CHAPTER 9

THE SHIPMENT, CARRIAGE AND DELIVERY OF GOODS

CONTRACTS OF AFFREIGHTMENT AND SIMILAR ARRANGEMENTS

WHEREAS a "contract of passage" is a contract for the carriage of passengers by sea, a "contract of affreightment" is a contract for the carriage of inanimate things and livestock. A contract of affreightment can and sometimes may, in the preliminary stages of negotiation, be made by word of mouth, but it is of course customary for the contract eventually to be embodied in some convenient form of document. The forms employed for this purpose may, according to circumstances, be (1) charter-parties, (2) bills of lading, (3) waybills, (4) special agreements, or (5) parcel tickets.

Charter-Parties. A charter-party is an agreement between a shipowner and a charterer for the use or hire of a ship for a particular voyage or series of voyages, or for a stipulated period of time. In some cases a charter-party may be for the hire or part of a ship for the carriage of goods on a particular voyage, or during a particular period. Some mention has already been made of this in the section of Chapter 3 dealing with the employment of ships, and further details of chartering are given in this Chapter. Some charter-party forms are reproduced in the Appendix. The term is derived from the Spanish "carta partita" and French "carte partie" meaning "divided document (card)". Originally the shipowner's and merchant's copies of the contract were both written side by side on the same sheet of material which was then divided down the middle to form "indentures"

Bills of Lading. Bills of lading may be issued, and commonly are, even where there is a charter-party in existence as well. This would be the case where a ship has been time-chartered to be employed on the berth so that the charterer is under an obligation to issue his own bills to the shippers of various parcels of cargo. Under a voyage charter also bills of lading may be issued, in the first instance as mere receipts for goods received on board, but where such goods are sold while they are still in transit the bills of lading transferred to third parties become much more than receipts. Bills of lading are used in respect of goods carried on "liner" terms. Further references are made to bills of lading in this Chapter and a specimen form is shown in the Appendix.

Waybills. Up until the early 1960's when most cargo was shipped on conventional vessels, documentary delays were not. a serious problem as there was usually time for negotiable bills of lading to catch up with the cargo. Since then, containerisation, faster vessels, fewer ports of call and improved handling facilities at loading and discharging berths have greatly reduced transit time but often the processing of bills of lading has failed to match this with the result that many consignments arrived at their destination before the necessary documents, which was inefficient and costly for all concerned. To avoid this gap between the movement times of goods and essential documents, a new form, the waybill has been developed.

A waybill is a non-negotiable document which does not have to be presented at destination. The named consignee or his authorised agent takes delivery of the goods subject to proof of identity and authority, although in certain countries, national law still demands presentation of a bill of lading.

Special Agreements. Article VI of the Schedule to the Carriage of Goods by Sea Act (see Appendix I) gives a carrier freedom of contract in respect of particular goods carried under special conditions provided that no bill of lading is issued and provided that the terms of agreement are embodied in a non-negotiable document marked as such.

Parcel Tickets. Valuable goods of small bulk which are normaIly carried in the strong room or other kind of lock-up compartment and, very often, pissengers' excess baggage are shipped under parcel tickets which are not generally regarded as contracts of affreightment. Such goods usually pay an ad valorem freight which may be subject to a minimum charge.

COMMON LAW WARRANTIES

In contracts of affreightment the following undertakings on the part of the shipowner are implied at common law, viz.:-

1. An absolute undertaking that the ship shall be seaworthy for the purposes of the contract at the time when the contract is made. 2. An undertaking that the ship shall be ready to commence the voyage and load the cargo and proceed on the voyage with reasonable despatch.
3. An undertaking that the ship shall not deviate from the contract route or the usual route except for some good reason or as provided for in the contract.

Of the above warranties, 1 and 3 apply equally to charter-parties and bills of lading. The despatch warranty generally applies only to voyage charter-parties and bills of lading issued pursuant thereto. Although these undertakings have been referred to as warranties it

would probably be more truthful to regard them as conditions precedent to the contract. Breach of any of them would result in the shipowner no longer being able to rely on any of the exceptions clauses in the contract and he would find himself reduced to the status of a common carrier with no protection against liability for loss of or damage to goods carried, other than the few common law exceptions. Moreover, he would have to prove that the loss would inevitably have occurred even if the undertaking complained of had not been broken. In the case of a deviation the same burden falls on the shipowner whether the loss or damage occurred before, during or after the deviation. The situation of the ship at the time when the contract is made is a condition the breach of which would entitle the charterer to rescind the charter-party. The seaworthiness of the ship and the fact that she is in every way fitted for the voyage is a condition at the beginning of the voyage, but there is no implied condition or warranty that the ship will continue to be seaworthy during the voyage. However, in accordance with what is called the "doctrine of stages", it is implied that the vessel must be seaworthy for each stage at the beginning of that stage where the voyage is divided into several distinct parts.

MODIFICATIONS OF THE COMMON LAW POSITION

In a charter-party it is customary to describe the vessel as being "tight, staunch, strong, and in every way fitted for the voyage," and in a bill of lading it was at one time usual to declare that the ship was seaworthy by describing her as a "good" ship. As long ago as 1830 the Carriers Act of that date gave carriers the right to contract out of certain of their common law obligations and, in practice, this was effected by inserting various exceptions clauses in contracts of affreightment. There are also certain Merchant Shipping Act provisions which have the effect of enabling a ship-owner to escape liability completely in some circumstances and to limit his liability in others (see Chapter 15). Section 3 of the Carriage of Goods by Sea Act, 1971, does away with the common law absolute warranty of seaworthiness by stating that there shall not be implied in any contract for the carriage of goods by sea to which the Rules apply any absolute undertaking by the carrier of the goods to provide a seaworthy ship. Article III of the Rules referred to, however does state that the carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to (a) make the ship sea-worthy; (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. To give an absolute undertaking to supply a seaworthy ship is one thing, to use due diligence to make a ship seaworthy is quite another. Where the Rules apply, the latter is as

far as the carrier is expected to go, and even that is quite onerous, those responsible for framing the rules evidently considering that it would be unfair to expect an owner or charterer to be technically fully competent to know whether a modern complex ship fitted with all kinds of complicated equipment was in every detail seaworthy or not.

The Rules contained in the Schedule to the Carriage of Goods by Sea Act, generally known as the Hague-Visby Rules, do not apply to charter-parties as such, though they do apply to bills of lading issued pursuant to charter-parties.

There is an important difference between the common law position and that under the Hague-Visby Rules with regard to deviation. At common law deviation to save life has always been justifiable, but not so deviation to save property at sea. Any delay due to rendering salvage services to another vessel in circumstances where lives were not in danger would, at common law, constitute a breach of the non-deviation warranty. By contrast, Article IV (4) of the Rules provides that any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

COMMON AND PRIVATE (OR SPECIAL) CARRIERS

Common Carrier. A common carrier is a carrier who, for hire or reward, holds himself ready to carry from one terminus to another the goods of any person who chooses to employ him for the purpose. Such a carrier, therefore, cannot pick and choose his customers. He is bound to charge a reasonable price for his services, but is not bound to charge a uniform price. He must accept and carry what ever goods are offered for carriage unless:-

(a) his carriage is already full;
(b) the goods offered are not of a kind he is accustomed to carry;
(c) the destination of the goods is not on his accustomed route;
(d) the goods are of a specially dangerous nature so that the carriage of them would involve extraordinary risk;
(e) the goods would be harmful to others he has already accepted.

The customer must deliver the goods to be carried to the carrier or to the latter's representative, and the carrier has a possessory lien on the goods carried for his charge for carriage (e.g., shipowner's lien for freight).

A common carrier is absolutely responsible for the safe carriage of the goods and for delivery without unreasonable delay at the proper destination in the same apparent order and condition as when received, but he is not liable at common law for any loss or injury arising from:-

(a) Act of God.

(b) Restraint of Rulers, Princes, and Peoples.
(c) Queen's enemies.
(d) Jettison for the common benefit (general average sacrifices).
(e) Negligence of the consignor (e.g., insufficient packing which is not obvious to the carrier).
(f) Inherent vice or defect of the goods.

The above exceptions apart, a common carrier is liable for any loss of or damage to the goods he carries even though he has not been negligent.

Private Carriers Where a carrier declines to accept the status of a common carrier, or refuses to carry goods other than those of a particular kind, and makes a special contract of carriage with each consignor in turn, he is a private carrier or special carrier. Although even he is bound by certain of the common law obligations, he is permitted to include an exceptions clause in his contracts relieving him from specified liabilities. He is, in addition, entitled to the same exceptions from liability as a common carrier.

Shipowners and Charterers as Carriers. It was held many years ago that the owner or master of a general ship is a common carrier. A "general ship" is a ship placed on the berth with an intimation by the owner or charterer thereof that he is willing to carry without special conditions the goods of anyone who offers them for carriage. In the same way the owner of a barge or lighter is a common carrier if he hires out his craft for the carriage of goods to any person applying for the use of it where the customer has the right to decide the places of arrival and departure of the vessel However, from what has already been said about modern modifications of the common law position, it will be evident that a shipowner will very rarely, if ever, be nowadays regarded at law as a common carrier completely.

In respect of a ship under voyage charter, the owner is a private carrier carrying goods under the terms of a special contract, namely the charter-party. In respect of a time charterer, when as is usual the master (or the ship's agent acting for the master) signs the bills of lading on the owner's behalf, the shipowner is the carrier, but if exceptionally the master has signed the bills of lading as the charter's agent or the charterer has signed the bills of lading in his own name, the charterer is the carrier. To what extent (if any) he is a common carrier will depend on the manner in which he employs the ship. In respect of a ship placed on the berth, the owner or charterer acting as carrier will be a common carrier to a very limited extent, that is to say, he will be a common carrier except in so far as the goods are carried under the terms of a special contract (e.g., a bill of lading), and in so far as the carriage is governed by statute law (e.g., certain sections of the M.S. Acts, the Carriage of Goods by Sea Act and the corresponding

legislation of countries other than the United Kingdom). The modern position of lightermen and barge owners is referred to in Chapter 12.

CHARTER-PARTIES AND SOME CHARTERING TERMS

Negotiation of Charters. In fixing a ship for a voyage charter and in negotiating a time charter it is almost invariably the case that the services of a shipbroker are engaged on a commission basis to act as an intermediary between the shipowner and the charterer. Shipbroking is a highly skilled occupation, and it will be convenient at this juncture to mention briefly the different categories of brokers who specialise in one or other of the several branches of the business.

There are:-

1. Sale and purchase brokers whose speciality is the buying and selling of vessels on behalf of their principals as described in Chapter 3, and the arranging of contracts for the construction of new tonnage.
2. Shipowners' brokers whose business it is to find cargoes for vessels to carry.
3. Charterers' agents who specialise in finding ships to carry merchants' cargoes.
4. Coasting brokers who act both as shipowners' brokers and as charterers' agents in the coasting trades.
5. Cabling agents whose function is to keep a particular chartering market constantly advised of the requirements of markets elsewhere, and to inform owners and charterers abroad of the state of the market in the agent's own district.
6. Ships' agents who act on behalf of owners and masters of ships while in ports of call to make arrangements for loading and discharging cargo embarking and disembarking passengers, bunkering, obtaining supplies, having repairs effected, and other details of ships' husbandry. In addition to making advance arrangements for docking or berthing, they collect freight due to the shipowner, assist with Customs requirements and attend to crew formalities. Agency fees for these services are charged according to a fixed scale.

In many cases the same firm of shipbrokers is concerned with more than one of the brokers' activities listed above. British ship brokers both at home and overseas are usually members of the Institute of Chartered Shipbrokers.

