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A CRITICAL ANALYSIS OF THE CHARTERER/SHIPPER'S DUTIES UNDER THE CONTRACT OF CARRIAGE OF GOODS BY SEA

By

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Abstract
This paper, critically evaluates the duties and obligations of a charterer/shippers under the carriage of good by sea. These duties include the common law and those applicable in the International Conventions. A charter-party is a legal contract of employing a vessel; the ship-owner lets it to the charterer on agreement with stipulated terms contain in a bill of lading. The charter party agreement allocates obligations, rights, duties, liabilities, risks, earnings, costs and profits between the contracting parties to wit, the ship-owner and the charterer. The understanding and interpretation of the terms of a charter agreement is of critical importance in maritime law practice. The present study is based on shipping practices under the English Common Law, which is synopsis about the distribution of the duties, liabilities and expenses between the ship-owner and the charterer in the most representative types of charter. This paper adopts the doctrinal research methodology, which employed primary and secondary sources of material. In addition, other secondary sources such as articles, journals, periodicals and conference papers and court judgments were referred to. This paper found that the shipper is under contractual and legal duties, which must be performed to ground liability; otherwise, the carrier will not be responsible or liable as provided under the relevant rules. The paper recommends that there is need for the harmonization of all the rules and laws regulating Charterer/Shipper's duties in the contract of carriage of goods by sea.
Keywords: *Carriage by sea, charterparty, duties, liabilities.*

1.0 Introduction

Trade in goods represent an essential share in the gross domestic product (GDP) of most states or regions, even as international trade transactions continue to support significantly, the economic growth and development of various nations[1]. However, trade in goods is largely dependent on the transportation of such goods from one place to another except, the sale relates to e-items. Carriage of goods from one point to another is integral to international trade. Subject to the terms of contract, the seller is usually responsible for arranging for the transportation of the cargo from his country to the buyer's country[2].

Carriage of goods from one place to another may be by air, road, rail, or sea. The transportation of goods, by whatever mode, must be done in a safe and efficient manner if the parties to the transaction

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[1] World Trade Statistics Review, 2017, <https://www.wto.org/english/re_e/stais_e/wts2017_e.pdf> accessed 10th August, 2023.
[2] *Ibid.*

are to be satisfied and trade relations, sustained[3]. Therefore, it is paramount to have binding agreement between parties to any contract for the carriage of goods. Furthermore, there is need for laws to create, unify and if necessary, regulate the transactions by setting minimum or further obligations, liabilities and rights for the parties.

This paper is concerned with the analysis of the Charterer's/Shipper's duties under the contracts of carriage of goods by sea, and consequently, excludes discussions on carriage by other modes of transportation. Carriage of goods by sea is perhaps the most used as about 90% of internationally traded goods are carried by sea[4]. A contract of carriage of goods by sea is one, made for the transportation of a bulk or general cargo between a shipper (a seller or buyer) and a carrier (a ship-owner or charterer) of the cargo[5]. The contract may be embodied in a charter-party (where the shipper of goods charters a ship from the ship-owner) or evidenced by a bill of lading (where the shipper procures shipping space from the ship-owner or a charterer)[6]. Thus, where a ship-owner makes available his entire vessel for a particular voyage, a specific period of time or by demise the contract of carriage is termed a charter-party and generally governed by common law principles, which afford the parties the freedom to negotiate terms without statutory interference[7]. On the other hand, where spaces on the vessel are made available to anyone intending to ship general cargo, the contract is evidenced by and may be termed a bill of lading[8] and in this case, certain regulatory restrictions have been imposed on party's freedom of contract, certain duties and obligations are expressed and some are implied.

2.0 Contract of Carriage of Goods by Sea (The Bill Of Lading)

A contract of carriage of goods by sea is one made between a shipper and a carrier, by which the carrier will, for a charge, undertakes to transport the shipper's cargo to a destination and deliver to a designated person[9]. Often, there is a verbal agreement between the parties further to which the carrier issues a bill of lading upon shipment of the cargo[10]. The bill of lading will therefore: record the goods as having been loaded on board the ship and as such serve the function of a receipt for such goods;[11] a document of title to such goods; and an evidence of the contract of carriage between parties[12].

