew During Cargo Operations
- Limitation of Liability - Owners Right to Limit

3rd Parties

Charters

- Liability to Owner’s for Improper Loading/Unloading.
- Liability for Damaged Cargo
- Liability for an Unseaworthy Vessel or Negligence of Its Crew
- Duty to Nominate a Safe Berth/Port
- Limitation of Liability - Charterers Right to Limit

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RELEVANT CASE LAW

- **IMPLIED WARRANTY OF SEAWORTHINESS**: “Seaworthiness” requires that the vessel be fit for the purpose intended under the charter party including being “reasonably fit to carry the cargo which she has undertaken to transport.” *The Silvia*, 171 U.S. 462, 464 (1898). However, although agreements relieving the owner of the implied warrant of seaworthiness are not favored, a vessel owner effectively can limit or disclaim by appropriate clause in the charter agreement the implied warranty of seaworthiness in the vessel. *Kemp Fisheries, Inc. v. Castle & Cooke, Inc.*, 1989 AMC 236 (9th Cir. 1988).

- **DEMISE CHARTER OR EMPLOYMENT AGREEMENT**: In an effort to avoid liability, owners of fishing vessels sometimes charter their vessels to their masters, and the masters hire their own crews. However, when things go pickle, such arrangements are challenged by injured crew members who claim status as employees of the owner. Yet, if the owner retains over operation of the vessel, there will be no shelter from liability. *Deal v. A.P. Bell Fish Co.*, 1985 AMC 446 (5th Cir. 1982)
CARGO DAMAGE: With respect to time and voyage charters, the issue whether the owner or the charterer is liable for cargo loss or damage depends on whether the loss was caused by unseaworthiness of the vessel, which is usually the owner’s responsibility, or whether the loss was caused by the negligence in loading, stowing or discharging the cargo, which is usually the charterer’s responsibility. *Dant & Russell, Inc. v. Dillingham Tug & Barge Corp.* 1990 AMC 1372 (9th Cir. 1990).


ORDINARY WEAR & TEAR: Charters have a duty to maintain the vessel in good state of repair during the charter and return it in the same condition as received, ordinary wear and tear excepted. What is “ordinary”? The court in *J.E. McAmis, Inc. v. Miller Contracting*, found that dents of less than one-half inch were deemed “ordinary” in the charter of dredging hopper barges. 2008 AMC 1313 (D. Or. 2008).
COMMERCIAL Frustration: Where radical circumstances arise by which the commercial objects of the charter may be rendered impossible or commercial impracticable, a court may find the charter to be “frustrated,” which frees both parties from their contractual obligations under the charter party. However, the grounding of a vessel on charter will not excuse obligation arising under the charter part on a this legal theory unless the grounding was an unexpected contingency where there was no allocation of that contingency. Denali Seafood, Inc. v. Western Pioneer, Inc. 1981 AMC 1560 (W.D. Wa 1980).

SAFE PORT AND SAFE BERTHS: In essence, whenever the charterer has the obligation to nominate a port or berth, there is an implied warranty that it will be reasonably safe for the vessel to enter, load/unload, and depart. A “Safe Port” is one where the ship can “reach, use, and return from without, absent an abnormal occurrence, exposure to danger that is unavoidable by good navigation and seamanship.” The Gazelle and Cargo, 2006 AMC 1202 (1888). Temporary but expected weather conditions do not render a berth or port unsafe. However, a safe berth clause may be breached where the designated berth is not available, the ship is forced to anchor or otherwise stand by under unsafe conditions, and is damaged as a result of choosing an unsafe alternative. American President Lines, Ltd. v. United States, 1968 AMC 830 (N.D. Ca. 1961).

Wreck Removal/Pollution: Any responsible party, whose acts or omissions where the sole cause of the discharge, shall be liable to the U.S. Government for removal expenses and damages. A “responsible party” is someone who is proven to have cause or contributed in even the slightest degree to this discharge of oil or hazardous substance into navigable waters, irrespective whether the act or omission was innocent or negligent. United States v. City of Redwood City, 1981 AMC 1519 (9th Cir. 1981).
-PART V-

RECOMMENDED LITERATURE

- Time Charters, Coghlin (6TH Ed. 2008)
- Bareboat Charters, Davis (2ND Ed. 2005)
- Voyage Charters, Cook (2ND Ed. 2007)
- Laytime and Demurrage, Schofield (6TH, 2007)
- Scrutton on Charter Parties (22ND Ed. 2013)
- Laytime, Summerskill ($424.00)
- The Law of Tug, Tow and Pilotage, Parks (3RD Ed. 1994)

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