A broker who negotiates a charter-party is entitled to commission or "brokerage", as it is usually called, in respect of his services, and the

rate at which this is payable, though varying from case to case, is generally something like 1 1/4 to 1 3/4 per cent. of the freight or charter hire. A typical "brokerage clause" reads "A commission of ..... per cent. on all freight, deadfreight and demurrage, and the customary freight brokerage is due to ..... on shipment of the cargo, vessel lost or not lost". If due on shipment of the cargo it will be based on the B/ L weight, otherwise it will be calculated on the amount of freight actually received. In the "Transitime" f'orm of time C/P the clause relating to commission reads "The Owners to pay a commission of ..... to ..... on any hire paid under the Charter, but in no case less than is necessary to cover the actual expenses of the brokers and a reasonable fee for their work. If the full hire is not paid owing to breach of charter by either of the parties the party liable therefore to indemnify the Brokers against their loss of commission. Should the parties agree to cancel the Charter, the Owners to indemnify the Brokers against any loss of commission, but in such case the commission is not to exceed the brokerage on one year's hire". There are of course, many other forms of brokerage clause. The expression "lost or not lost" refers only to losses by expected perils.

Usually the broker retains the original charter-party and supplies the parties thereto with as many true and certified copies as they may require.

Charter-parties issued in the United Kingdom are exempt from stamp duty.

Signing of Charter-Parties. A C/P must be signed by or on behalf of the shipowner, by or on behalf of the charterer, and by a witness or witnesses. If the two principals or their agents sign the agreement on the same occasion, a single witness suffices for both, but if the contract is executed partly at one place and partly at another, or on different occasions at the same place, each principal signature must be individually witnessed. That is, four signatures would be required.

Captain's Copy of C/P. If it is the intention of the owners of a voyage-chartered ship that the master, with or without the assistance of agents, is to be solely or jointly responsible on their behalf for the conduct of business with the charterer and consignee (or their respective agents) at ports of loading and unloading it will be essential for him to be supplied with a copy of the charter-party. Should this be inadvertently overlooked the master should not hesitate to ask for a copy as without one he would be severely handicapped, being directly concerned with all such matters as the conduct of preliminary voyage, berthing arrangements at loading and discharging ports, the serving of notice of readiness, the kind and quantity of cargo to be shipped, the form-in which bills of lading are to be signed, the obligations of the parties in the matter of demurrage or despatch money and, possibly in some cases, the collection of freight.

On the other hand, if it is the owners' policy to rely entirely on the skill and judgement of their agents to look after their interests in general matters relating to the performance of the contract, they will then consider the master to have fulfilled his part by attending properly to the navigation, stowage and stability of the ship. In that case they will probably regard it as unnecessary for the master to have a copy of the charter-party.

Charter-Party Forms. There are certain standard forms of both time and voyage charter-parties officially recognised by the General Council of British Shipping and/or the Baltic Conference for use in particular trades, and other standard forms which, although not officially recognised, are regularly used. In addition, there are a number of so-called "Private C/P forms" drawn up to meet the requirements of special trades wherein the volume of business is limited. The use of a standard form is often enforced by the rules of shipowners' Protecting and Indemnity Associations with the object of reducing to a minimum the possibility of disputes arising from different interpretations of ambiguous clauses. The official forms are known by Code Names such as:-

Austral Australian Grain Charter-Party,
Baltime Uniform Time Charter,
Centrocon River Plate Charter-Party (Grain, etc.),
Gencon Uniform General Charter,
Medcon East Coast Coal Charter-Party,
Linertime BIMCO Deep Sea Time Charter.

The coal, grain, rice, timber, stone, ore, fertiliser, and other trades all have their own forms of charter-party.

Preliminary Voyage and Cancelling Date. In the case of a voyage charter it is usual for the C/P to provide either that the ship is to proceed immediately to a named loading port, or that she is to be there by a certain date. If the former, she must proceed to the port with all reasonable speed, but should the voyage be delayed by one of the excepted perils the shipowner will not be held responsible for the delay. However, if the ship is delayed for so long that she cannot reach the port within a time that is reasonable having regard to the nature of the contemplated adventure, the charterer may cancel the C/P. If the latter, it may not be essential to proceed to the port at once. If time permits she may be employed in the interval under an intermediate charter. But if the ship cannot reach the agreed loading port by the date stipulated because the performance of the intermediate charter is delayed by perils of the sea, the owner will not be protected by the exceptions clause in the original C/P. Where the charterer has the express right of cancelling in the event of the ship failing to arrive by the agreed date, that option may be exercised even though the ship did proceed directly but was prevented from reaching the port in time by

an excepted peril. Sometimes instead of fixing a precise date, it is represented that the ship is "expected ready to load" by a given date. That means that there are reasonable grounds for representing that the ship will be ready to load on or about the date mentioned, and implies that the ship shall proceed from wherever she happens to be at such time as will enable her, by proceeding with reasonable despatch, to arrive at the loading port by the expected date. In a case where a vessel was "expected ready to load about 15th/18th November", the judge held that this meant not earlier than the 15th nor later than the 18th though he was prepared to accept that the word "about" gave the shipowner two or three days' grace either way.

A typical time charterer clause provides that should the vessel not be delivered by the date agreed the charterers are to have the option of cancelling and, further, if the vessel cannot be delivered by the cancelling date, the charterers, if required, are to declare within 48 hours after receiving notice thereof whether they will cancel or take delivery.

In a voyage charter the "cancelling date" is the date fixed by the C/P as the latest on which the ship must be ready to load. If the ship is not arrived and ready by that date, the charterer has the option of cancelling the C/P. If it appears probable that the ship cannot arrive before the cancelling date through circumstances beyond the shipow-ner's control, the master should at the first opportunity note a protest to that effect. The ship must continue the voyage to the loading port however late she may be, unless the contract has become frustrated, as the charterer is under no obligation to decide whether he will accept the ship or cancel the C/ P until notice of readiness to load has been tendered to him. What a charterer will do in such circumstances usually depends on the trend of the freight market. If the market has risen since the vessel was first fixed he will find it to his advantage to maintain the contract. On the other hand, if freight rates have fallen, and he can charter another ship for prompt loading, he will probably decide to cancel. The master should keep the owners fully and promptly imformed of all developments, especially where the charterer delays his decision unreasonably. Meanwhile, the owners will no doubt make efforts to have the cancelling date extended, even agreeing to accept a lower rate of freight, and will instruct the master accordingly.

Notice of Readiness. Under a voyage charter, before the charterer or shipper is under an obligation to commence loading, three conditions must be satisfied, viz.:-

1. The ship must be an "arrived ship".
2. The ship must be in all respects ready to load.
3. Notice of readiness to load must be served on the charterer or his agent.

If the ship has merely been ordered to a named port, she is an "arrived ship" as soon as she has arrived within the limits of the port

and is at the charterer's disposal and ready to load in a place where ships waiting for a berth usually lie, even though she is not yet in that part of the port where cargo. of the kind contemplated is customarily loaded. Although the charterer has the right to nominate the loading berth, it is not necessary for the ship to be in that berth in order to claim that she is an "arrived ship". It is different, however, if C/P terms , require the ship to proceed to "berth as ordered" or to a named berth.

In that case she is not an arrived ship until she is in the berth.

For the ship to be "ready", her loading appliances, if they are to be used, must be ready, rigged and in good order; holds and other cargo compartments to be used must be clean,dry dunnaged and completely ready to receive the cargo and, if shifting boards or other special appliances are needed, they must be in place. Any necessary permits to load and surveyors' certificates, if needed, must have been obtained and must be produced when serving notice.

The notice of readiness must be in writing and must be tendered during normal office hours. The master should prepare the notice in duplicate and insist on the charterer signing his acceptance on one copy which the master should retain as a receipt, and this should state the date and precise time of acceptance. If the weight or volume of cargo to be loaded is limited by the ship's deadweight or cubic capacity, as the case may be, the master should include in the notice a declaration of the maximum deadweight of cargo the ship will be able to lift in accordance with season, bunkering requirements, etc., or the maximum cubic capacity that will be at the charterer's disposal, bearing in mind that the C/P will in all probability provide that the charterer is to have the "full reach and burthen of the ship". It is never sufficient to tender notice stating that the ship will be ready at some stated future time. The charterer is not bound to accept a notice in such form. The ship must actually be ready at the time when notice is served.

When the charterer has accepted the notice of readiness, or at some stipulated time thereafter if the C/P so provides, the time for loading commences to count, although this may be varied by other C/P terms or by a custom of the port.

If the ship is to load at two or more ports, notice of readiness need be given only at the first loading port unless the C/P provides to the contrary. If no notice is given, but the charterer actually begins to load, the absence of notice is immaterial.

Lay Days. This expression describes the number of days allowed by a charter-party for loading and for discharging the cargo or, if so-called "reversible" lay days are provided for, for both processes. Lay days may be "fixed" or "indeterminate", although the latter would be very unusual nowadays. Where lay days are fixed, the C/P will either state the number directly or state it indirectly by quoting the average rate per day at which the vessel is to be loaded or discharged. For instance, a C/P may use the phrase "to load in 10 working days", whilst

another may provide for a ship with 9500 tons of cargo "to discharge at 1000 tons per running day" thereby fixing the time allowed for the discharge at 9 1/2 days. Unless the C/P or an established custom of the port otherwise provides, every day of the week is.. a lay day whether work is normally done on any particular day or not; but in general practice it is usual to agree that certain days shall not count, and that makes it necessary to consider the meanings of the various terms in common use, which are as follows.

Days and Running Days. Both of these expressions mean consecutive calendar days counting from midnight to midnight and, unless contract or custom dictate otherwise, include Sundays and holidays whether work is actually done, or normally done at the port or not.

Sundays and Holidays Excepted. Where a C/P provides that Sundays and holidays are not to count as lay days, those days still do not count even if they have been used for working by agreement between the master and the charterer. However, if the agreement in the C/P is that Sundays and holidays are not to count unless used, then the position is different. The term "holidays" applies only to official public or local holidays, and not to time arbitrarily taken off by workmen. It does not include Saturday afternoons unless there is a legal provision to the contrary in the country where the ship is loading or discharging. If there is an intention that Saturday afternoons should not count as lay time, they should be specifically excepted in the C/P.

Working Days. Unless a custom of the port not inconsistent with the provisions of the C/P gives the expression a different meaning, a working day is a day on which work is normally done at the port concerned, and is a 24-hour day from midnight to midnight even if work does not continue throughout the whole period. Hence, when lay days are described as working days they exclude Sundays and officially recognised holidays.

Some C/P's stipulate "time from noon on Saturday or the day previous to any holiday to 7 a.m. on Monday or the day after such holiday not to count as lay days, unless used". In the absence of such a condition Saturdays and Mondays count as full days. If a C/P provides "time to count on Mondays from 8 a.m." without adding the words, "unless used", a Monday will count only as $^{16}/_{24}$ of a lay day.

Working Day of 24 Hours. Each period of 24 hours in which work is normally done counts as one lay day, even though the 24 hours are spread over two or more calendar days. Where, for example, the ordinary working hours of the port are from 6 a.m. to 6 p.m., a working day of 24 hours would occupy two calendar days.

Working Day of 24 Consecutive Hours. This is a day of 24 hours during some part of which work is ordinarily done at the port. The expression has the same meaning as "working day".

