



International Trade, Bills of Lading, Charterparties and Arbitration

Day 10

Time Charter

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<https://g.page/ArunKasi/review>

TIME CHARTER

Orders and Indemnity

ORDERS AND INDEMNITY

- Wide liberty to order balanced by indemnity
- Orders must be about employment and not navigation
- Legitimate Order v Illegitimate Order
- Indemnity v Breach

TIME CHARTER

Orders and Indemnity

COMMON ORDERS

- Orders about issuing bills of lading
 - Shipowner to sign the bill 'as presented'
 - *The Nanfri* – shipowner ordered master not to sign freight prepaid bills – serious breach that entitled charterer to terminate charterparty
- Orders about cargoes to be loaded
- Orders for delivery against indemnity (legal?)

TIME CHARTER

Orders and Indemnity

COMMON ORDERS

- Orders about ports to call
 - Safe port / safe berth warranty
 - Nominated port must be prospectively safe at the time of nomination
 - If port subsequently becomes unsafe, the charterer must re-nominate (if not, breach)
 - Safe port – *The Eastern City*
 - In the relevant period of time ...
 - the particular ship *can reach it, use it, and return from it* without,
 - in the absence of some *abnormal occurrence*,
 - being exposed to *danger* which cannot be avoided by good navigation or seamanship

TIME CHARTER

Withdrawal, Off-Hire

OBLIGATION TO PAY HIRE

- Usually payable in advance for a certain period
- Hire must be paid strictly on time in full and cleared funds
 - NYPE 2015 form cl 11(a) - received by the Owners ... in the bank account
 - BIMCO BALTIME 1939 (revised 2001) cl 6(2) - cash
- If payable by a certain day, charterer has until midnight of that day to pay
- Adjustments for last hire (eg. NYPE 2015 form cl 11(e))

TIME CHARTER

Withdrawal, Off-Hire

SET-OFF AGAINST HIRE

- Can do **equitable** set-off
(the set-off claim must have close proximity to the hire payment). Eg:
 - Speed and consumption warranty claims
 - Loading less cargo than permitted and required
 - Off-hire deduction
- Can do **contractual** set-off
(contractually allowed set off). Eg:
 - Disbursements made to ship
 - NYPE 2015 form cl. 11(f) [cash advances] and cl 17 (Off-Hire clause)

TIME CHARTER

Withdrawal, Off-Hire

OBLIGATION TO PAY HIRE

- Breach is innominate term, so charterer can terminate only if breach results in sufficiently seriously consequences

TIME CHARTER

Withdrawal, Off-Hire

WITHDRAWAL

- Contractually provided, eg. NYPE 2015 form cl 11(c):
 - **(c) Withdrawal**
 - Failure by the Charterers to pay hire due in full **within three (3) Banking Days of their receiving a notice** from Owners under Sub-clause 11(b) above shall entitle the Owners, without prejudice to any other rights or claims the Owners may have against the Charterers:
 - (i) to withdraw the Vessel from the service of the Charterers;
 - (ii) to damages, if they withdraw the Vessel, for the loss of the remainder of the Charter Party.
- Usually, subject to anti-technicality clause, eg. NYPE 2015 form cl 11(b):
 - **(b) Grace Period**
 - Where there is failure to make punctual payment of hire due, the Charterers shall be given by the Owners **three (3) Banking Days** (as recognized at the agreed place of payment and the place of currency of the Charter Party) **written notice** to rectify the failure, and when so rectified within those three (3) Banking Days following the Owners' notice, the payment shall stand as punctual.
- Shipowner must **strictly comply** with the terms of anti-technicality clause / withdrawal-preconditions.
 - If not, shipowner will be liable for wrongful termination

TIME CHARTER

Withdrawal, Off-Hire

SUSPENDING PERFORMANCE

- Contractually provided, eg. NYPE 2015 form cl 11(d):
 - **(d) Suspension**
 - At any time while hire is outstanding, the Owners shall, without prejudice to the liberty to withdraw, be entitled to *withhold the performance of any and all obligations hereunder and shall have no responsibility whatsoever for any consequences thereof*, and Charterers hereby indemnify the Owners for all legitimate and justifiable actions taken to secure their interests, and hire shall continue to accrue and any extra expenses resulting from such withholding shall be for the Charterers' account.