It should be noted that between the carrier and the shipper, the bill is only an evidence of the contract between the parties. Thus, in *Owners of the Cargo Lately Laden on Board the Ardennes v Owners of the Ardennes (the Ardennes)*[13] the carrier's verbal undertaking to the shipper, to sail to London directly was held to be binding even though the bill of lading stated that the carrier could break the journey. The

[3] Indira Carr, and Peter Stone, *International Trade Law* (6th ed, Routledge, 2018) p.158.
[4] UNCTAD, Review of Maritime Transport 2015, UNCTAD/RMT/2015 <www.unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=1374> accessed 10th August 2023.
[5] Jason Chuah, *Law of International Trade: Cross-Border Commercial Transactions*, (5th ed, Sweet & Maxwell, 2013) pp243-245.
[6] John F. Wilson, *Carriage of Goods by Sea*, (7th ed, Pearson Education Ltd., 2010) p3.
[7] Jason Chuah, n6, pp 243, 247 and 248, Sinem Ogis, Carriage of Goods by Sea, (University of Southampton)
[8] John F. Wilson, (n7), at p3.
[9] Indira Carr, and others, (n3), p.224.
[10] John F. Wilson, (n7), p5.
[11] Art III r4 of the Hague-Visby Rules
[12] Bernard Eder and others, (eds) *Scrutton on Charterparties and Bills of Lading* (23rd ed., Sweet & Maxwell, 2015) pp 9-10
[13] [1951] 1 KB 55 at 59

court decided that the bill of lading is not itself the contract of carriage between the shipper and the carrier although it is an excellent evidence of it. The bill of lading is however, a contract of carriage when transferred to a third party (endorsee or consignee)[14].

From evolution[15], through its development to the modern day usages, the above functions as well as terms evidenced in a bill of lading, have not only pointed out the importance of the document in international trade but also indicated how central it is in determining the duties, rights and liabilities of the parties to contracts of carriage[16]. Although at common law, carriers were strictly liable for the safe transportation and delivery of a cargo to the designated place, prior to 1924, carriers could avoid this liability by including disclaimers in the bills of lading[17]. This resulted in the shippers bearing all the risks of shipment. In the UK, even in the face of the apparent inequality in the bargaining powers of the parties to carriage contracts, the courts, conceding to the principles of freedom of contract (*laissez faire*) prevalent at that time, interpreted such clauses in favour of carriers and exempted them from liability for loss or damage arising from perils of the sea, deviation, unseaworthiness of the ship and negligence.[18]

Based on the indications in the boxes of consignee on the face side, bills of lading can be divided into Order Bill, Bearer Bill and Straight Bill. An Order Bill of Lading is the one that "provides for delivery of the goods to be made to the order of a person named in the bill"[19]. In practice, this kind of bill is marked in the box of consignee as "to order", "to order of XX' or similar words. If it is only marked as "to order', it equals to "to order of the shipper (the one named as the "shipper" on the bill of lading)[20]. The Chinese Maritime Code (CMC) does not provide the definition for Order Bill of Lading, but the former theory and practices are commonly accepted in China[21]. However, if the box of consignee remains blank, it will be a Bearer Bill of Lading, or a Blank Bill of Lading. Under such a bill of lading, the carrier will not deliver the goods to a named person or in accordance with whose order, but will deliver the goods to the bearer. In practice, this kind of bills with a blank box of consignee is very rare[22].

An order bill of lading can be transferred by endorsement with the delivery of the document. a bearer bill of lading can be transferred without endorsement[23], that is to say, transfer is taken effect only by the surrendering of the bearer bill of lading[24]. Usually, an order bill of lading can in effect become as a bearer one by being indorsed in blank[25].

[14] *Leduc & Co v Ward* (1888) 20 QBD 475
[15] William P. Bennett, *The History and Present Position of the Bill of Lading as a Document of Title to Goods*, (Cambridge University Press, 1914) p9,
[16] Indira Carr, and Peter Stone, (n3), p170
[17] Ibid, p224
[18] Ibid.
[19] Carver, Bill of Lading, (5th ed., UK: Sweet and Maxwell, 2022), p2
[20] Ibid.
[21] *Yin &Guo's Carriage Law*, 2005 p225
[22] *Ibid.*
[23] Chinese Maritime Code (CMC) Art. 79(3)
[24] Carver, Bill of Lading, (5th ed., UK: Sweet and Maxwell, 2022), p.3.
[25] Yang Liangyi, *Bills of Lading and other Shipping Documents (hereafter as "Yang's Bill of Lading")*, (1st ed., Publishing House of China University of Politic and Law, 2001) pp.21-22.