Weather Working Day. A weather working day is a working day of 24 hours on which work is not prevented by bad weather, whether work is intended or not. When inclement weather prevents work from being done during only part of a working day (whether work is intended or not), how much of the day counts as laytime is decided by comparing the working time when loading or discharging is prevented with the actual time normally worked each day at the port. For example, if the working day is continuous for 24 hours and four hours are lost due to bad weather, then 20 hours will count as laytime used. But if the normal working day there is from 0600 to 1200 and 1300 to 1900, a total of 12 hours, and bad weather preventing work occurs from say 0400 to 1000 (whether work intended or not), the part from 0600 to 1000, a total of four hours or 4/12 of available working time is lost. Hence '/» of a weather working day is considered lost, which means 4/12 of 24 hours equal to eight hours. Therefore 24 – 8 equal to sixteen hours of laytime is to count for that day. There is sometimes a custom at a port, with the object of avoiding disputes, to declare what time has been lost due to bad weather on a particular day. Generally, however, it is a question of fact, if work was done the time counts; if no work was done, or work could not have been done, the time does not count.

Weather Working Day of 24 Consecutive Hours. This is a working day where any time in which bad weather halts cargo operations, or would have if work was intended or contemplated, is not to count as laytime, whether the bad weather occurs in normal working time at the port or not. Therefore in the example quoted above, if weather working days of 24 consecutive hours had been allowed, the period from 0400 to 1000, a total of six hours would have been considered lost and 18 hours on that day would have counted as laytime used.

Working Day, Weather Permitting. For time to be lost with this type of day, loading or discharging must actually be interrupted or prevented by bad weather. If, after laytime starts to count, no work was intended or contemplated on a particular day because of shortage of cargo for example, but bad weather would have prevented work, the laytime for that day would still count as laytime used. When loading or discharging is prevented, the time lost has to be proportionally adjusted as in the example for weather working days above.

Working Hatch. Sometimes a C/P has stated "Cargo to be loaded/discharged at the average rate of .....,.. tons per working hatch per day". In the case of a loading ship a working hatch is a hatch which is still not fully loaded; in a discharging ship one which is not yet

empty. Obviously, as soon as a hatch ceases to be a "working hatch" the loading or discharging rate is automatically reduced.

In order to avoid complication in calculating the laytime allowed it is usual to take the capacity of the largest hold and divide it by the rate per day quoted to provide the number of laydays allowed. If the largest hold can be served by two gangs then the rate per day must be doubled before dividing it into the hold capacity.

Colliery Working Days. These are days on which the colliery norma11y works.

Reporting day. This is the day on which the master's notice of readiness is tendered to the charterer or consignee. If the work of loading or discharging starts immediately the reporting day will count as a lay day, unless the C/P or a binding custom of the port provides otherwise.

Indeterminate Lay Days. Lay days are said to be indeterminate when a C/P provides for a ship to be loaded or discharged "as customary", or "according to the custom of the port", or "with all despatch", or "as fast as steamer can receive/deliver". This is a most unsatisfactory arrangement as it would always be very difficult to determine whether a vessel has in fact loaded or discharged "as fast as she can".

Reversible Lay Days. A C/P may provide that a ship is to load and discharge a cargo at a given average rate per day, in which case lay days are said to be "reversible". Time lost at the loading port may be made up by a faster rate of discharge and, conversely, time gained at the loading port makes more time available for discharge. For instance, if a ship has 12,000 tons to load and discharge at 1000 tons per day, and the average rate of loading turns out to be only 800 tons per day, the rate of discharge would have to be increased to 1333 tons per day to avoid demurrage. This arrangement is common in the case of tanker charters and is frequently made in the case of other bulk cargoes. Where reversible lay days are agreed it is important that bills of lading should be endorsed to show the time used for loading, so that the consignees will be in no doubt as to the time available for discharging the cargo.

In some C/P's it is agreed that lay days shall be reversible at loading ports only, in which case time lost at the first loading port can be made up for by an increased rate of loading at subsequent ports, or time gained at the first port can be made available at other ports.

Most tanker charters provide for a fixed number of "running hours" to be made available for loading and discharging. Running hours, like running days, imply that once the time begins to count it runs continuously apart from any stipulated exceptions.

If reversible lay days are agreed for loading and discharging, it follows that the settlement of demurrage or despatch money, as the case may be, cannot be effected until after the discharge of cargo is completed and the total time used in both loading and discharging has been computed.

The Right to Average Lay Days. Some C/P's give the charterer the "right to average the days allowed for loading and discharging". This not very clearly worded clause has given rise to dispute and a fairly recent court decision has indicated that it should be interpreted to mean that time used in loading and time used in discharging must be considered separately, and the one should be set off against the other. The correct method of drawing up time sheets in accordance with this ruling is shown in Chapter 18.

Coal Charters. C/P's for coal cargoes, particularly, introduce many variations in lay day arrangements. For example, the rate of loading may be fixed according to "colliery scale", say 344 hours for 7600 tons, 360 hours for 8000 tons, and so on, A C/P may require a ship to load (a) in colliery turn, (b) in regular turn, or (c) free of turn. Of these (a) implies that loading is to commence when the particular kind of coal to be loaded becomes available; (b) implies that the ship will take her turn in order of arrival with other ships, and that time will not count until the ship has berthed; (c) implies that lay days are to begin as soon as the vessel is arrived and ready and the master has served notice of readiness, whether a berth is available or not.

When Lay Days Commence. Unless the C/P or a custom provides differently, the time for loading or discharging begins to count as soon as notice of readiness is accepted by the charterer or consignee. In general practice, however, it will usually be the case that the C/P does provide otherwise. A fairly common C/P term is that "notice is to be given during business hours, 9 a.m. to 5 p.m. Monday to Friday or 9 a.m. to 1 p.m. on Saturday, and lay days to begin 24 hours after notice of readiness is accepted". In tanker charters 6 hours after notice is accepted is more usual. If this is unqualified, time will commence to count at the moment when the notice matures, neither sooner nor later, irrespective of whether the actual work or loading or discharging has begun earlier or has not begun at all. In other cases the clause may be qualified by the additional words "unless commenced earlier". In that case, obviously, time counts from the maturing of the notice or when work begins, which ever happens first. If the notice matures on a day which is not a lay day, time does not begin to count until the customary time of commencing work at the port on the next following lay day. (If, for instance, notice is accepted at 10 a.m. on a Saturday, the lay days being working days, although such notice will have matured at 10 a.m. on the Sunday the lay time will not commence to count until 7 a.m., or

whatever is the usual time of commencing work at the port, on Monday.)

Demurrage. If the charterer or consignee detains the ship beyond the agreed number of lay days or, where the lay days are indeterminate, detains her for an unreasonable time, he will be in breach of the charter-party so that the shipowner will be entitled to either "damages for detention" or "demurrage".

Unless the C/P makes some other specific provision, the shipowner will be able recover all the damages resulting from the detention, and in this respect the charterer's or consignee's liability is unlimited.

However, the usual practice is for the charterer's liability to be expressly limited to an agreed sum in respect of each day and/or fraction of a day of the delay. Days during which the ship is delayed are referred to as "demurrage days", and the sum payable to the shipowner in respect of the delay is commonly known as "demurrage" but, strictly speaking, demurrage in the proper sense of the term does not arise unless the C/P expressly provides for an agreed number of demurrage days over and above the agreed lay days. Demurrage is then a sum named in the charter-party to be paid by the charterer as liquidated damages for delay beyond the lay days. A C/ P might, for instance, provide "vessel to be loaded in 12 working days, and 10 running days at UK Pnd 1200 per day and pro rata for part of a day to be allowed for demurrage". In that case, as soon as the 12 working days have expired the vessel will come on to demurrage, and the charterer's liability will be limited to UK Pnd 1200 for each day of delay thereafter up to 10 days. No breach of contract is involved in the charterer making use of agreed demurrage days. If the ship is still further detained after the demurrage days have passed then, in respect of such extra detention, the liability of the charterer, who then is in breach of contract, will be unlimited. In this connection it is important to note that if the C/ P provides that the ship is to have a lien on the cargo for demurrage, that does not imply that she automatically has a lien for extra detention as well; such a lien must be contracted for separately.

The charterer or shipper is obliged to supply the cargo in sufficient time for it to be stowed before the lay days expire, in default of which he will be liable for the delay caused, as the ship is not deemed to be completely loaded until the cargo is stowed.

Payment of Demurrage. C/P's generally specify the rate at which demurrage is to be paid when incurred, quoting so much per day, or so much per registered ton per day, and adding the words "and pro rata for part of a day". In some charters, however, demurrage may be made payable at a fixed sum per running hour. If the contract does not provide for a fraction of a day to be allowed for on a proportionate basis, the common law ruling would prevail. At common law, demurrage days are indivisible, meaning that a fraction of a day counts

as a whole day. In practice, however, it is most unusual for the *"pro rata"* term to be omitted.

Unless there is a contrary term in the contract, the principle of "once on demurrage, always on demurrage" applies. That is to say that demurrage days are always running days, and that is so irrespective of the kind of lay days contracted for. Similarly, unless the contrary is expressly agreed, exception clauses do not apply when the ship is on demurrage. However, days which follow the lay days can count as demurrage days only when the ship remains at the charterer's disposal, and if the shipowner removes the ship from the charterer's disposal, say for bunkering or other purposes demurrage cannot be claimed for any time while she is so removed. If a C/P provides that a ship is to load in a stated number of working days, Sundays and holidays excepted, and that demurrage is to be paid at a fixed sum "per like day", then demurrage would not be payable in respect of Sundays or holidays falling during the period of detention. Such an arrangement is rare, and unsatisfactory to the shipowner.

Demurrage is payable daily and should be collected daily (except where lay days are reversible), and if the ship is to be detained over a week-end, Sunday's demurrage should be collected on Saturday together with Saturday's.

Damages for Detention. If the lay days have expired and demurrage has not been provided for, or the time for loading or discharge has not been agreed and a reasonable time for these processes has expired, or the demurrage is to be paid for an agreed number of days and a further delay occurs, the shipowner is entitled to sue for "damages for detention". In the case of such a claim, the damages are unliquidated and therefore the Court must assess what loss has been suffered by the shipowner due to his ship being detained in port. As a rule, if a demurrage rate has been fixed, any damages for detention will be assessed at the same rate, but where a breach of some other term of the contract has also been caused, such as not loading a full cargo, it may be possible to recover any additional damage due to such breach.

Cesser Clause. Under a voyage charter it often occurs that the charterer is not the shipper of the cargo but is a person who transfers that right to someone else. In such a case the charterer, as soon as his profit is assured, will have no further interest in the ship and voyage and will be quite satisfied to leave the work of carrying and delivering the cargo to the ship owner on behalf of whom the master will have signed the bills of lading which, at this stage, constitute the contract of carriage. In order to let the charterer out, it is customary for the C/P to contain what is known as a "cesser clause", of which the following is a typical example – "The Charterers' liability shall cease as soon as the Cargo is shipped, and the advance of Freight, Deadfreight and

Demurrage in loading (if any) are paid, the Owners having a lien on the Cargo for Freight, Demurrage and Average."

If the charterer refuses to pay demurrage incurred at the loading port, the master should note a protest and endorse the bills of lading with the amount due and remaining unpaid so that, at the discharging port, the lien can be enforced. If, however, a C/P containing a cesser clause also has a clause inserted to the effect that the master is to sign "clean" bills of lading, endorsement of unpaid demurrage could not be made. In that event the master should attempt to obtain a letter of guarantee from the charterer, countersigned by a bank, for payment of outstanding demurrage. If unsuccessful, he should then note a protest and inform the shipowner without delay. The shipowner will then have a right of action to recover the amount from the original charterer as the Court will, if necessary, set aside the cesser clause on the grounds that it can operate only to the extent that the shipowner's right of lien is preserved. There would, of course, be a resort to arbitration if the C/P so provides.