TIME CHARTER

Withdrawal, Off-Hire

OFF-HIRE

- NYPE 2015 form cl 17 (Off-Hire clause)
- In the event of loss of time from **deficiency and/or default and/or strike of officers or ratings, or deficiency of stores, fire, breakdown of, or damage to hull, machinery or equipment, grounding, detention by the arrest of the Vessel**, (unless such arrest is caused by events for which the Charterers, their sub-charterers, servants, agents or sub-contractors are responsible), or detention by Port State control or other competent authority for Vessel deficiencies, or detention by average accidents to the Vessel or cargo, unless resulting from inherent vice, quality or defect of the cargo, drydocking for the purpose of examination, cleaning and/or painting of underwater parts and/or repair, or by any other similar cause preventing the full working of the Vessel, the payment of hire and overtime, if any, shall cease for the time thereby lost. Should the Vessel deviate or put back during a voyage, contrary to the orders or directions of the Charterers, for any reason other than accident to the cargo or where permitted in Clause 22 (Liberties) hereunder, the hire to be suspended from the time of her deviating or putting back until she is again in the same or equidistant position from the destination and the voyage resumed therefrom. **All bunkers used by the Vessel while off-hire shall be for the Owners' account.** In the event of the Vessel being driven into port or to anchorage through stress of weather, trading to shallow harbors or to rivers or ports with bars, any detention of the Vessel and/or expenses resulting from such detention shall be for the Charterers' account. If upon the voyage the speed be reduced by defect in, or breakdown of, any part of her hull, machinery or equipment, **the time so lost, and the cost of any extra bunkers consumed in consequence thereof, and all extra proven expenses may be deducted from the hire.** **Bunkers used by the Vessel while off-hire and the cost of replacing same shall be for the Owners' account and therefore deducted from the hire.**

TIME CHARTER

Withdrawal, Off-Hire

OFF-HIRE

- Contractually provided, eg. NYPE 2015 form cl 17:
 - 1) deficiency / default / strike of officers or ratings;
 - 2) deficiency of stores;
 - 3) fire;
 - 4) breakdown of, or damage to hull, machinery or equipment;
 - 5) grounding;
 - 6) detention by the arrest of the Vessel, (unless such arrest is caused by events for which the Charterers, their sub-charterers, servants, agents or sub-contractors are responsible);
 - 7) detention by Port State control or other competent authority for Vessel deficiencies;
 - 8) detention by average accidents to the Vessel or cargo, unless resulting from inherent vice, quality or defect of the cargo;
 - 9) drydocking for the purpose of examination, cleaning and/or painting of underwater parts and/or repair;
 - 10) by any other similar cause *preventing the full working of the Vessel.*

TIME CHARTER

Withdrawal, Off-Hire

OFF-HIRE

- Calculating off-hire: Net clause or Period clause
- NYPE 2015 and BIMCO BALTIME 1939 (revised 2001) forms provide 'net' clause
 - “in the event of loss of time ... the payment of hire ... shall cease for the time thereby lost” – NYPE 2015 form cl 17

TIME CHARTER

Redelivery

REDELIVERY

- Usually, a window time
 - ‘about 12 months’, ‘12 months, 10 days more or less in charterer’s option’, ‘minimum 12 months maximum 14 months’, or ‘about 90 days to maximum 100 days’
 - ‘minimum 1 June 2020/maximum 30 June 2020’
 - If no such **margin**, court will imply a reasonable margin - *The Dione*
 - Loose window: eg. ‘duration **about** 70/80 days **without guarantee**’

TIME CHARTER

Redelivery

REDELIVERY

- Usually, a window time
 - *The Peonia*
 - ... **about** **minimum** ten months' **maximum** twelve months' time charter, **exact duration in charterers' option**. Charterers have further option to complete last voyage.

TIME CHARTER

Redelivery

REDELIVERY

- Off-hire period gets added to contractual time, only if charterparty provides for that, eg. NYPE 2015 form cl 52(c):
 - **(c) Off-hire**
 - The **Charterers to have the option** of adding any time the Vessel is off-hire to the Charter period. Such option shall be declared in writing not less than one (1) month before the expected date of redelivery, or latest one (1) week after the event if such event occurs less than one (1) month before the expected date of redelivery.

TIME CHARTER

Redelivery

REDELIVERY

- Pre-notice are usually required, eg. *The Zenovia*:
 - ‘Charterers are to give Owners not less than 30 days followed by 20/15/10/7 days notice of approximate redelivery date and intended port thereafter 5/3/2/1 days definite notice of redelivery and port’.
- But pre-notice times are not mandatory

TIME CHARTER

Redelivery

REDELIVERY

- Early delivery
 - Repudiatory Breach – if shipowner accepts, it can claim damages
- Late delivery (delivery after final terminal date)
 - Overlap period
 - Damages at market rate or hire rate, whichever higher

