

Carriage of Goods by Sea

Contract of Affreightment: A contract for the carriage of goods by sea is called as a "contract of affreightment". The word 'affreightment' literally means 'the hiring of a vessel or ship'. It may, thus, be defined as a contract between the consignor or shipper and the shipping company whereby the former agrees to hire, at a price called 'freight', space in a ship for transportation of goods. A contract of affreightment may be embodied either in a Charter Party or a Bill of Lading.

Charter Party: A charter party is a contract of affreightment entered into for hiring the whole ship or a principal part thereof to carry goods from one port to another. It also refers to the formal written document in which the contract of hiring of the whole or part of the ship for the conveyance of goods is expressed. The person hiring the ship or a part of it is called the 'charterer'.

Kinds of Charter Party:

A Charter Party may be either:

1. **Voyage Charter:** When the vessel is chartered for a particular voyage is called the voyage charter.
2. **Time Charter:** When the vessel is hired for a specified period of time, irrespective of the number of voyages performed.
3. **Charter by demise:** In the case of hiring the whole ship, the terms of the charter party may sometimes amount to a lease or demise of the ship, whereby the possession of the ship comes under the absolute control of the charterer who becomes temporarily the owner of the ship and the captain and the crew become his servants. This is called a 'charter by demise'.
4. **Charter without demise:** Generally, a charter party is without a demise or lease of the ship where, like a simple contract of carriage, the charterer only gets the right to have his goods conveyed by the ship and the captain and the crew do not become his servants and the possession and control of the ship remain with the shipowner. In such a case it is called a 'charter without demise'.

Clauses of Charter Party:

1. **Particular of the Parties:** This clause covers the description and name of the parties i.e. the charterer and the shipping company.
2. **Particular of the ship:** The name and the rating of the ship showing its measurement, volume and its loading capacity. If the ship provided is of different class, charterer can avoid the contract.
3. **Lawful Merchandise:** Goods loaded must be such as could be lawfully carried and discharged at the port of destination.
4. **Position of the Ship:** The position of the ship as on the date of contract must be clearly shown as it indicates to the charterer that when the ship will probably arrive at the port of dispatch.
5. **Port of Loading:** It is the duty of the ship owner to bring the ship to the port of loading and inform the charterer in time so that the arrangement for the loading of the cargo could be made.
6. **Obligations of the ship owner:** It is the responsibility of the ship owner to provide a ship which is sea worthy. If it is not stated in the contract, it will be considered as an implied condition.

7. **Obligation of the Charterer:** Charterer should pay the agreed freight either in advance or at the completion of mission depending upon the terms of the contract. Moreover he is required to return the ship in good condition and should load as much cargo as ship can safely carry. There is an implied condition that charterer should not load dangerous goods.
8. **Lay days and demurrage:** Lay days are the number of days allowed to the charterer for the loading and unloading cargo. These days begin to run from the time when the charterer has received notice of the arrival of the ship at the stated port. These days may be either "running days" which are counted from midnight to midnight including holidays or "working days" which are the days on which the work is normally done i.e. excluding holidays.

It is necessary that work of loading and unloading be completed within the number of days allowed and if days are not fixed, then within the reasonable period of time considering the circumstances and the custom of the port.

Lay days reflect the maximum time allowed. If the ship is loaded in a shorter period of time, charterer must allow the ship to depart.

If charterer requires extra time than allowed lay days, he will be required to pay extra amount calculated on a daily basis known as "demurrage". No demurrage is payable if the ship has been detained through the fault of the owner. For the recovery of the freight ship owner has lien on the goods but for demurrage he can exercise this lien until and unless specified in the contract.

9. **Cargo of third parties:** Generally charterer is allowed to load the cargo of the third parties but for this purpose, separate bill of lading will be required.
10. **Delivery of goods:** It is the duty of the master of the ship to proceed at the port of discharge, get the goods out of the ship hold and put them on the deck of the ship. Thereafter, charterer will be responsible for taking delivery of the goods.
11. **Excepted Perils:** By virtue of this clause, shipowner will not be liable for the loss caused by some perils such as storm, flood, earthquake, fire etc. This clause protects ship owner only if the perils could not have been avoided by the exercise of reasonable care.

Bill of Lading: A 'bill of lading' is a document issued by the shipowner or by the master or captain of the ship or other agent in exchange of Mate's Receipt after the goods have been placed on board of the ship for being carried to a specific destination. It is used when the goods shipped form only a part of the cargo of a 'general ship'. In the case of hiring an entire ship, a charter party is drawn up.