In addition, these two kinds of bills are usually marked as "negotiable" on face, and are likely to be called as "negotiable bill"[26].

A straight bill of lading is the bill stated with a named or a specified person in the box of consignee without any other words such as "to order" or the similar. This kind of bill of lading also is called as straight consigned bill, or nominate bill of lading. A straight bill usually is marked with "non-negotiable" or "not-negotiable" on the face, and is called as "non-negotiable bill."[27] "Non-negotiability" means this kind of bill of lading is not to be transferred by the endorsement or by the delivery of the document. Under the CMC, a straight bill of lading "is not negotiable" either[28]. Some of the rules governing carriage of goods by sea include the Hague Visby Rule, Hambury Rules, Rotterdam Rules etcetera. In *Ji MacWilliam Co. v Mediterranian Shipping Co.SA (The Rafaelas)*[29], the claimant who named the consignee under a straight bill of lading, indicated that the bill was non-negotiable sought the application of the rules to a contract of carriage in respect of which goods carried from Durcan, South Africa got damaged between Felixstone, England, Boston and USA. The court held that the rules were applicable, and in so holding, stated that the document was a document of title because it expressly provided that it had to be presented to obtain delivery of the goods. In Nigeria, there is the Carriage of Goods by Sea Act.[30]

3.0 Types of Charterparty

There are majorly three types of charter-party, namely: voyage charter-party, time charter-party and bareboat charter-party[31].

i. Voyage Charter-Party

Here, the charterer employs the vessel for a specific voyage or voyages. Under a voyage charter, the ship-owner provides transport for a specific cargo between a loading port and a discharging port at terms, which specify a rate per carrying ton[32]. Here, the ship-owner 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 charter-party). The charterer is also obliged to pay the stipulated amount of freight. All other costs (capital, operating and voyage costs) are for the ship-owner's account.

ii. Time Charter-Parties

Here, the charterer has the use of the ship for a specific trip or most commonly for a period[33]. An example of a time charter-party, which is widely used in the dry bulk market is the NYPE charter-party. An example of a time charter-party, which is used in the tanker market is the Intertanktime. In the case

[26] *Ibid.*
[27] *Ibid.*
[28] Art.79 (1) of CMC,
[29] (2005) Lloyd's Rep. 347
[30] Cap 44, Vol. II, Laws of the Federal Republic of Nigeria, 1990
[31] Girvin, S., *Carriage of Goods by Sea. (*2nd ed., New York: Oxford University Press, 2011).
[32] *Ibid.*
[33] *Ibid.*

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 ship-owner.

This means that master and crew are appointed by the ship-owner 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 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.

iii. *Bareboat Charter-Parties*

Bareboat charter-party is where the registered owner passes and transfers complete control and management of the ship to the charterer. This form of charter-party is not as common as the first two. An example of a bareboat charter-party, which is used in the dry bulk market is the Barecon 2001 charter-party[34].

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). He may also bear the survey costs of the ship depending on the terms of the charter-party[35]. The ship-owner 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[36]. The charterer is responsible for paying all operating expenses, voyage and cargo handling cost, whilst the ship-owner 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.

[34] Giziakis, K., and others, *Chartering* (in Greek). (3rd ed., Athens: Stamoulis Publication, 2010).
[35] *Ibid*.
[36] Bariyima Sylvester Kokpan, Re-appraising the Concept of Laytime in Charterparties, available at <https://ssm.com/abstract=3819800> accessed 28th October, 2023

4.0 Duties and Obligations of a Charterer/Shipper

Duty under Voyage Charter Parties

Under a Voyage Charter-parties the duties of and obligations of the charterer/shipper include:

1. Duty to Properly Describe His Vessel. It is the duty of the ship-owner to give a detail description of his vessel. However, the description of the vessel in the voyage charter is less detailed comparing with the time charter. If the ship-owner 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[37]. If the misrepresentation is fraudulent, the charterer may repudiate the charter-party and ask for damages (compensation). When an innocent misrepresentation has been made, the ship-owner 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[38].

2. Duty to Provide a Seaworthy Ship: When the voyage begins, the ship-owner owes the duty to provide the ship and it shall be seaworthy for that particular voyage and cargo-worthy for the cargo to be carried. In reality, the undertaking is twofold[39]; the vessel must be seaworthy at the time of sailing and 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 duty. The carrier is liable for loss or damage to the goods caused by the vessel's unseaworthiness or uncargo-worthiness 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 ship-owner 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 ship-owner will be protected.