TIME CHARTER

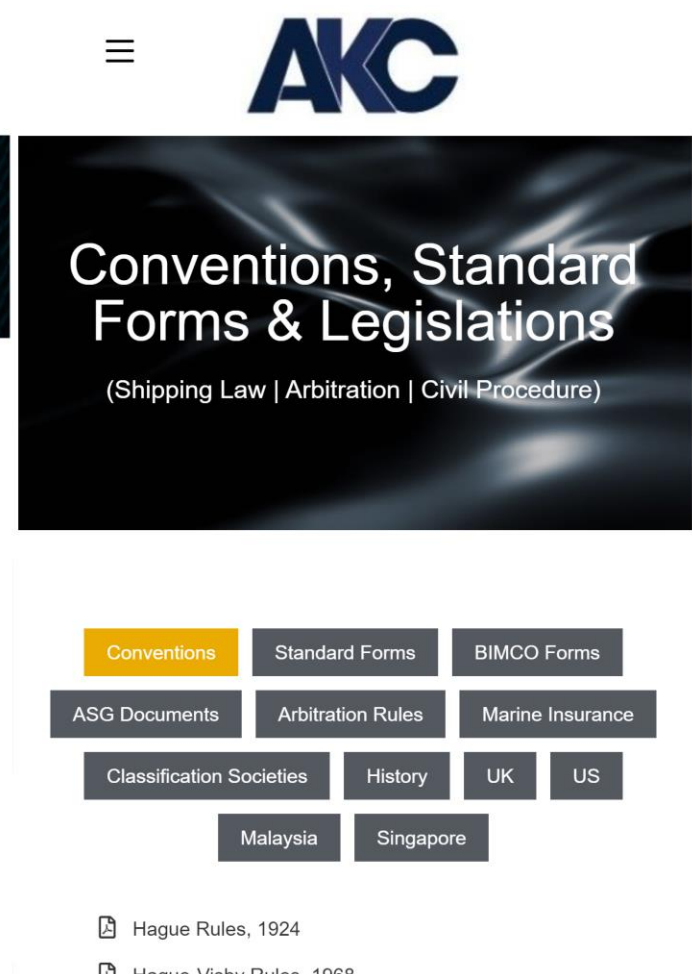
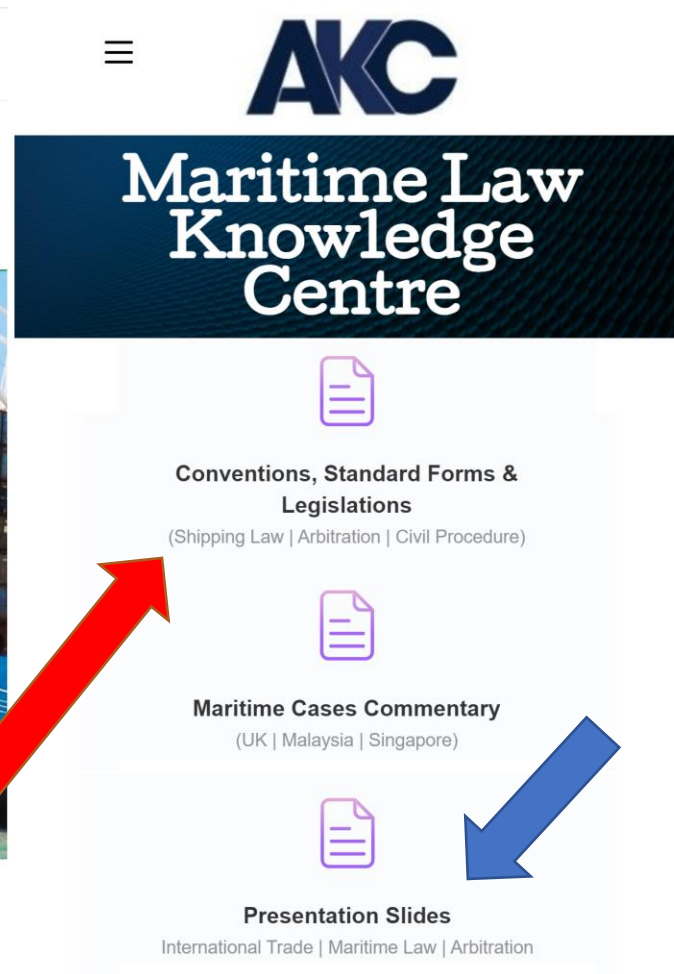
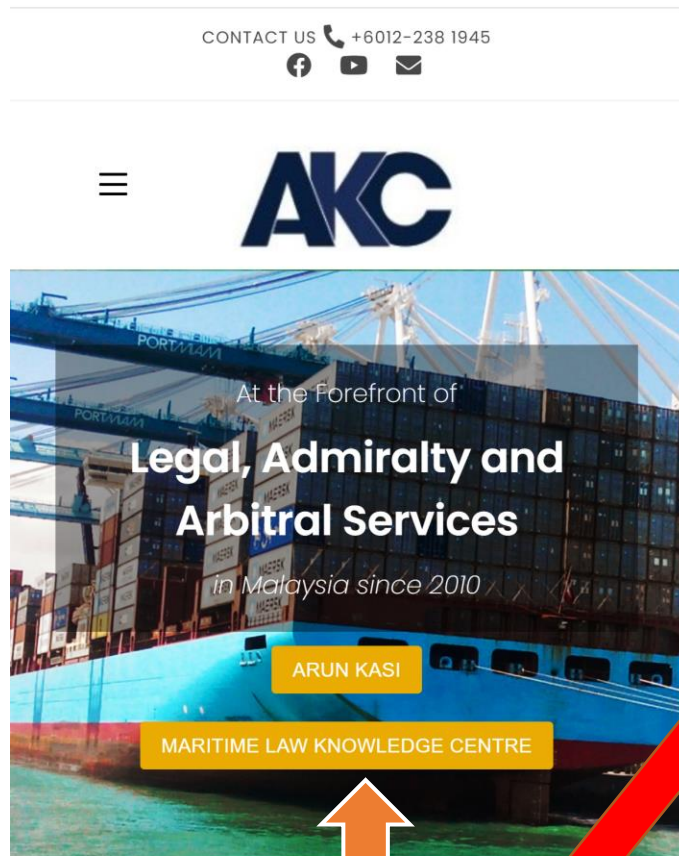
NYPE 2015 form, cl 8