A bill of lading must be stamped and signed by the ship owner or his agent i.e., the master or captain of the ship. Under the Carriage of Goods by Sea Act, 1925, a bill of lading, apart from the main terms of contract, must contain the following particulars:

- a. The leading marks necessary for identification of the goods, provided such marks are stamped on the cases or coverings in which such goods are contained in such a manner as should ordinarily remain legible until the end of the voyage.
- b. The number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper.
- c. The apparent order and condition of the goods.

Characteristic of a bill of Lading: A bill of lading has the following distinctive features:

1. It is a prima facie evidence of the receipt, by the carrier, of the goods as therein described.
2. It is an evidence of the contract of affreightment (where the goods are placed on a general ship) whereby the shipping company undertakes to carry the goods and to deliver them to the person named therein or his assignees, on payment of freight.
3. It is a 'document of title' to the goods. It enables the holder to obtain delivery of goods. Its possession is in law equivalent to the possession of goods and therefore its transfer is symbolically a transfer of the goods themselves. It can be transferred by endorsement and delivery passing the endorsee same rights as the endorser (i.e., making the endorsee owner of the goods covered thereunder).
4. It is a semi-negotiable instrument, that is, although it resembles a negotiable instrument in that it can be transferred freely by endorsement and delivery and its transferee can sue in his own name and can give a valid discharge to the person liable but it is not a negotiable instrument in the strict legal sense of the term inasmuch as that the transferee, even though he takes the bill bonafide and gives value for it, acquires no better title than what the transferor had.

Kinds of Bill of Lading:

1. **Clean Bill of Lading:** Where a bill of lading acknowledges receipt of goods in good order and condition, it is called clean bill of lading.
2. **Dirty or qualified bill of lading:** When a bill of lading contains a qualified statement for e.g. goods received in damp condition it is called dirty or qualified bill of lading.

When a clean bill of lading has been issued, the ship owner is estopped as against an endorsee or a person rightfully presenting the bill from proving that the goods were not in good condition, when they were shipped for e.g. "Ellerman & Backnall Steamship Co. Ltd. v/s. Shah Misrimal, 1966".

3. **Through Bill of Lading:** A through bill of lading is for the carriage of goods partly in the ship of shipowner and partly by land or in the ship of another ship owner for an inclusive freight.
4. **Received for shipment:** This is not a proper bill of lading and operates only as receipt of goods received for shipment. It is issued when the goods are received in anticipation of the arrival of the ship. Generally this bill is converted into a clean bill of lading when the master of the ship issued the receipt of delivery of the goods on the board of the ship.
5. **Bearer:** Under this case, bill of lading can be transferred freely by simple delivery and the person holding that bill can obtain delivery of the goods.
6. **Order bill of lading:** This type of bill cannot be transferred simply by delivery, it requires endorsement. The person in whose favour it is issued can transfer the bill in favour of another person by endorsement.

Difference between bill of lading and charter party:

A charter party is in itself the contract.	A bill of lading is not a contract but if is a valid and acceptable evidence of a contract.
Charter Party represents a written contract resulting in a lease or demise of the entire, or principal part, of the ship for carrying the goods.	A bill of lading is a document witnessing a contract whereby a ship owner undertakes to carry goods of a shipper on a general ship.

a shipper.	particular voyage.
Charter party contains all the terms of shipment may not be an evidence of receipt nor of title goods.	A bill of lading, in addition to being a receipt also a document of title of goods. it also contains terms of shipment.
A charter party could be for a particular voyage	A bill of lading is always for a particular voyage
Charter party freights are usually paid at the destination.	Bill of lading freights are paid in advance.
It is not transferable.	It can be transferred by delivery and by endorsement.
Charterer becomes temporary owner of the ship	Under this case, ship owner always remains owner of the ship.

Kinds of Freight:

1. **Advance Freight:** This freight is payable by agreement in advance of or before the commencement of voyage. If the amount is not paid fully and the ship is lost on the voyage, such freight is still recoverable by the ship owner.
2. **Dead Freight:** This freight is payable by the charterer for failure to produce or load the agreed amount of cargo.
3. **Freight Pro-rata:** If part of the original contract of charter party is performed by the ship owner and if at a point short of destination the goods are accepted by the charterer or his agent in such a manner that further carriage is dispensed with, a contract to pay proportionate compensation for the benefit actually received i.e. for the voyage actually performed arises which is called "freight pro-rata".
4. **Primage:** Primage means a reward payable to the captain for his care and attention. Now a days no extra payment is made to the captain but it is usually included in the amount of agreed freight.