3. The Ship-Owner Owes the Duty to Execute Voyages with Reasonable Dispatch. 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 charter-party. If no definite time is fixed in the contract of carriage, the undertaking of the ship-owner is to proceed to the loading port in a reasonable time[40]. Delay may occur in the prosecution of the preliminary voyage. The general rule is that the ship-owner 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 in the charter-party, in which case the charterer has the option, under the terms of the contract, of repudiating the charter-party. At this stage of the voyage charter, the ship-owner, in order to transfer the risk of delay to the charterer, must accomplish any contractual requirements

[37] Cooke, J. and others, *Voyage Charters*. (4th ed., Lloyd's Shipping Law Library, London: Informa Law from Routledge, 2014).
[38] Ibid.
[39] Dockray, M., *Cases and Materials on the Carriage of Goods by Sea*. (3rd ed., London: Cavendish Publishing, 2004).
[40] Cooke J. and others, (n11)

stipulated at the charter-party, to trigger the lay-time clock.[41] In other words, the ship-owner must satisfy the following three conditions: to have his vessel arrived at the loading port, to have his vessel ready to load and to give a valid NOR (Notice of Readiness). If he is delayed in doing so, no lay-time can start. Subject to the terms contained in the charter-party agreement laytime will begin to run upon the arrival of the vessel, readiness of the vessel and notice of the arrival of the ship to the charterer[42]. Therefore, delay caused by the vessel not arriving or being ready to load, or delay sustained by not giving a valid NOR is at ship-owner's risk. The ship-owner must take care to put the vessel in the condition of an arrived ship[43].

While 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 charter-party. A port is safe when the particular ship can reach it, use it and return from it in the absence of some abnormal occurrence and exposure 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[44]. Thus, a port may be safe for one type of vessel but unsafe for another[45]. If the ship-owner 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 ship-owner. 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.

In addition, the charterer under a voyage charterparty is obligated to perform additional duties, which include duty not to ship dangerous goods without first notifying the ship-owner of their particular characteristics. The consequences is that 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).[46]

The charterer must procure the appropriate quantity and quality of the cargo (described at the charter-party). 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 charter-party stipulates that the cargo will be brought alongside by the charterer, the expense and risk of doing so are transferred to him. Furthermore, the charterer must load a full and complete cargo. Where the charterer

[41] Bariyima Sylvester Kokpan, Re-appraising the Concept of Laytime in Charterparties, available at <https://ssm.com/abstract=3819800> accessed 28th October, 2023.
[42] Ibid.
[43] Girvin, S., *Carriage of Goods by Sea. (*2nd ed., New York: Oxford University Press, 2011).
[44] Giaschi, C.J., Carriage of Goods, Bill of Lading and Charter Parties, 1997, U.B.C., Maritime Law, available at https://www.admiraltylaw.com/UBC%20Law332/carriage_of_goods_ouyline.pdf> accessed 5th October, 2023.
[45] *Ibid.*
[46] Girvin, S., *Carriage of Goods by Sea. (*2nd ed., New York: Oxford University Press, 2011).

fails to load a full and complete cargo, the ship-owner has the right to claim freight and obtain other cargo in order to minimize the loss.

The charterer must load within the stipulated time (known as laytime), otherwise he 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[47].
Demurrage shall not be subject to laytime exceptions and this is known as "once on demurrage, always on demurrage"[48]. 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 ship-owner 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[49]. In some cases, for example, in tanker charters, no dispatch is payable unless an additional clause ("rider clause") is agreed to the charter-party.

The Issue of Freight

The charterer is primarily liable for the payment of freight[50]. 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[51]. 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 ship-owner, he can take out a special freight risk insurance which covers the situation where the cargo is lost during the transportation. Sometimes the ship-owner, 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.