Despatch Money. Provided the C/P is claused to that effect, the shipowner becomes liable to pay despatch money to the charterer or receiver when the loading or discharging process is completed before the lay days have expired. If the charterer undertakes to give reasonable despatch and incurs extra expenditure in order to do so, such compensation is reasonable, but cases have occurred where the agreed rate of loading or discharging has been put at such a low figure that the charterer, without any special effort or expenditure, has succeeded easily in despatching the ship well within the period of the lay days, so that despatch money has been tantamount to a reduction in the freight rate.

Demurrage and despatch are sometimes dealt with in the same clause in the C/P; in other cases the despatch clause is separate from the demurrage clause. In either case the question of whether despatch money is payable in respect of all time saved to the ship, or merely for lay days that have not been used, is an important one to be determined by the particular form of words used. Where the C/P states that despatch money is to be paid "for all time saved" there is no doubt that the intention is that it must be paid in respect of Sundays and holidays saved as well as lay days saved. On the other hand, where despatch money is to be paid "for all laytime saved", this means it is payable only for lay days saved. Where the phrase "for all time saved in loading" has been used, and the meaning of this has been disputed, it has been ruled that despatch money is due only for lay days saved.

As with demurrage, it is usual to contract for despatch money to be paid at a fixed rate per day and pro rata for part of a day. If not so contracted for, the common law ruling would prevail whereby despatch money can be claimed only in respect of "clear" days saved. By clear day is meant any period 'of 24 consecutive hours. Hence, from 3 p.m.

Monday to 3 p.m. Thursday of the same week constitutes three clear days. Sometimes the rate at which despatch money is to be paid is stated directly (e.g., UK Pnd 100 per day and pro rata), or it may be related to the demurrage rate. It is fairly common for despatch money to be payable "at half the demurrage rate". Tanker charters either do not contain a despatch clause, or stipulate "No despatch money payable".

Unlike demurrage, despatch money is payable in a lump sum.

Port of Call. In spite of modern facilities for communicating with the master of a ship by radio it is still not unknown for a C/P to stipulate that a chartered ship shall, after loading, proceed to some named port "for orders". The C/P will have provided that the' cargo is to be discharged at one or more safe ports within a named range, and at the time of sailing from the loading port the merchant shipper will not have decided which one the vessel is to proceed to. Unless the contrary has been agreed to, the master is not bound to inform the charterer of the ships arrival at the port of call, but the ship must remain there for a reasonable time to receive orders, or for such time as may be specified in the C/P. If at the end of that reasonable or agreed time no orders are forthcoming, the master will be justified in proceeding to one of the several alternative ports of discharge named in the C/P and discharging the cargo there. The master should, of course, keep in touch with the shipowner, and carry out any instructions the owner may send him.

Deadfreight. This term is applied to the sum payable to the shipowner when the charterer has failed to load "a full and complete cargo" in accordance with the provisions of the contract. The rate per ton which should be, and usually is, stated in the C/P may or may not be the same as the rate for cargo that has been shipped. A lien on shipped cargo for deadfreight must be specially contracted for. (See Chapter 2.)

Where a ship has been fixed to carry, say, "8000 tons, 5% more or less at steamer's option", the charterer will not have fulfilled his obligation by merely supplying 7,600 tons. He must ship more if the vessel can take more, but he is not obliged to supply more than 8,400 tons whether the ship can lift more than that quantity or not. If the master has declared in writing at the time of serving notice of readiness that the ship could take, say, 8,300 tons and the charterer supplied only 8,100 tons, he would be liable for deadfreight on 200 tons short-shipped.

There is a legal ruling that a charterer who is liable for deadfreight may deduct from it any additional expense that the shipowner would have incurred if a full cargo had been loaded. In the case quoted, for example, the shipowner would save the stevedoring costs of loading and discharging an extra 200 tons, and there may be other savings. It is a matter of principle that the shipowner should not be better off as a result of carrying a part cargo than he would have been had he carried a full one.

It has been ruled that there is an implied term in any C/P also to the

effect that, if the charterer fails to load a full cargo, the shipowner may load a substitute cargo provided that by doing so he is acting reasonably. The test of reasonableness is whether the shipowner's action in doing will mitigate the damages to which the charterer had made himself liable. (See Chapter 2 on the duty of an injured party to minimise his loss.) It must also be implied that the ship is entitled, reasonably, to delay the charter voyage in order to obtain and load the substitute cargo. Calling at another port for this purpose would be deemed a reasonable deviation so long as the port chosen is on the route of the charter voyage.

Charterer's Agent. A C/P may contain a "consignment clause" consigning the ship to the charterer's agents at the port of loading and/or the port of discharge. Such agents automatically become the ship's agents when the ship arrives at the port and, in accordance with the law of agency, the shipowner as principal will be responsible for their acts on his behalf. Further mention is made of this in the section on Agency in Chapter 2.

Procedure where Charterer has no Cargo. If on arrival at the loading port it transpires that the charterer has no cargo ready for the vessel, the master should communicate the fact to the owners without delay. Without waiting for owners' instructions, however, the master should serve the usual notice of readiness on the charterer, bearing in mind that the latter's breach in failing to load is not complete until the lay days have expired. If, when that time comes, there is still no cargo forthcoming the master should note a protest, stating therein that he has complied with all the terms of the charter-party on the shipowner's behalf. Meanwhile the owners will probably try to effect another charter at the same or a nearby port, and will instruct the master accordingly. The remedy against the original character will lie in the deadfreight clause, if the C/P contains one, or in the penalty clause.

A typical penalty clause reads "The penalty for non-performance of this agreement shall be proved damages not exceeding the estimated amount of freight". This can be availed of by either party in the event of non-fulfilment of the contract by the other.

Charterparty Laytime Definitions 1980. In December 1980, the Baltic and International Maritime Conference (BIMCO), the Comite Maritime International (CMI), the Federation of National Associations of Ship Brokers and Agents (FONASBA) and the General Council of British Shipping (GCBS) after consultation with other shipping interests and with cargo interests sponsored the publication of "The Charterparty Laytime Definitions 1980" for voluntary adoption in charterparties by shipowner and charterers. In a joint announcement these organisations pointed out that over the years there have been an increasing number of disputes over the meaning of words and phrases

used in charterparties and that very often these disputes have given rise to different interpretations of the same word or phrase within and between different jurisdictions. This has meant that the charterparty, a document of international character, has become subject to uncertainty, lack of clarity and lack of uniformity. It is the view of the sponsoring organisations that the availability to the parties at the time of negotiation of a list of definitions for voluntary adoption will limit and therefore reduce the scope for dispute.

If a shipowner or charterer wish to incorporate some or all of the Definitions, they may do so by attaching them to the charterparty after deleting any definitions which they do not want to apply and then inserting an incorporation clause in the charterparty itself such as:-

"The '**CHARTERPARTY LAYTIME DEFINITIONS 1980**' as attached are incorporated into this charterparty."

1. **Port** – means an area within which ships are loaded with and/or discharged of cargo and includes the usual places where ships wait for their turn or are ordered or obliged to wait for their turn no matter the distance from that area.

If the word **Port** is not used, but the port is (or is to be) identified by its name, this definition shall still apply.

2. **Safe Port** – means a port which, during the relevant period of time, the ship can reach, enter, remain at and depart from without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship.

3. **Berth** – means the specific place where the ship is to load and/or discharge.

If the word **Berth** is not used, but the specific place is (or is to be) identified by its name, this definition shall still apply.

4. **Safe Berth** – means a berth which, during the relevant period of time, the ship can reach, remain at and depart from without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship.

5. **Reachable on Arrival or Always Accessible** – means that the charterer undertakes that when the ship arrives at the port there will be a loading/discharging berth for her to which she can prceeed without delay.

6. **Laytime** – means the period of time agreed between the parties during which the owner will make and keep the ship available for loading/discharging without payment additional to the freight.

7. **Customary Despatch** – means that the charterer must load and/or discharge as fast as is possible in the circumstances prevailing at the time of loading or discharging.

8. **Per Hatch per Day** – means that laytime is to be calculated by multiplying the agreed daily rate per hatch of loading/discharging the

cargo by the number of the ship's hatches and dividing the quantity of cargo by the resulting sum. Thus:

$$\text{Laytime} = \frac{\text{Quantity of Cargo}}{\text{Daily Rate X Number of Hatches}} = \text{Days.}$$

A hatch that is capable of being worked by two gangs simultaneously shall be counted as two hatches.

9. **Per Working Hatch per Day or Per Workable Hatch per Day** – means that laytime is to be calculated by dividing the quantity of cargo in the hold with the largest quantity by the result of multiplying the agreed daily rate per working or workable hatch by the number of hatches serving that hold. Thus:

$$\text{Laytime} = \frac{\text{Largest Quantity in one hold}}{\text{Daily Rate per hatch X Number of Hatches serving that hold}} = \text{Days.}$$

A.hatch that is capable of being worked by two gangs simultaneously shall be counted as two hatches.

10. **As Fast as the Vessel can Receive/Deliver** – means that the laytime is a period of time to be calculated by reference to the maximum rate at which the ship in full working order is capable of loading/discharging the cargo.

11. **Day** – means a continuous period of 24 hours which, unless the context otherwise requires, runs from midnight to midnight.

12. **Clear Day or Clear Days** – means that the day on which the notice is given and the day on which the notice expires are not included in the notice period.

13. **Holiday** – means a day of the week or part(s) thereof on which cargo work on the ship would normally take place but is suspended at the place of loading/discharging by reason of:

(i) the local law; or

(ii) the local practice.

14. **Working Days** – means days or part(s) thereof which are not expressly excluded from laytime by the charterparty and which are not holidays.

15. **Running Days or Consecutive Days** – means days which follow one immediately 'after the other.

16. **Weather Working Day** – means a working day or part of a working day during which it is or, if the vessel is still waiting for her turn, it would be possible to load/discharge the cargo without interference due to the weather. If such interference occurs (or would have occurred if work had been in progress), there shall be excluded from the laytime a period calculated by reference to the ratio which the duration of the interference bears to the time which would have or could have been worked but for the interference.

17. **Weather Working Day of 24 Consecutive Hours** – means a working day or part of a working day of 24 hours during which it is or, if the ship is still waiting for her turn, it would be possible to load/discharge the cargo without interference due to the weather. If such interference occurs (or would have occurred if work had been in progress) there shall be excluded from the laytime the period during which the weather interfered or would have interfered with the work.

18. **Weather Permitting** – means that time during which weather prevents working shall not count as laytime.

19. **Excepted** – means that the specified days do not count as laytime even if loading or discharging is done on them.

20. **Unless Used** – means that if work is carried out during the excepted days the actual hours of work only count as laytime.

21. **To Average** – means that separate calculations are to be made for loading and discharging and any time saved in one operation is to be set against any excess time used in the other.

22. **Reversible** – means an option given to the charterer to add together the time allowed for loading and discharging. Where the option is exercised the effect is the same as a total time being specified to cover both operations.

23. **Notice of Readiness** – means notice to the charterer, shipper, receiver or other person as required by the charter that the ship has arrived at the port or berth as the case may be and is ready to load/discharge.

24. **In writing** – means, in relation to a notice of readiness,a notice visibly expressed in any mode of reproducing words and includes cable, telegram and telex.

