



International Trade, Bills of Lading, Charterparties and Arbitration

Day 8

Voyage Charter: Freight & Lien

Arun Kasi

Advocate & Solicitor, Malaya

Barrister, England and Wales

Arbitrator, AIAC and THAC panels

Fellow, Chartered Institute of Arbitrators London (CIArb)

Member, London Maritime Arbitrators Association (LMAA)

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Voyage Charter: Freight and Lien

Freight v Hire

- Freight for voyage (carriages under bills of lading / voyage charter)
- Hire for time

Voyage Charter: Freight and Lien

Bases of Freight

- Lump sum.
- Deadweight (net cargo carrying capacity).
 - eg. where the shipowner has the option of providing one of its ship within a range of deadweight.
- Quantity loaded or discharged.

Voyage Charter: Freight and Lien

Bases of Freight

- If charterer loads less than the minimum agreed quantity, he pays **Deadfreight**.
 - Subject to *de minimis* rule: *The Vrontados* (1965) – 12,600 tons, short 12 tons.
 - No defence to charterer to say extrinsic conditions like port's draft restrictions prevented loading full and complete cargo **to capacity of the ship**: *The Archimidis* (2008).
 - But this will be different if full and complete cargo was intended to mean full cargo **the ship can receive at the loading port**.
- **Deadweight warranty** by shipowner refers to the **minimum** capacity.
 - Obligation to load full and complete cargo is about loading to the **maximum** capacity.
 - Hence, charterer may have to load beyond the deadweight warranty quantity:
Steamship Heathfield Co v Rodenacher (1986) - 2,600 tons – 2,673 tons – 2,950 tons.
 - Warranty v Description
 - Full and complete load refers to capacity of the ship less space occupied by bunkers:
Rotherfield v Tweedie (1897) – 4,250 tons – 3,947 tons.

Voyage Charter: Freight and Lien

Significance of Freight

- No set-off against freight (earned freight): *The Aries* (1977).
- Once freight is earned, it must be paid even if the voyage is not completed for whatsoever reason.

Voyage Charter: Freight and Lien

Concept of Freight Earned

- Common law: freight is earned and payable upon 'right and true delivery'.
 - No delivery, no freight (it does not matter that the goods were lost by a peril of the sea not attributable to the fault of the shipowner).
 - *Thomas v Harrowing* : 'right and true delivery' means delivery of goods 'which were shipped and of which delivery was not prevented by any of the excepted perils'.
 - Short Delivery v No Delivery.
 - If does not arrive or arrives but with **no** cargo, then no freight is earned if freight is earned upon 'right and true delivery'.
 - It is no delivery, if the delivered goods had been so damaged that the character of the goods had changed: *Asfar v Blundell* (1896) – ship sank – condition of dates so changed that they were no longer merchantable as dates – it is no delivery to hand them over – so no freight.

Voyage Charter: Freight and Lien

Concept of Freight Earned

- Common law position is often contractually modified.
- Charterparty may provide for full or majority of freight to be 'deemed earned' and payable upon loading and balance freight to be earned and payable upon delivery.
 - 80:20 and 95:5 splits are common.
- Charterparty may also split the time when it is earned and when it is payable.
- 'near' clause, commonly found, modifies common law obligation to deliver at the agreed destination port when the agreed port cannot be safely accessed.
 - Same can also apply for loading port
 - Eg. BIMCO GENCON 1994 form, cl. 1 (for both loading and discharge)
 - or so near thereto as she may safely get and lie always afloat

Voyage Charter: Freight and Lien

Bill of Lading Holder

OBLIGATION OF B/L HOLDER TO PAY FREIGHT TO SHIPOWNER

- B/L usually incorporate voyage charterparty terms.
- If B/L issued by shipowner to cargo interest is **not annotated 'freight prepaid'** and charterparty incorporated into B/L, the shipowner may claim freight from charterer / B/L holder claiming the goods.
- If freight amount not stated in the bill, the obligation of the holder will be to pay freight on *quantum meruit* basis.