It is necessary to emphasize that the ship-owner's right to collect freight must not be mixed with his obligation to pay compensation for the damaged cargo[52]. If lump sum freight is agreed, the ship-owner

[47] Lopez, N. J., *Bes' Chartering and Shipping Terms.* (11th ed., London: Barker & Howard Ltd., 1992).
[48] Plomaritou, E., *Demurrage, Damages for Detention, Despatch*. (London: Lloyds Maritime Academy, 2013), (Module 4 of distance learning course titled as "Certificate in Laytime and Demurrage").
[49] Schofield, J., *Laytime and Demurrage*. (6th ed., London: Informa Law from Routledge, Lloyd's Shipping Law Library, 2011).
[50] Cooke, J., and others, *Voyage Charters*. (4th ed., Lloyd's Shipping Law Library, London: Informa Law from Routledge, 2014).
[51] Gorton L., and others, *Shipbroking and Chartering Practice*. (7th ed., London: Informa Law from Routledge, 2009).
[52] Plomaritou, E., *Commercial Risks Arising from Charterparties, Operations and Claim Issues*. (London: Lloyds Maritime Academy 2014), (Module 2 of distance learning course titled as "Certificate in Commercial Risks in Shipping").

is entitled to full freight if some part of the cargo reached the port of delivery. Nevertheless, if all cargo is lost, the ship-owner 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 charter-party, the charterer is responsible for the payment of cargo handling expenses. However, a charter-party may stipulate "liner terms" or "gross terms", in which case the loading and discharging costs are covered by the freight (paid by the ship-owner).

B. Duty under Time Charter-parties:

Similarly, a charterer under a time charterparty has the following duties:

1. The ship-owner is under the duty to properly describe the vessel in details. The major obligation of the ship-owner under a time charter is the proper description of his vessel[53]. 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 ship-owner 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 ship-owner makes an innocent misrepresentation that induces the charterer to sign the contract, the charterer may sue for damages. If the misrepresentation is fraudulent, the charterer may repudiate the charter-party. The ship-owner has the duty to disclose all material facts. When an innocent misrepresentation has been made, the ship-owner 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[54].

2. Under a time charter-party, the ship-owner has the duty as to the ship shall proceed at all the voyages with utmost dispatch[55]. The ship-owner bears the risk of delays unless covered by an exception clause. If the ship-owner fails to carry out this duty, the charterer's remedy depends on whether the failure is such as to frustrate the charter-party. If it is not, the charterer has an action for damages for the delay although the ship-owner 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 ship-owner's warranty of reasonable dispatch is implied unless anything to the contrary is stated in the charter-party.

The traditional way to describe the time charter period is to fix a certain period known as flat period[56]. 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 additional 15 days in charterer's option

[53] Girvin, S., *Carriage of Goods by Sea. (*2nd ed., New York: Oxford University Press, 2011).
[54] Ibid.
[55] Wilson, J. F., *Carriage of Goods by Sea. (*5th ed. London: Pearson Longman, 2004).
[56] Coghlin, T., Baker, A., and Kenny, J., *Time Charters. (*6th ed. London: Informa Law from Routledge, Lloyd's Shipping Law Library, 2008).

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 charter-party. In this case, a clause must be inserted in the charter-party defining the latest time by which the charterer must notify the ship-owner that he intends to use his option to extend the period. Furthermore, the hire for the additional period should be determined in the charter-party. If the market rate goes down during the charter period, the charterer will probably not use his option and the ship-owner 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[57]. The first case is called an underlap situation and the latter an overlap situation. The ship-owner 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.

3. Duty to redeliver the vessel. 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 charter-party[58]. The only requirement of the charterer is to provide the estimated date of redelivery in good faith. The ship-owner is entitled to the market rate for the overlap period if the market rate is higher than the rate stipulated in the charter-party[59]. If the market rate is lower than the charter-party 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 charter-party, 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 ship-owner 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 ship-owner may sue for damages. When the redelivery has been delayed by a reason outside the charterer's control, the ship-owner 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[60]. 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 ship-owner to start immediate commercial trading for his own account[61].

[57] Girvin, S., *Carriage of Goods by Sea. (*2nd ed., New York: Oxford University Press, 2011).
[58] Coghlin T., and others, (n27).
[59] Gorton, L., Ihre, R., Hillenius, P., and Sandevarn, A., *Shipbroking and Chartering Practice*. (7th ed., London: Informa Law from Routledge, 2009)
[60] Wilson, J. F., *Carriage of Goods by Sea. (*5th ed. London: Pearson Longman 2004).
[61] Gorton L. and others, (n30)

On failure to fulfill this duty and 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.

4. Under a time charter, the charterer also has a duty and an obligation to trade the vessel only among safe ports and always within the agreed trading limits[62]. 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. However, 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 charter-party 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[63]. Nevertheless, 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 arises rendering 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.