Bottomry and Respondentia: This is a transaction in which the master of a ship pledges the ship or cargo by means of a bond in order to raise money for the benefit of the ship. "Bottomry bond" is an instrument in writing executed by the master binding him to repay the money advance within a limited time after the safe arrival of the ship at its destination. When, however, the money is raised only against cargo as a security, the contract is called "respondentia".

Essential Elements of Bottomry Bond:

1. The repayment must be conditional on the safe arrival of the ship.
2. There must be necessity to raise the loan, the ship must be in distress, the master must have no credit money and money must be required for necessary purposes.
3. The master must have made all possible efforts to raise money.
4. The bond must be given for loans advance to the ship and not for the master's personal use.

General Average: The concept of general average arises when any extra ordinary expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of protecting and preserving the property involved in a common adventure. As a rule such loss must be shared raterily by the parties interested in the common adventure.

Master of the Ship: Master of the ship is the highest officer on the board. He has two functions. As agent of the ship-owner he does what is necessary to sign and carry out the contract and, in case

of necessity and emergency, he is the agent of the cargo owners. He can sell the goods or throw them overboard or pledge them for advance of money in case the action is imperative or it is not possible to communicate with the ship owners / or the shippers and it is not safe to wait longer.

CASE – I: "C" a carrier issued a bill of lading acknowledges receipt a box of goods stating that value, weight, contents and the quality of the goods were unknown. The shipper transferred the bill of lading to "P". When the goods were delivered it was found these goods were not the same as described. "P" brought an action against C. Will he succeed?

Held: Original consignor will be held responsible for all the losses because he did not supply the goods as per the specification which was given to P/

CASES – II: "P" held as endorsee for bill of lading for ground nuts shipped from Bombay to London. During the voyage ships deviated and called at a port not lying on the prescribed route. Resumed the prescribed route and collided with another vessel, in consequences a quarter of the ground nuts was lost. The vessel proceeded on her voyage and while nearing London was sunk by an enemy submarine. Can "P" recover his loss from ship owner?

Held: In this case, P can recover loss from ship owner because this is the case of breach of implied condition i.e. the non deviation.

Reference:

Page 487,488,489 (N.D Kapoor)

Page 549,550,551 (M.C Kuchel)

Page 260,261,262 (Study Text)

Difference between:

Voyage Charter	Time Charter
Difference of Function: In case of voyage charter, the ship undertakes to transport a specified cargo between designated ports. In other words, the ship-owner provides carrying services to the charterer.	In time charter, the ship owner places his vessel for an agreed time at the disposal of the charterer who is free to employ it for his own purposes within the permitted contractual limits.
Difference of Commercial: The voyage charterer in contract takes little more part in the operation of the vessel. His primary obligation is to provide a cargo is to arrange for its reception at the port of discharge.	The time charterer controls the commercial function of the vessel and is normally responsible from expenditure directly resulting from compliance with his instruction such as fuel cost, port charges and cost of loading and discharging the cargo.
Freight / Hire: Freight is the consideration payable to a carrier for the carriage of the goods from the port of shipment to the agreed destination. The obligation to pay freight can arise either under a voyage charter or a bill of lading contract. Here the payments are made in respect of the carriage of goods from one place to another.	In time charter, the obligation of the charterer is to pay hire. Hire is payable for his right to use a vessel for a specific period of time irrespective of the extent to which it is employed by the charterer for the carriage of cargo.
Comparative Advantage: In a voyage charter, the ship owner by quoting a fix rate per ton of cargo for the complete voyage will himself bear the risk of delay arising from causes beyond the control of	From the ship-owner point of view the time charter is far more attractive, since the risk of delay, caused by factors such as bad weather, congestion in port or strike of stevedores, falls on the charterer

the parties.	who must pay a flat rate for the time he hires the vessel.
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Goods: includes goods, wares, merchandise and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.

Carriage of goods covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.

Carrier: includes the owner or the charterer who enters into a contract of carriage with a shipper.

Warranty and term:

"Warranty" in a maritime contract is a condition essential to be complied with, failing which the aggrieved party can repudiate the contract.

A "term" is an affirmation or a promise not so vital to the contract and its breach only gives the aggrieved party the right to claim damages.

Whether a statement in a contract of affreightment is a warranty or a term is determined by the court from the intentions of the parties to be gathered from the surrounding circumstances.

Implied warranties:

Implied warranties in a contract of affreightment are:

- 1) Seaworthiness of the ship, subject only to exercise of due diligence by the ship owners beyond which seaworthiness is not guaranteed.
- 2) To man, equip and supply the ship.
- 3) To make the cargo carrying chamber, refrigerated and cool. All other parts of the ship holding goods should be fit and safe for the storage, carriage and preservation of goods.
- 4) Reasonable dispatch in the matter of loading of cargo, commencing and completing the voyage.
- 5) No deviation in respect of unnecessary detours but taking the ship along usual and customary routes.
- 6) No shipping of dangerous goods failing which the shipper shall be liable for any damage caused to any person or property arising through shipment of such goods.