25. **Time Lost Waiting for Berth to Count as Loading/Discharging Time or As Laytime** – means that if the main reason why a notice of readiness cannot be given is that there is no loading/discharging berth available to the ship the laytime will commence to run when the ship starts to wait for a berth and will continue to run, unless previously exhausted, until the ship stops waiting. The laytime exceptions apply to the waiting time as if the ship was at the loading/discharging berth provided the ship is not already on demurrage. When the waiting time ends time ceases to count and restarts when the ship reaches the loading/discharging berth subject to the giving of a notice of readiness if one is required by the charterparty and to any notice time if provided for in the charterparty, unless the ship is then on demurrage.

26. **Whether In Berth or Not** or **Berth No Berth** – means that if the location named for loading/discharging is a berth and if the berth is not immediately accessible to the ship a notice of readiness can be given when the ship has arrived at the port in which the berth is situated.

27. **Demurrage** – means the money payable to the owner for delay for which the owner is not responsible in loading and/or discharging after the laytime has expired.

28. **On Demurrage** – means that the laytime has expired. Unless the charterparty expressly provides to the contrary the time on demurrage will not be subject to the laytime exceptions.

29. **Despatch Money or Despatch** – means the money payable by the owner if the ship completes loading or discharging before the laytime has expired.

30. **All Time Saved** – means the time saved to the ship from the completion of loading/discharging to the expiry of the laytime including periods excepted from the laytime.

31. **All Working Time Saved or All Laytime Saved** – means the time saved to the ship from the completion of loading/discharging to the expiry of the laytime excluding any notice time and periods excepted from the laytime.

FREIGHT

Freight is the remuneration to which the carrier of goods by sea is entitled on the performance of his contractual obligations or otherwise, depending on the terms of the contract. According to the nature of the goods carried and/or the custom of the trade, freight may be payable at an agreed rate per ton deadweight, per measurement ton, per freight ton or other unit, or on an ad valorem basis. Heavy goods of relatively small bulk are normally charged for on a deadweight basis, i.e., at so much per long ton of 2,240 lbs., per short ton of 2,000 lb., or per tonne of 1,000 kg. By contrast, light bulky goods are charged for on a lightweight or measurement basis,. i.e., at so much per "ton" of 40 cubic feet. In some trades a freight unit may be, say a "ton" of 50 cu. ft. For sawn timber the customary freight unit is the Petrograd Standard of 165 cu.ft. and for pulpwood or pit props the Piled Fathom of 216 cu. ft.

Primarily the liability to pay freight rests on the shipper of the goods, but by the terms of the contract the shipper's liability may be transferred to the person who takes delivery of the cargo under a B/L. Even so, the liability of a charterer to pay freight due under a C/P continues to attach to him in spite of the liability of B/L holders, unless he has been freed by a cesser clause or similar device.

If cargo is landed at some place short of its proper destination no freight can be claimed, but if the consignee agrees to accept goods at an intermediate port he will be liable for a pro rata freight. The shipowner can, of course, earn the full freight by transhipping or forwarding the goods to the agreed place of discharge.

Freight on Damaged Goods is due in full but will be subject to a counterclaim for damages unless the carrier is protected by exceptions clauses in the contract of affreightment or by common law exceptions.

However, if goods are so badly damaged that they have ceased to be goods of the kind shipped then no freight can be claimed.

Back Freight can be claimed if goods cannot be discharged at the port of destination owing to circumstances beyond the control of the owner or master and, in consequence, have to 'be returned to the original port of shipment. It does not follow that it is always in the shipowner's best interests to enforce this right.

Lump Sum Freight. A ship may be chartered on a lump sum basis implying that a fixed amount of freight is payable by the charterer regardless of whether a full cargo is shipped or not. So long as some cargo is by some means delivered at the proper destination, the lump sum is payable in full, though it may be subject to counterclaim where goods have been stolen, jettisoned, or lost and the shipowner is not protected by "exceptions". Charters of this kind are usually for mixed cargoes such as "timber and generals". Liner owners occasionally resort to chartering a tramp on a lump sum basis when they are temporarily short of space to meet their berth commitments.

Advance Freight and Charges thereon. At one time it was common for a voyage C/P to contain a freight clause of which the following is typical. "Freight to be paid at UK Pnd ..... per ton, ... % in advance at the port of loading to supply master with cash for steamer's disbursements less ... % for insurance and ... % interest; the balance to be paid at the port of discharge concurrently with discharge, sufficient in cash to meet steamer's disbursements and the remainder in good and approved 3 months Bills of Exchange on London".

In law no freight is considered to be earned until the cargo is finally delivered at its proper destination, but freight which is paid in advance is not recoverable from the shipowner in the event of the ship being lost. Therefore, at the loading port, as the freight is not yet earned, the advance ranks as a loan on which interest is payable. Also, as the money is advanced by the shipper at the risk of losing it should ship and cargo be lost, the shipper has an insurable interest in the advance. He is the proper person to effect the insurance and, in practice, will do so. But as the money is advanced to the ship for the ship's convenience, the shipowner will be charged with the cost of the insurance. It is usual for both of these charges to be levied by the shipper deducting a certain percentage from the gross amount of the advance. For instance, out of a total advance of UK Pnd 1,000, if the insurance and interest charges are fixed at 2 1/2 per cent. and 1 1/2 per cent., respectively, the shipper would retain UK Pnd 40. Sometimes the clause reads "less ... % for insurance and interest, giving no indication of how the total charge is divided.

If, as has sometimes occurred, the C/P merely provides that "the master is to be supplied with cash for disbursements at the loading port", without any specific mention of an advance of freight, the loan

will be repayable in any case, even if the ship is lost, so that the shipowner will be the proper person to insure the money. Cases have been decided, when there has been doubt whether the advance was intended to be part payment of freight or merely an ordinary loan, on the fact of who it was who insured the money.

The object of paying the balance of the chartered freight concurrently with discharge is to keep sufficient cargo in the ship's possession to be able to enforce lien if necessary. In some cases freight has been collected twice daily during discharge, or even hourly, but a more common arrangement nowadays is for, say, 90 per cent. of the balance to be paid before discharge begins and final settlement made on the last day of discharge. Obviously, if freight is payable on out-turn weight, the exact amount cannot be determined until discharge is completed.

Where part of the balance of freight is paid in the form of bills of exchange, these will be drawn by the consignee on his London banker or agent in favour of the shipowner and will be delivered to the master or agent of the ship. They will be foreign bills in sets of two or three, all of the same tenor and date, and payable at some stated period "after sight". The master or agent should remit them to the shipowner by various routes, arranging for at least one part of each set to arrive as soon as possible.

When part of the balance of freight has been paid in cash in circumstances where the shipowner has had no agent at the discharging port, it has often been convenient for the master to remit the amount to the shipowner by going through the process known as "buying a bill of exchange". This involves depositing the cash at a bank and requesting the bank, on the strength of such credit, to draw its own bills on London in favour of the shipowner. Such bills should be made payable "on demand" and remitted to the owner as described above.

In present-day circumstances the somewhat cumbersome method of paying freight described in the preceding paragraphs is probably very rarely used, and a modern voyage C/P freight clause might read "The freight to be paid in.....on signing Bills of Lading, discountless and non-returnable, ship and/or cargo lost or not lost". Another fairly common arrangement is for the freight to be due within an agreed period of time "after final sailing". This means when the ship has finally departed from the commercial limits of the loading port in all respects ready to proceed on the contract voyage and with no intention of returning.

Distance Freight. In certain circumstances when it is impossible for the cargo to be discharged at the agreed port of discharge, delivery may be given at some other port which is the nearest safe port. If the distance to such safe port is substantially in excess of the distance to the port originally contemplated, extra freight, known as "distance freight", may become payable by the terms of the C/P. (See reference to the General Ice Clause).

Bill of Lading Freight, or Aggregate B/L Freight. This is the freight due to the ship by the terms of the Bills of Lading as distinct from the freight due in accordance with the terms of the charter party. Where the charterer has himself supplied a full cargo, the balance of freight due from the B/L holders together with any advance freight paid by the shipper at the loading port should amount to the same as the chartered freight. But it may happen that the charterer has been unable to fill the ship, and, to avoid being in breach of the C/P, has in accordance with the terms of that contract sublet the remaining space in the ship to other shippers at freight rates different from those stipulated in the C/P. If such rates are lower than the C/P rate, the master or ship's agent should collect the difference from the charterer before the B's/L are signed. Otherwise there may be difficulty in recovering it owing to the operation of the Cesser Clause, and when the ship reaches the port of discharge consignees will be liable only for the the B/L freight and will not be bound by C/P terms unless the B's/L have been endorsed clearly to that effect. Some C/P's have a clause providing that if the freight on the substitute cargo is payable at a rate higher than the chartered rate, the difference is to be shared between the shipowner and the charterer in some agreed proportion (usually 50-50). In the absence of such a clause the excess freight could be claimed by the charterer.

Some C/P's contain a clause reading "The Captain to sign clean Bills of Lading for his cargo, also for portions of cargo shipped (if required to do so) at any rate of freight without prejudice to this charter, but not at lower than chartered rates, unless the difference is paid to him in cash before signing Bills of Lading". The phrase "without prejudice to this charter" implies that should the B's/L contain terms inconsistent with those of the C/P the master, by signing such bills, does not abandon the shipowner's rights under the C/ P. Moreover, such rights are not affected by the master's obligation to sign "clean" bills.

Variation in Weight or Measurement, and Weighing Charges. Unless there is a special agreement to the contrary, freight is payable only on the quantity of cargo shipped, carried and delivered. Owing to expansion or contraction, increase or decrease of moisture content, or other factors, the weight or measurement of goods delivered may differ from the weight or measurement shipped. The general rule in such a case is that freight is payable only on the lesser quantity shipped or the quantity delivered.

In one form of C/P for phosphate cargoes the following provision is made. "No freight to be payable on any excess moisture at the discharging port as compared with the loading port. A sample taken from the whole cargo is to be placed in two sealed bottles, one for the Captain and one to be retained by shippers for analysis. The Captain to have the option of having his analysed at the discharging port

..... and the mean of the two results to be taken as final".

If by the contract freight is payable "on quantity delivered", the shipowner is responsible for the cost of weighing or measuring. Otherwise weighing charges must be borne by whichever party requires the cargo to be weighed, unless there is an agreement or binding custom to the contrary.

Where a C/P provides that freight is payable "at receiver's option on quantity delivered or on B/L quantity less 2% in lieu of weighing" such option need not be exercised until the time for payment arrives. If the receiver opts not to weigh, the 2 per cent. deduction is based on the whole chartered freight, not merely on the balance due at the discharging port.

If the receiver insists on having the cargo weighed or measured and the ship employs a check-weigher or measurer, the latter will be at the ship's expense.

In some ports there is a custom that weighing charges are to be shared equally by the ship and consignees.

DISCHARGE OF VOYAGE CHARTER CARGO

Although it may be expedient to do so, the master is not legally bound to notify the consignees of the ship's arrival at the discharging port, but a public announcement must be made by entering the ship at the Custom House or Harbour Office. Also a C/P term requiring notice of readiness to be tendered must be complied with.

If the ship has a general cargo she may discharge at any place within the commerical area of the port convenient to the consignees of the majority of the cargo. If not a general cargo, the proper place of discharge is usually that selected by the charterer, his agent, or the receiver.

Where a bulk cargo is to be discharged at two or more ports it is usual for the C/P to provide that "the vessel is to be left in a seaworthy trim between ports of discharge". If the master is not informed of the intention to discharge at more than one port at the time of loading and, as a result, additional expenditure has to be incurred to comply with the "safe trim" requirement, that expense will be recoverable from the charterer.