5. Duty not to nominate another port. 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[64]. Nevertheless, 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[65]. 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 charter-party. That means the charterer has to indemnify the ship-owner against all consequences or liabilities arising from the master signing bills of lading or otherwise complying with such orders. However, the ship-owner 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 ship-owner, sign them by himself on the ship-owner's behalf. In either case, the signature binds the ship-owner as principal to the contract contained in or evidenced by the bills of lading.

6. Duty not to carry dangerous cargos: The vessel shall only be used for lawful cargo in lawful trades[66]. This means that the trade and the cargo must be lawful not only in the countries where the loading and

[62] Coghlin, T., and others, *Time Charters. (*6th ed. London: Informa Law from Routledge, Lloyd's Shipping Law Library 2008).
[63] *Ibid.*
[64] Wilson, J. F., *Carriage of Goods by Sea. (*5th ed., London: Pearson Longman2004).
[65] Girvin, S., *Carriage of Goods by Sea. (*2nd ed., New York: Oxford University Press 2011).
[66] Coghlin, T., Baker, A., and Kenny, J., *Time Charters. (*6th ed., London: Informa Law from Routledge, Lloyd's Shipping Law Library 2008).

discharging take place, but also in the country where the ship is registered and by the law governing the charter-party. The charter-party 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.

7. Duty to load and discharge the goods: Most time, charter-parties provide that the charterer have to load, stow, trim and discharge the cargo at his expense under the supervision and responsibility of the master[67]. 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.

8. Duty to make timely payments: The payment of hire to the ship-owner in advance or on the due date is considered an absolute obligation of the charterer[68]. Payment should be made in advance at monthly or semi-monthly intervals in accordance with the charter-party. 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[69]. 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. The owners will refund any overpayment after the return of the vessel[70].

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 ship-owner can claim damages and also terminate the charter and withdraw the vessel from services[71]. However, if the lateness of the payment is due to a situation approved by the ship-owner, 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 ship-owner in exercising the right to withdraw the vessel may amount to a waiver of that right. The 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

[67] Ibid.
[68] Ibid.
[69] Plomaritou, E., *Calculating Laytime*. (London: Lloyds Maritime Academy 2013a), (Module 3 of distance learning course titled as "Certificate in Laytime and Demurrage").
[70] Gorton, L., Ihre, R., Hillenius, P., and Sandevarn, A., *Shipbroking and Chartering Practice*. (7th ed. London: Informa Law from Routledge 2009)
[71] Dockray, M., *Cases and Materials on the Carriage of Goods by Sea*. (3rd ed. London: Cavendish Publishing 2002)

might broadly be termed the ship-owner's sphere of responsibility. When that occurs, any risk of delay will be allocated on the ship-owner. 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.[72].

C. Duty under Bareboot Charter-parties

i. In a bareboat charter, the ship-owner is only responsible for asset (ship) depreciation and capital cost amortization (i.e., payment of capital and interest), and perhaps he may bear the survey costs of the ship depending on the terms of the charter-party.

ii. Duty to pay shipbroker: The ship-owner is further responsible for the brokerage payable to the shipbroker[73]. A bareboat charter may become an extremely risky type of chartering business for a ship-owner[74]. 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 ship-owner.

On the other hand, 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 is duty bound to provide 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[75].

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[76]. 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. Consequently, 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

[72] Lopez, N. J., *Bes' Chartering and Shipping Terms. (*11th ed. London: Barker & Howard Ltd. 1992)
[73] Davis, M., *Bareboat Charters: A Practical Guide to the Legal and Insurance Implications*. (2nd ed. London: Informa Law from Routledge, Lloyd's Shipping Law Library 2005).
[74] Plomaritou, E., *Commercial Risks Arising from Charterparties, Operations and Claim Issues*. (London: Lloyds Maritime Academy 2014), Module 2 of distance learning course titled as "Certificate in Commercial Risks in Shipping".
[75] Zarate, J. A. F., "Risk of Delay in Charterparties: Like a Ping-Pong Game?" *Revista E-Mercatoria* 8(1): 2009, pp57-59.
[76] Carr I., and Stone P., *International Trade Law*. (5th ed., London: Routledge Publishing, 2013).

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[77]. As with serious claims for oil pollution, a charterer may be liable to indemnify the owner for the total loss of the ship because 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.