Effects of Breach: The effects of any violation or breach of the terms of charter party (including the implied warranties) are as follows:

- 1) If any breach of the terms is discovered before the commencement of the voyage, the aggrieved party can repudiate the contract and also claim damages.
- 2) If any breach of terms comes to the knowledge after the voyage has begun, the aggrieved party can claim damages.
- 3) In the event of unauthorized deviation of the ship from the agreed or customary route, the shipowner ceases to be covered by the "excepted perils" clause.

Right of stoppage in transit: The Indian bill of lading act, 1856 does not affect the provisions regarding unpaid seller's right of stoppage of goods in transit as given under the Sale of Goods Act. Accordingly, the shipping company is not required to deliver the goods to the holder of the bill of lading, If the consignor, in exercise of the right of stoppage in transit, gives instructions not to deliver the goods.

Ship owner's Lien: A lien is the right given to the ship-owner to retain possession of the cargo at the port of discharge as security for the payment of freight or other charges. This right is restricted and is available in the following cases:

To recover the freight due on delivery of the cargo under either a charter and bill of lading contract of carriage. 1)

For expenses incurred by the ship owner in protecting the cargo since the master has authority under an agency of necessity (emergency) to take whatever steps are necessary to protect the cargo owner's interest during the voyage. 2)

For the recovery of general average contribution due from cargo. 3)

Maritime Lien: A maritime lien is a claim on a ship, cargo and the freight in respect of services rendered to them. This right is given by law to all persons who have rendered some services to save the ship or cargo in time of danger. By virtue of this right, they can recover their charges from the shipowner or the cargo owner. Until their charges are paid, the ship is not allowed to leave harbour and the Court may order for sale of the ship or cargo in favour of the holder of maritime lien. This lien is possessed by the following persons:

- (i) seamen for their wages
- (ii) the holder of a bottomry bond for his dues.
- (iii) Salvors i.e. persons who rescue ship or property from the ship for charges in connection with salvage.
- (iv) Persons who have a claim against the ship, for damages caused by collision due to negligence.

A maritime lien can be exercised independently of any possession by filing a suit in the appropriate court.

Kinds of General Ship:

Liner: A vessel carrying general cargo sailing regularly along a certain line of course at advertised times is called "liner". 1)

Tramp: A vessel sailing from port to port looking for cargo. 2)

Mate's Receipt: The bill of lading was issued by the master at the time when the goods were shipped. However, in modern times when the goods are put on board, the mate usually issues an informal receipt which in later exchange for the bill of lading and is called mate's receipt.

Responsibilities and Liabilities of carrier: The following are the responsibilities and liabilities of carrier:

1. The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to:
 - a) make the ship seaworthy
 - b) properly man, equip, and supply the ship
 - c) make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.
2. If a loss arises due to seaworthiness of the ship, the burden of taking due diligence in making the ship seaworthy shall be of the carrier.
3. The carrier shall be responsible for carefully loading, handling, stowing, carrying, keeping and caring for the goods and their discharge.
4. Issuing a proper bill of lading giving necessary details, Such a bill of lading would be prima facie evidence of the receipt of goods as described in.

5. Any clause, covenant or agreement in a contract of carriage, relieving the carrier or the ship for liabilities from loss or damage to the goods covered in the article, shall be null and void. However, a benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability.

Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

- 1) act, negligence or default of the master, pilot, or the servants of the carrier in the navigation or in the management of the ship.
- 2) Fire, unless caused by the actual fault or privity of the carrier
- 3) Perils, dangers and accidents of the sea or other navigation waters
- 4) Act of God
- 5) Act of war
- 6) Act of public enemies
- 7) Arrest or restraint of princes, rulers or people, or seizure under legal process
- 8) Quarantine restrictions
- 9) Act or omission of the shipper or owner of the goods, his agent or representatives
- 10) Strikes or lock-outs
- 11) Riots and civil commotions
- 12) Saving or attempting to save the life or property at sea
- 13) Latent defects not discovered by due diligence

The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the fact, fault or neglect of the shipper, his agent or his servants.

Conditions of Charter Party:

Tonnage: Tonnage, a part from nationality class, the charterer will wish the contract to be for a certain size of vessel so called registered tons i.e. the tonnage for which cargo spaces are available on board of the ship.