Voyage Charter: Freight and Lien

Cesser Clause

- A cesser clause will release the charterer from liability once the shipowner has issued B/L to the cargo interest
- A cesser clause will take effect only if the shipowner has an effective remedy against the bill of lading holder:
 - *The Silva Plana* (1989).
 - *The Aegis Britannic* (1987).

Voyage Charter: Freight and Lien

Sources of Lien

- By common law
 - Lien **effective against the world**: the owner of (and other holders of rights in) goods.
 - **Must complete voyage** to exercise lien.
 - Lien on **cargo only**.
 - Lien for freight and general average. Possibly also for Detention.
 - But not for Demurrage and Deadfreight.
 - Lien for freight – only if it remains unpaid at delivery port (irrespective of earlier earning).

Voyage Charter: Freight and Lien

Sources of Lien

- By contract
 - Per terms of contract – **no need to complete voyage.**
 - Limited to **between contracting parties.**
 - Contract may provide for lien **on cargo, sub-freight and sub-hire.**
 - Contract may allow lien for dues other than Freight, General Average and Detention.
 - Eg. BIMCO GENCON 1994 form, cl 8:
 - lien on the *cargo* and on all *sub-freights* payable in respect of the cargo, for *freight, deadfreight, demurrage, claims for damages and for all other amounts due* under this Charter Party including costs of recovering same.