NYPE 2015 form cl 8

- The Charterers shall perform all cargo handling, including but not limited to loading, stowing, trimming, lashing, securing, dunnaging, unlashng, discharging, and tallyng, at their risk and expense, under the **supervision** and responsibility of the Master.
 - Underlined words above are by way of modification that is quite popular
 - When modified, liability for damage arising from loading shifts to shipowner, while cost of loading remains on charterer

International Trade, Maritime Law and Arbitration Web Reference

arunkasico.com -> [Maritime Law Knowledge Centre](#) -> [Conventions ...](#)



Carriage of Goods by Sea

Further Reading

[Arun Kasi, *The Law of Carriage of Goods by Sea*, Singapore, Springer, 2021](#)

Arun Kasi

The Law of Carriage of Goods by Sea

 Springer

PART I: INTRODUCTION AND INTERNATIONAL TRADE

1. Introduction and Legal Framework
2. Shipping Documents
3. International Trade

PART II: BILLS OF LADING

4. Obligations of Carrier under Rules: Legal Bases
5. Third Parties: Protection and Action for
6. Proof of Damages: Presumptions and Estoppels
7. Implied Terms and Exclusion Clauses.
8. Hague & Hague-Visby Rules: Application
9. Hague & Hague-Visby Rules: Carriers' Obligations and Defences
10. Hague & Hague-Visby Rules: Carriers' Liability and Time Limitations
11. Shippers' Obligation for Dangerous Cargo

PART III: CHARTERPARTIES

12. Charterparty: Introduction
13. Voyage Charter: Freight and Lien
14. Voyage Charter: Laytime and Demurrage
15. Time Charter: Orders and Indemnity
16. Time Charter: Withdrawal, Off-Hire and Redelivery
17. Time Charter: Apportionment of Cargo-Claims Liability

Carriage of Goods by Sea

Further Reading

Arun Kasi

The Law of Carriage of Goods by Sea

 Springer

Availability

Malaysia

- Kinokuniya

UK

- Wildy
- Foyles
- Waterstone
- Blackwells
- John Smith's
- Browns Books

USA

- Barnes & Noble
- Books A Million
- Walmart
- The Last Bookstore
- Schuler Books
- Bookscouter
- Joseph Beth
- Bluemanatee
- Literatibookstore
- Powells
- Bookshop.org
- Kinokuniya

Canada

- Indigo

New Zealand

- Mightyape

Australia

- Dymocks
- Booktopia
- Kinokuniya

Germany

- Hugendubel
- Weltbild
- Thalia
- Langer Blomqvist
- Buchkatalog
- Umbreit
- Stephanus Buchhandlung

France

- Galignani

Brussels

- Standard Boekhandel
- Club

Sweden

- Adlibris
- AkademiBokHandeln
- Bokus

Switzerland

- Buchhaus
- OrellFuessli

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- Kinokuniya

Taiwan

- Kinokuniya
- Books.com.tw

Thailand

- Kinokuniya

S. Korea

- Aladin

India

- Books Wagon