Shifting from one berth to another in the same port of discharge, even when the berths are in different docks, does not amount to discharge at two ports, and the cost of shifting is for the shipowner's account.

Cargo must be discharged in the manner required by port regulations and customs unless the C/P or B/L stipulates a particular method. The contract may give the receiver the right to select one of several alternative methods, but if it does not, the choice lies with the

shipowner subject to the receiver's right to require the least expensive method to be used. The shipowner may employ an alternative method if the one selected by the receiver becomes impossible.

If the contract provides that cargo is to be "taken from alongside", that means that the consignees must provide appliances to take delivery from the ship's tackles or from the quay at the ship's side. Where the shipowner is by contract entitled to require delivery in the river, the consignee has a duty to provide lighters to take the cargo from alongside. If that method is used when the shipowner is not so entitled, the "exceptions" in the contract will not apply while the goods are on their way from ship to shore. However, where the contract reserves "liberty to tranship", contractual exceptions will apply while the goods are in lighters.

The consignee must take steps to secure a berth and proceed with the discharge without unreasonable delay. Generally, however, lay time for discharge is fixed and commences from the moment when the vessel becomes an "arrived ship", and if delay occurs the shipowner has a remedy in the demurrage clause except where the consignee is protected by the exceptions clause.

As goods which have been shipped under a B/L must be delivered in accordance with B/L terms, it is important that the master should have a "Captain's copy" of every B/L. The question of the proper person to whom the master is entitled to give delivery is extremely important, and this is discussed further on in this Chapter in the section on Bills of Lading.

It is usual for a voyage-chartered ship to be ordered to discharge at some named port "or so near thereto as she can safely get". This means that the ship must discharge at a place sufficiently near to the named place which must be the nearest practical port or place of discharge and be within the so-called "ambit" of the named port in the sense of being in an area or zone within a range of proximity not beyond the reasonable contemplation of the parties as fair and reasonable men in the light of all the circumstances of the adventure. Only in an exceptional case could a port 250 miles from the named port be considered as within its "ambit" in this sense. In a particular case a vessel was chartered to carry cement from Sika to Saigon and discharge part of her cargo there and the remainder at Pnom Penh, some 250 miles farther on involving the navigation of two rivers. The pilotage authority refused to accept the ship for the passage to Pnom Penh on the grounds that she was not adequately powered to negotiate the river in its then state and conditions would not be suitable for the ship to reach Pnom Penh until some five months had elapsed. In the event the entire cargo was discharged at Saigon. In the ensuing dispute arbitrators found that the "ambit" of Pnom Penh included Saigon and that the discharge of her Pnom Penh cargo there was reasonable from a commercial point of view, but they also found that they were bound by authority to hold that the vessel was obliged to wait the five months at

Saigon. The Court of Appeal, however, held that Saigon ought to be treated as a good port of discharge for the Pnom Penh cargo within the meaning of the words "so near thereto as she may safely get".

MISCELLANEOUS VOYAGE CHARTER-PARTY CLAUSES AND PHRASES, AND OTHER CHARTERING TERMS

From what has been said earlier in this chapter it will be evident that every voyage C/P will indicate the names of the contracting parties or their agents, the kind and quantity of cargo to be carried, the loading and discharging ports, agreements as to lay days, demurrage and despatch, the rate of freight and method of payment. Other clauses in common use, and which have not been previously explained, are included in the summary which follows.

Address Commission. Some C/P's provide that a commission of 2 per cent. (or thereabouts) of the freight shall be paid to the charterers on signing bills of lading. As the charterers do not perform any particular services in return for this so-called "address commission", it amounts virtually to a reduction in the freight rate. Where the ship has no such liability she is said to be "free of address". One form of commission clause reads "The Vessel to be free of address at Port of Discharge, but to pay the usual Commission of two per cent. on the amount of freight on signing Bills of Lading". This address commission should not be confused with agency fees or brokerage which are payable in return for specific services rendered.

Always afloat. A clause frequently inserted is: "Ship to proceed to ..... and there load, always afloat, in the customary manner, ... a full and complete cargo of ....., and being so loaded, shall therewith proceed with all possible despatch (or with all reasonable despatch) to ..... or so near thereunto as she can safely get, and there deliver her cargo alongside ....., always afloat, etc".

This relieves the ship of any obligation to wait until the tide is suitable for her to proceed to her appointed berth. The place named must be suitable in any tide, and if it is not suitabIe at the time when the ship arrives she is entitled to load or discharge at the nearest safe place. With respect to some ports where the nature of the bottom is suitable there may be a special agreement that the ship may lie aground at low water.

Arbitration Clause. With the object of avoiding expensive litigation, many C/P's contain a clause requiring that any disputes arising

under the contract shall be referred to arbitration. (See Chapter 2 for further details).

Berth Terms. Where shipments are made on a chartered ship on "berth terms" or "liner terms" the principal terms of the C/P will correspond with customary terms for shipment of the commodity concerned by regular liner. Special conditions relating to rates of loading or discharging are, however, not excluded. Loading and discharging expenses under berth terms will be for the account of the shipowner. An example of a loading clause which introduces this feature reads "Steamer to be loaded according to berth terms, with customary berth despatch, and if detained longer than five days, Sundays and holidays excepted, Charterers to pay demurrage at the rate of 2p British Sterling or its equivalent per net register ton per day, or Pro rata, payable day by day, provided such detention shall occur by default of Charterers or their agents.".

Bill of Lading Clause. This clause, to which reference has already been made, varies considerably from one C/ P form to another. Sometimes clean bills are demanded, sometimes not. Frequently, a specimen of the B/L form to be used is printed in the C/P which then requires "The Master to sign Bills of Lading in the form endorsed hereon ..... ".

Both to Blame Collision Clause. Great Britain and practically all other maritime countries with the exception of the United States of America have ratified and given legal effect to the Brussels Collision Convention, 1910, whereby, when two colliding vessels are both held to blame, their liabilities are in proportion to their respective degrees of fault. Until 19 May 1975, in American law, when both ships were at fault, they were held to be equally at fault. On that date the U.S. Supreme Court overturned the previous rule and held: – "that when two or more parties have contributed by their fault to cause property damage in a maritime collision or stranding, liability for such damage is to be allocated among the parties proportionately to the comparative degree of their fault, and that liability for such damage is to be allocated equally only when the parties are equally at fault or when it is not possible fairly to measure the comparative degree of their fault". The Supreme Court's decision may not affect the rule that under American jurisdiction, cargo interests are entitled to recover 100 per cent of their losses from the non-carrying ship in spite of the fact that each ship is only partly to blame. The owners of the non-carrying ship, in turn, are entitled to recover from the owners of the carrying ship their proportion of the amount they have been called upon to pay to the owners of the cargo in the other vessel. The object of the "Both to blame collision clause" is to enable the owners of the carrying ship to recover the amount of the damage indirectly paid to their shippers.

The clause reads "If the ship comes into collision with another ship as a result of the negligence of the other ship and/or the negligence of any ship or ships other than or in addition to the colliding ship and any act, negect or default of the Master, Mariner, Pilot or servants of the carrier in the navigation or in the management of the ship the owners of the goods carried hereunder will indemnify the carrier against all loss or liability to the non-carrying ship and/or any other ship or ships as aforesaid of her or their owners in so far as such loss or liability represents loss of or damage to or any claim whatsoever of the owners of the said goods paid or payable by the non-carrying ship and/or any other ship or ships as aforesaid or her or their owners to the owners of the said goods and set off recouped or recovered by the non-carrying ship and/or any other ship or ships as aforesaid or her or her owners as part of their claim against the carrying ship or carrier".

For a number of years it has been a recommendation of the General Council of British Shipping that the above clause should be inserted in all B's/L and charter-parties, and this recommendation still stands in spite of the fact that the Supreme Court in the United States declared the clause invalid and contrary to the American public policy which prohibits a "common carrier" from contracting out of his liability for his own negligence or that of his servants. There appear to be two reasons for this, as follows: –

1. Even where collision liability has been decided in the United States there may be claims for indemnity under the clause in countries other than the United States, and it is considered unlikely that the clause would be held to unenforceable and contrary to public policy in such countries.
2. Where the owner of the carrying ship is a "private carrier" in the sense that the ship is chartered to a single charterer, owner and charterer are considered to have contracted on equal terms, and if they have both agreed to the inclusion of the clause in the C/P and in B's/L issued pursuant thereto; the clause may be held to be enforceable even in the United States.

The example which follows gives a simple illustration of the effect the clause is intended to have, and for this purpose it has been assumed that both ships have been found equally to blame.

The ship "Carrier" collides with the ship "Non-carrier", and both are held 50 per cent. to blame by the American courts. Suppose the damage to the cargo in "Carrier" amounts to f.12,000 and the damage to the ship "Non-carrier" herself amounts to UK Pnd 6,000.

The owners of the cargo in "Carrier" have no claims for damages from the owner of that ship, who is relieved from liability "for loss or damage arising from errors or faults in the navigation or management of the ship" by the terms of B's/L.

In American law the owners of "Carrier's' cargo can claim their full UK Pnd 12,000 loss from the owners of "Non-carrier". In turn, those owners will include in their claim against the owners of "Carrier" 50 per cent.

of that amount, namely UK Pnd 6,000. Over and above that they will claim UK Pnd 3,000 as 50 per cent. of the damage to their own ship. Thus, "Non-carrier's" total claim against "Carrier" will amount to UK Pnd 9,000. Finally, if the Both to Blame Collision Clause proves to be effective, the owners of the "Carrier" will be indemnified by the owners of the cargo carried therein to the extent of UK Pnd 6,000 representing that part of the damages paid to "Non-carrier" relating to the goods carried by "Carrier".

In charter-parties which formerly contained the Both to Blame Collision Clause in the form reproduced above the word "New" has now been added, and bills of lading issued pursuant to such charter-parties are claused as shown below.

New Both to Blame Collision Clause. If the liability for any collision in which the vessel is involved while performing this Bill of Lading falls to be determined in accordance with the laws of the United States of America, the following clause shall apply: –

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried here-under will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of the said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier".

The foregoing provisions shall also apply where the owners, operators, or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

Calling for Orders. In certain grain charters there is a clause to the effect that "Orders for the first discharging port, unless given when signing bills of lading, to be given at ..... within 12 running hours of arrival, or demurrage to accrue, but charterers to have the right to order the vessel to Falmouth for final orders to discharge at a safe port in the United Kingdom or on the Continent between Havre and Hamburg, both inclusive, etc". If the ship is ordered to Falmouth, there is provision for the freight rate to be slightly increased.

Deviation Clause. The ship must comply with the common law non-deviation warranty requiring her not to depart from the contract or usual route except where authorised by statute law or by the terms

of the contract. The "deviation clause" states precisely for what purpose the vessel has liberty to deviate. A typical form of wording is "With liberty to sail without pilots, to call at any port or ports on the way for fuel, supplies, or any reasonable purpose, to tow and be towed and assist vessels in distress, all as part of the contract voyage". Sometimes liberty to deviate to adjust compasses is included.

Draftage. The "Austral" form of grain C/P provides for payment of freight "per ton of 2,240 lb. or 1,016 kilos net weight delivered, less a deduction for draftage of 2 lb. per 2,000 lb of wheat discharged at a port in Great Britain or Ireland and weighed at the time of discharge by approved hopper scale in drafts of 2,000 lb. or over".

Dreading Clause. This is found in the "Centrocon" C/ P (grain from the River Plate) and gives the charterer the option of shipping other lawful merchandise subject to an agreed minimum. If the option is exercised freight must be paid on the ship's deadweight capacity for wheat in bags at the rate agreed for heavy grain. Additional loading and discharging expenses must be paid by the charterer.