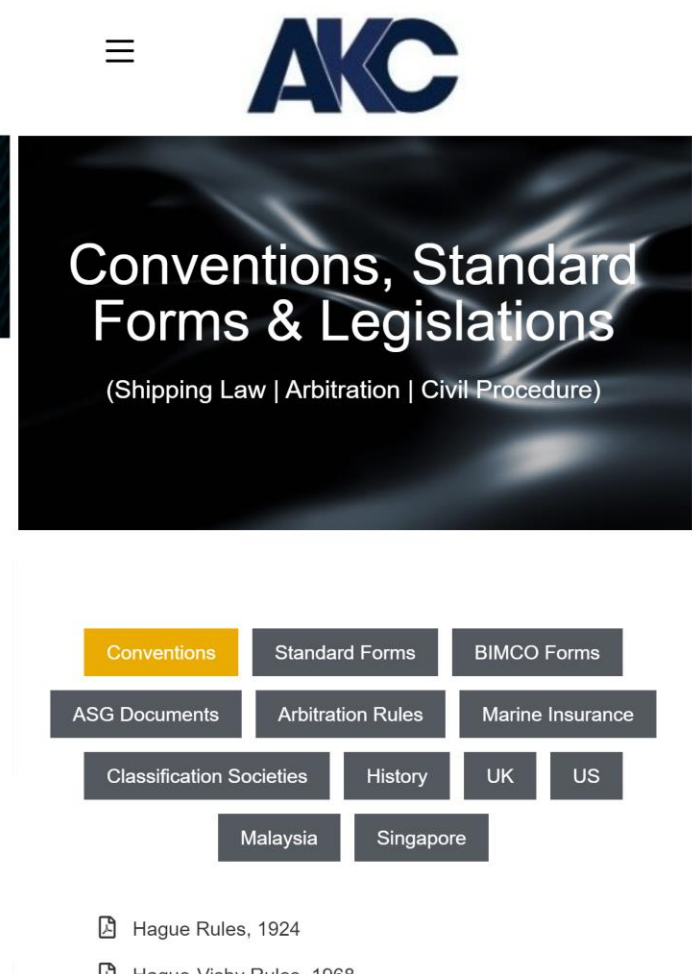
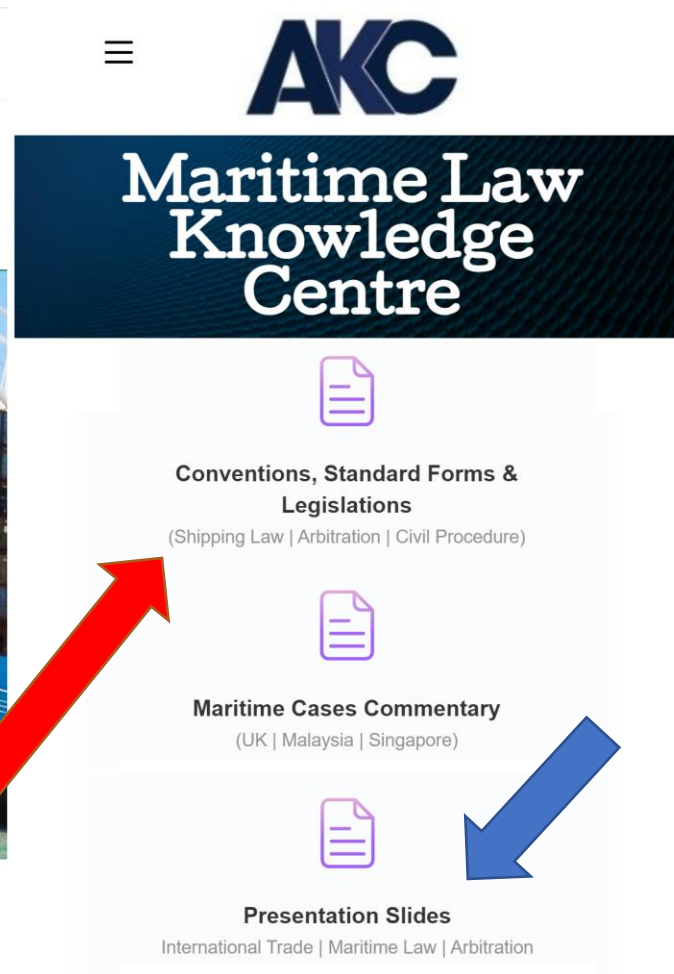
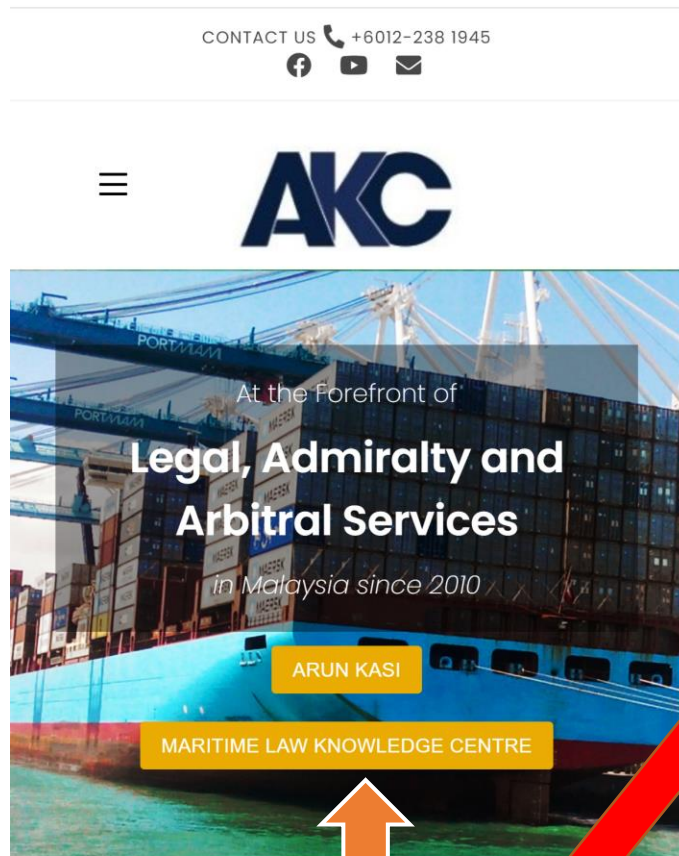
Voyage Charter: Freight and Lien

Manner of Exercise of Lien

- Usually exercised by discharging the cargo into a bonded warehouse at the destination port.
- But it may be exercised by the ship waiting outside the discharge port, where it is not practicable to discharge into bonded warehouse.
- The law and procedure at the discharge will govern the sale of the goods.
- Sale right can be provided for in the charterparty.
 - But BIMCO GENCON 1994 form does not have such a provision.
- Contractual lien on sub-freight exercisable by giving notice to person bound to pay the sub-freight i.e. 'intercepting' freight.
 - The person bound need only pay any freight not yet paid to the 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
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- Joseph Beth
- Bluemanatee
- Literatibookstore
- Powells
- Bookshop.org
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- Aladin

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- Books Wagon