5.0 Liabilities and Limitation of Liability

In maritime transport, the carrier is obliged to perform essential roles and bears the responsibility related to any issue of shipping. The carrier is to transport and deliver the goods/cargo by ensuring that there is no damage/loss that is caused and such cargo is to be delivered within a fixed timeframe as well. To this effect, international conventions regulating maritime transportation tends to fix and determine the extent of the carrier's responsibility and liability for economic losses, damage or loss of cargo, delay in delivery[78]. Such responsibility and liability can be enforced over the entirety of the cargo assigned, or even over a part of the cargo that has been effected.

The practice in international jurisprudence in understanding and ascertaining the rights and liabilities of ship-owners or carriers flows from the Bills of Lading (B/L), which essentially is a contract of carriage. This is governed by four international conventions: The Hague Rules[79], the Hague-Visby Rules[80], the Hamburg Convention[81] and the Rotterdam Rules[82]. The Bahrain Maritime Law has adopted the principles of the Hague- Visby Rules in its domestic maritime law[83]. Such a contractual relationship ideally exists between the sender-carrier, importer-carrier, consignor-carrier or carrier-consignee.

The abovementioned Rules have laid down the duration and extent of the existence of such a relationship and the liability period thereunder. As per the Hague Rules, the carrier is bound to ensure the maintenance of the goods/cargo from the period of it being loaded on his ship and until it is discharged/unloaded. The Hague-Visby Rules follow a similar liability period[84]. The Hamburg Rules on the other hand have a 'port-to-port' practice followed where the carrier is liable for the goods/cargo during the period from when the goods are loaded at the starting port, during the carriage and at the port

[77] Plomaritou, *Commercial Risks Arising from Charterparties, Operations and Claim Issues*. (London: Lloyds Maritime Academy, 2014) (Module 2 of distance learning course titled as "Certificate in Commercial Risks in Shipping").
[78] Rosaeg E., *Basis of Carrier's Liability in Carriage of Goods by Sea*, 2004
[79] International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1924 (Hague Rules).
[80] International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1924 (Hague Rules), as amended by the Visby and SDR Protocols 1968 and 1979.
[81] United Nations Convention on the Carriage of Goods by Sea, ("*Hamburg Rules*") ("Hamburg, 31 March 1978").
[82] United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, (*Rotterdam Rules* 2009).
[83] The Bahrain Maritime Law (No. 23 of 1982)
[84] *Hague-Visby Rules*, Article 1(e).

of discharge[85]. As per the Rotterdam Rules, the responsibility would exist from the time the goods have been received and up to the delivery of such goods to the consignee at the arrival port.

Furthermore, limitation of liabilities under the applicable law may be achieved by the use of exception clauses in the charter-parties. In addition, an increasing number of ship-owners 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 ship-owner, has the right to land and warehouse the unclaimed goods. The ship-owner 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 ship-owner's liability as a carrier. When the ship-owner 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 ship-owner for ensuring the safety of the goods. He is under an obligation to deliver the goods to the same person as the ship-owner 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 ship-owner's liability cease once the goods have been transshipped[86].

6.0 Conclusion

This paper has noted that carriage of goods by sea is generally regulated by international conventions. Nigeria is a signatory to and has domesticated some of the international conventions thus making them enforceable in the country. These conventions define and set minimum contractual obligations and duties for the parties, which make it unlawful for any party to breach the agreement, avoid it or compromise such duties and obligations. It is trite as established in this paper, that the carrier shall properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver goods. The carrier must also carry the goods to the place of delivery within the specified time and deliver them to the consignee in the condition in which they were handed over to him by the shipper or his agent. In general, the carrier is not an expert in nature and peculiarities of cargo. Therefore, the shipper has the duty to inform, to give proper instructions and to package the goods properly; otherwise the carrier will not be responsible. However, if the carrier specializes in transport of specific cargoes, then the carrier must generally have knowledge and skill required for that particular trade. The shipper is also to deliver the goods ready for carriage, to provide information, instructions and documents to provide information for the compilation of contract particulars and to inform of the dangerous nature or character of the goods. The essence is to promote healthy business of carriage.

In the final analysis, this paper recommends the need for complementary functioning of all the rules and laws regulating Charterer/Shipper's duties in the contract of carriage of goods by sea. This is because, under Hague Visby Rule, the carriers can validly exclude liability for the period before (loading) and after (discharge) of goods by incorporating a Period of Responsibility Clause into the

[85] *Hamburg Rules*. 1978, Article 4.
[86] Merchant Shipping Act 1894

carriage of goods contract. Such harmonious regulation would engender respect for the terms of contract of carriage by sea.