Exceptions Clause. Where the C/P includes a "Clause Paramount" incorporating the Hague Rules, an "exceptions clause" is superfluous and may be omitted, as the Rules themselves contain the usual exceptions from liability. Otherwise, an "exceptions clause" will be included to relieve the shipowner from liability for loss or damage arising from: –

(a) **Act of God.** To prove loss from this cause it must be shown that the accident arose from natural causes, but without any human intervention, and could not have been prevented by any amount of care and foresight. Natural causes in themselves are not enough. Fog is a natural cause, but if a ship goes aground in foggy weather that is not an Act of God as careful navigation could have prevented it.

(b) Q**uarantine Restrictions.** If the ship is put in quarantine on arrival she is not a "ready ship" so that lay days will not begin until the quarantine period has ended. Otherwise, quarantine restrictions do not excuse a default on the part of the charterer in loading or the consignee in discharging. The position would be different, of course, if the C/P made an exception in favour of the charterer/consignee. Where there is an exception of "quarantine expenses" in the shipowner's favour, lighterage costs will be for the charterer's account if, because of quarantine, the ship is obliged to load in the roads instead of alongside.

(c) **Perils of the Sea.** This refers to accidents of an unforeseeable nature which can happen only at sea. Foundering, stranding, springing a leak in heavy weather, are examples.

The inevitable action of wind and waves resulting in ordinary wear and tear is excluded. Sometimes the exception is extended to "Dangers and accidents of the seas, rivers, and navigation, of whatever nature and kind".

(d) **Fire.** As explained in Chapter 15, the owner of a registered British ship is given protection by statute against liability for loss caused by fire on board happening without his fault or privity, and this holds good even where fire results from a breach of the warranty of seaworthiness so long as the latter is not attributable to the owner. A contractual exception of "fire", which is considered a waiver of the statutory right does not protect the shipowner where the vessel was initially unseaworthy. Hence, owners entitled to the benefit of the statute should not include this exception in their contract. If goods are covered by a "received for shipment B/L" or a "through B/L" the statutory protection should be extended by using the clause "fire whether on board, in craft, or on quays or wharves (without prejudice to the operation of Section 18 of the Merchant Shipping Act, 1979)".

(e) **Inherent Vice or Defect of Goods.** This refers to the natural tendency of certain goods to deteriorate. Difficulty is often experienced in deciding whether damage to a perishable cargo is due to inherent vice, perils of the sea, or want of adequate precautions in stowage. Hence it is most unwise to place to much reliance on this exception.

(f) **Leakage, Breakage, Heat, Rust, and Sweat.** These exceptions cover only the damage caused to the goods which themselves suffer leakage, breakage, etc., and not damage to other goods stowed nearby. In any case none of these can be relied upon to give protection when there has been negligence on the part of the shipowner or his servants.

(g) **Jettison.** This covers jettison rendered necessary by a peril of the seas and, also, jettison rendered necessary by the neglect of master or crew in the navigation of the ship so long as the vessel was initially seaworthy and the goods were not carried in a manner contrary to the terms of the contract of carriage.

(h) **Contact with Other Goods.** The shipowner will not escape liability if damaged from this cause is proved to be due to negligent or improper stowage but the onus of proving negligence rests on the party alleging it. If, say, parcels of different quality of the same commodity are stowed one on top of the other without adequate separation, and the owner or his servants did not know, and had no reason to know, that more effective separation was required, this exception will relieve the ship from liability for any resulting deterioration of one or other of the parcels.

(i) **Barratry.** This includes (i) any wilful act of violence to the ship or her cargo, (ii) any wrongful appropriation of the ship or her cargo, and (iii) any fraudulent or consciously illegal act which exposes the ship or cargo to damage or confiscation, done by the master or any of the crew without the consent of the shipowner. (Further reference to barratry will be found in Chapter 14 where it is mentioned in relation to insurance).

(j) **Queen's enemies.** This refers to the actions of nationals of a country with which this country is in a state of war. The term "act of war" is wider than "Queen's enemies" since it includes acts of war where the carrying ship is neutral.

(k) **Pirates.** Piracy is an act of violence done by individuals for their own profit on the high seas. The probably unimportant distinction between "pirates" and "rovers" is that the former confine their activities within a limited area whilst the latter roam at large. Passengers in a ship who mutiny have been held to be pirates. Cases have occurred from time to time in Far Eastern waters where persons have embarked as fare-paying passengers and have at time and place of their own choosing made an armed attack on the master and crew with the intention of robbing the ship of the more valuable parts of her cargo. Rioters who attack a ship from the shore are also classed as pirates.

(l) **Thieves.** This exception covers robbery, i.e., theft by violence, and theft in the sense of premeditated thieving by outside parties. It does not include "pilferage", i.e., petty theft by passengers, crew or other servants of the shipowner.

(m) **Arrests or Restraints of Rulers, Princes, or Peoples.** This includes political or executive acts only, and does not cover loss caused by riot or by ordinary judicial process. By "People" is meant the "de facto "ruling or governing power as distinct from uncontrolled mobs or rioters. The exception covers acts that do not amount to act of war.

(n) **Embargo.** This is the name given to any government prohibition on the movement of ships or goods in particular circumstances.

(o) **Blockade.** This refers only to an effective blockade. Knowledge of an announcement of the intention to establish a blockade in the area containing the loading port or discharging port apparently does not excuse the ship from proceeding to the port. If, on arrival in the vicinity, it is found that the blockade is effective, the master will be entitled to go to the nearest safe port.

(p) **Riots, Strikes, or Stoppages of Labour.** A "strike" exception in itself can be relied on only when there is a general concerted refusal by workmen to work in consequence of an alleged grievance. It does not extend to the case where men

refuse to work through fear of disease. The wider exception here quoted gives the ship far greater protection, and the addition of the words "from whatever cause" would be better still.

(q) **Explosions and Bursting of Boilers, Breakage of Shafts, and Latent Defects**. To claim the advantage of this exception there must, as usual, be no negligence on the part of the shipowner or his servants. A latent defect is one which is not apparent to the eye or the senses and which is not discoverable by "such an examination as a reasonably careful man skilled in the matter would make". Where there is an absolute obligation to provide a seaworthy ship, the exception of "latent defects" is of no avail if the ship is initially unseaworthy. The warranty of seaworthiness is qualified by express agreement only, so words such as "latent defects even existing at the time of shipment" must be used to give more adequate protection. Where the Hague Rules apply, the carrier is not responsible for the loss or damage arising from latent defects "not discoverable by due diligence". To rely on this the carrier does not have to prove that he failed to discover the defect in spite of using due diligence. If he used no diligence at all, he will still be protected if it can be proved that he would not have discovered the defect even if he had used all due diligence.

(r) **Negligence.** A typical form of "negligence clause" within the exceptions clause excepts the ship from liability for loss or damage due to "Collision, stranding or other accidents arising in the navigation of the steamer, even when occasioned by the negligence, default or error of judgment of the Pilot, Master, Mariners or other Servants of the Shipowners or persons for whom they may be responsible (not resulting, however, in any case from want of due diligence by the Owners of the Steamer, or by the Ship's Husband or Manager)". The exception "collision", standing by itself, does not cover loss due to collision caused by the negligence of the shipowner's servants, even compulsory pilots, but loss by collision due to the negligence of those in charge of another vessel is covered.

(s) **Strike of Seamen**. Another exception may be loss arising from delay in the commencement or prosecution of the voyage due to a general strike or lock-out of seamen or other persons necessary for the movement or navigation of the vessel.

An exceptions clause may include such words as "Nothing herein contained shall exempt the shipowners from liability for damage to or loss of cargo occasioned by bad stowage, by improper or insufficient dunnage, by absence of efficient ventilation, or by improper opening of valves, sluices, or ports".

In connection with "exceptions" it is necessary to bear in mind what is called the ejusdem generis (of a like kind) rule. Frequently a clause provides for one party or the other (or both) to be exempt from liability for loss arising from any one of a list of particular causes, such list then being followed by words of a general nature. Disputes often arise over the question of the scope of these general words. Unless such words are sufficiently all-embracing, the matter will be subject to the application of the ejusdem generis rule so that the general words will be given a limited meaning to cover only items or events of a like kind to those specifically mentioned. For instance, if a C/P is claused "Charterers not to be responsible for delays caused by frosts, floods, and other causes beyond their control", that would probably be taken to include delays caused by heavy snowfall, but it would not include, say, delay due to a strike. In the same way the phrase "strikes, lock-outs, civil commotions, and other causes or accidents beyond the control of the Charterers" would not cover a delay due to an epidemic, though it should include delay caused by a trade union ban on overtime working. Even the addition of the word "etc." after a list of specific events has been proved to have given considerable extension to the meaning of an exceptions clause. But to avoid altogether the application of the ejusdem generis rule, where it is the intention of the parties to give the clause unrestricted scope, use should be made of such words as "and all other delays howsoever, whensoever and wheresoever caused".

Extra Work. One form of C/P makes provision for the steamer to work at night if required by the charterers, they paying all extra expenses for such work.

Freight in Full of ..... Where this expression is used it means that the freight paid includes the charges specified, which will then be for the shipowner's account. Where the cargo needs to be trimmed, and the C/ P quotes "freight in full of trimming" the ship will have to pay the trimming charges, but will earn a correspondingly higher freight than she would if those charges were paid directly by the charterer. Other charges which may be dealt with in this way include port charges, pilotage dues, light dues, consular fees, and lighterage at the port of discharge.

Full Reach and Burden. Where the contract gives the charterer the full reach and burden of the ship that applies to holds, tweendecks, and other underdeck compartments normally available for the carriage of cargo and, in addition, any lawful deck capacity. This provision is sometimes expressed more fully by the words "... not exceeding what the vessel can reasonably stow and carry, in the judgment of the master, over and above the space and burden necessary for the vessel's officers and crew, her cabins, tackle, apparel, furniture, provisions, fresh water, stores, necessary ballast, and fuel". Under a voyage charter

the charterers are not entitled to stow cargo in passenger cabins or to carry passengers for their own gain. Any passenger accommodation the vessel may have remains at the free disposal of the shipowner. (Under a time charter that may not be so, and this is referred to in the section dealing with time C/P clauses). "Reach" is concerned with the vessel's cubic capacity, and "burden" with her deadweight capacity.

The ship is not entitled to carry bunkers in excess of the amount necessary for the charter voyage. Where liberty to call at intermediate bunkering ports is given, the proper allowance for bunkers is the quantity required for the longest stretch between bunkering ports plus a reasonable amount for contingencies. If the charterer insists on the ship taking fuel for a longer run and thereby fails to load a full and complete cargo, the shipowner will have a remedy in deadfreight. On the other hand, it has been ruled that the charterer is not obliged to supply cargo to fill a cross bunker used alternatively for cargo or coal fuel.

Freight-paying Ballast. In the absence of any agreement otherwise, the shipowner must provide all necessary dunnage and ballast to comply with his obligation to provide a seaworthy ship or use due diligence to make the ship seaworthy, and he is not entitled to require the charterer to provide cargo of a kind which renders ballast unnecessary. Although this is probably of a significance only in the case of a sailing ship, it is a rule that even where the charterer has to provide the ballast it must be in place before the cancelling date, or the charterer will be entitled to exercise his option to cancel the contract. The shipowner is entitled to carry freight-paying merchandise as ballast so long as it occupies no more space or deadweight capacity than ordinary ballast would, and does not interfere with the C/P cargo.

General Average Clause. This invariably provides for G/A to be settled by the latest York-Antwerp Rules either with or without reservations. A typical example is "Average, if any, shall be settled according to the York-Antwerp Rules, 1974. Should the vessel put into any port or ports leaky or with damage, the Captain or Owners shall without delay inform the Charterers thereof".

Grab Damage. In C/P's for carriage of coal, metallic ores, and other cargoes where it is customary to discharge by means of grabs, there will usually be a clause governing the method of survey of grab damage and how payment for repair shall be made.

Ice Clauses. These are important features of some C/P's. They vary considerably according to the nature of the trade with which the C/P is concerned, but a good idea of their usual provisions will be evident from the following references to three of them.

1. **"Centrocon" C/P** ice clause: The main provision is that if the agreed port of discharge on the Continent is ice-bound the master has the option of waiting until it is open or going to the nearest safe port for fresh orders and telegraphing the consignees on arrival. If kept waiting more than 24 hours, lay days are to count. If ordered to a United Kingdom or open Continental port and the extra distance exceeds 100 miles, the ship is to receive additional freight at some stated rate per ton (or tonne).

2. **"Gencon" C/P** ice clause: –

With respect to the port of loading –

(a) If the port is inaccessible when the vessel is ready to proceed, or during the voyage, or on arrival, or if frost sets in after arrival, the Captain is at liberty to leave without cargo and the charter shall be null and void.

(b) If during loading the Captain, through fear of being frozen in, deems it advisable to leave, he has liberty to do so with what cargo is on board, and proceed to some other port or ports with the option of completing cargo for owner's benefit. The cargo loaded under charter is to be forwarded to destination at the vessel's expense against payment of freight.

(c) If there is more than one loading port, and one or more are ice-bound, the Captain is at liberty either to load part cargo at the open port and fill up elsewhere for owner's benefit, or declare the charter void, unless the charterer agrees to load a full cargo at the open port.

(d) This Ice Clause is not to apply in the spring.

With respect to the port of discharge –

(a) Should ice (except in spring) prevent the vessel from reaching the port, receivers have the option of keeping the vessel waiting on demurrage or ordering her to a safe port to discharge. Orders are to be given within 48 hours after the charterer is notified of the impossibility of reaching the port of destination.

(b) If during discharge the Captain deems it advisable to leave, he has liberty to do so with what cargo is on board and proceed to the nearest accessible port.

(c) On delivery of the cargo at such port all B/ L conditions apply and the vessel shall receive the same freight as if she had discharged at the original destination, but if the distance of the substituted port exceeds 100 nautical miles the freight is to be increased in proportion.

3. **North Russian Timber Charter ice clause.** The main provisions are: (i) if the loading port is inaccessible by reason of ice on the vessel's arrival at the edge of the ice, or if frost sets in after the

vessel's arrival in part, the charterer is to provide icebreaker assistance free of expense to the steamer. (ii) Time lost in waiting for icebreaker assistance in excess of 48 hours is to count as lay days when the vessel is arriving and to count as time on demurrage (or to be set off against despatch) when the vessel is leaving. (iii) The Captain is to follow official instructions issued by the authorities for vessels convoyed by icebreaker through the ice.

Lien Clause. This is an alternative name for the Cesser Clause already described.

Lighterage Clause. This clause in the "Centrocon" C/P reads "Owners to have liberty to lighten if required to cross bars and/or shoals in the River Parana at the Steamer's expense and the Merchant's risk, provided the Steamer has not the option to complete at Buenos Aires or La Plata, but the Master to give notice before lightening to enable the Charterers to send their representatives on board". Other lighterage clauses may provide that if the vessel's draught exceeds a stated figure she shall reduce the draught by discharging part of the cargo into lighters in some "safe anchorage", which need not be within the commercial limits of the port. Lighterage expenses are, under such clauses, for the receivers account, any custom of the port to the contrary notwithstanding.

Negligence Clause. This has already been described under "Exceptions Clause" of which it is usually a part.

New Jason Clause. Like the "Both to blame collision clause", this clause is one recommended by the General Council of British Shipping for insertion in all B's/ L and C/P's. It is not usual to reproduce either clause in full in a C/ P, but simply to incorporate them by reference. Details of the New Jason Clause will be found in the section on Bills of Lading.

Options. These usually refer to alternative loading and/or discharging ports and corresponding adjustments of freight rates. Options are sometimes given, too, for the shipment of different kinds of cargo.

Paramount Clause. This, being a B/L clause, is explained in detail in the section on B's/L. Where a C/ P itself contains a specimen form of the B/L to be used, such B/L may contain the Paramount Clause to incorporate into the contract all terms, provisions, and conditions of the Carriage of Goods by Sea Act or corresponding legislation.

P and I Bunkering Clause. The purpose of this clause, which appears to give liberty to deviate, is to allow the shipowner to take as much bunkers as possible at ports near the centre of oil production where bunker prices

are usually lower than at ports away from such centres, and if necessary to proceed to any port or ports whether on or off the customary route or routes to the ports of loading or discharge named in the charter. It allows the owner to take bunkers to the full capacity of fuel tanks, whether such amount is or is not required for the chartered voyage. This clause appears to be realistic in accepting that by allowing the owner to take cheaper bunkers when he can, it may be to the benefit of all and result in lower freight rates than might otherwise apply. This clause is sometimes called the Bunker Deviation Clause.

Ready Berth Clause. Cases have occurred when a chartered ship on reaching the port of discharge has been ordered by the port authority to anchor outside the official port limits because no berth was immediately available for her. The ship, therefore, not being strictly an "arrived ship" has suffered serious loss through difficulties in tendering notice of readiness. To give the owners adequate protection in such circumstances, the following clause has been recommended by the Baltic Conference for insertion in C/P's.

"If a suitable discharging berth be not available on vessel's arrival at or off the port, whether entered at customs or not, the Charterer shall pay to Owners compensation at the demurrage rate stipulated in the charter for all time, counting from 24 hours after the first high water upon which the vessel could have berthed, until the vessel is in a suitable discharging berth. The Master or Owners shall have an absolute lien on the cargo for such compensation".

Rechartering. One version of this clause reads: "Charterers to have the right to transfer this Charter-party, but in such case the original Charterers shall remain responsible for the right and true fulfilment of the same.

Sailing Telegram. In some charters it is provided that a sailing telegram be sent to the charterers on the vessel leaving her last port (on the way to the first or only loading port), or in default 24 hours more shall be allowed for loading. This is necessary to give the charterers full opportunity to have the cargo ready on the vessel's arrival

Safe Port. Many C/P clauses make reference to safe ports. To qualify for this description a port must be "safe" in the following respects.

1. There must be a safe access to the port free from any permanent obstruction. However safe a port may be in other respects, it is not a safe port if the ship cannot reach it without serious risk of damage by ice. A temporary obstruction, neap tides for instance does not make an otherwise safe port unsafe.
2. The port must be one where the ship can lie safely afloat at all states of the tide, unless where it is customary and safe to load or discharge aground there is a special agreement to do so.

3. There must be adequate facilities for trade including a safe shore for the landing of goods, proper wharves, warehouses, and other establishments for dealing with the kind of cargo contemplated.
4. The port must be politically safe in the sense of being free from any state of war or embargo.
5. For any particular ship a port is not safe if the ship, having reached the port, cannot return from it without cutting her masts.

The safety of a port should be looked at in respect of a vessel which is properly manned and equipped, navigated and handled without negligence and in accordance with good seamanship.

If the master, when ordered to a port, knows it to be unsafe, he may refuse to proceed and may require the charterer to nominate another port. If he proceeds to a port as ordered and finds it unsafe when he arrives in the vicinity, he may refuse to enter or, if that is possible, he may incur expenditure (tug hire, for instance) to make the port safe and charge the amount to the charterer. Unless there is a specific agreement otherwise, the master is always entitled to refuse to enter a port which his vessel cannot safely reach without first lightening in a roadstead or another port even if that is a customary method of discharge at the port.

Safe Berth. A berth, to qualify as a "safe berth" must be safe in all the same respects as a safe port. In a number of cases in the past where the master, in obedience to charterer's orders, has taken his ship to a berth which has proved to be unsafe, and the ship and/or wharf have suffered damage in consequence, it has been held that it was the duty of the master to make certain that the berth was safe and to refuse to go there if he deemed it unsafe. Failure to do that has resulted in the shipowner having to bear the cost of repairing the damage. More recently, however, in a similar case (on final appeal to the Judical Committee of the Privy Council, the case being first heard in Australia) the decision was given the other way. It was held that by the words "safe wharves as ordered" the charterers had given an undertaking that the nominated berth would be safe, that it was not safe for the particular ship concerned, and that the master even though aware of the defects of the berth had acted reasonably in taking the ship there.

Strike Clause. The following will serve as one illustration. "If the cargo cannot be loaded by reason of Riots, Civil Commotions or of a Strike or Lock-out of any class of workmen essential to the loading of the cargo, or by reason of obstruction or stoppages beyond the control of the Charterers on the Railways, or in the Docks, or other loading places, or if the cargo cannot be discharged (for similar reasons), the time for loading or discharging, as the case may be, shall not count during the continuance of such causes, provided that a Strike or

Lock-out of the Shippers' and/or Receivers men shall not prevent demurrage accruing if by the use of reasonable diligence they could have obtained other suitable labour at rates current before the Strike or Lock-out. In case of any delay by reason of the before mentioned causes, no claim for damages or demurrage shall be made by the Charterers, Receivers of the Cargo, or Owners of the Steamer. For the purpose, however, of settling despatch money accounts, any time lost by the Steamer through any of the above causes shall be counted as time used in loading". Another clause recommended in the shipowner's interests is "Ship not to be responsible for any loss, damage, or delay directly or indirectly caused by or arising out of strikes, lock-outs, labour disturbances, trade disputes, or anything done in contemplation or furtherance thereof, whether the owners be parties thereto or not".

Stevedores. C/P's often provide that the charterers have liberty to appoint a stevedore to load the ship at a fixed rate per ton, not exceeding the current rate. Where this is agreed, legal relations between shipowner and stevedore remain unaffected so that the latter remains the servant of the former. Not only is the shipowner responsible for the default or negligence of the stevedore, but the master retains the duty of supervising and controlling the loading and stowage. On the other hand, if the C/P provides that the stevedore is to be both nominated and employed by the charterer, then it is the charterer who is liable for the faults of the stevedore. In a case where the C/P provided that charterers were to "load, stow, and trim the cargo at their expense under the supervision of the captain", charterers contended that the shipowner was responsible for damage to cargo through negligent stowage. It was held in the House of Lords that to the extent that the master exercises supervision and limits the charterers' control of the stowage, the charterers' liability is limited in a corresponding degree. As, in that case, there was no evidence that the master had interfered with the stowage, the charterers were held to be responsible.

Where the C/P provides for delivery of cargo "free alongside", the shipper's duty is complete when he has delivered the goods within reach of the ship's tackles. Further costs of loading, stowing, and trimming are then for the shipowner's account. This more or less traditional arrangement is often associated with a similar arrangement at the port of discharge where the ship pays the stevedoring charges for unloading the cargo and the consignee takes delivery from the ship's tackles. Frequently, however, the charter provides for "free discharge" which means that the consignee bears the whole cost of discharging the cargo and taking delivery. Where the charter is on a "free in and out" basis, it becomes the responsibility of the charterer to load the ship at his expense and for the consignee to pay the complete costs of discharge. Freight rates, of course, take into account whichever method is contracted for. The advantage of "free discharge" is that disputes over the division of discharging and delivery costs are avoided. Where both

loading and discharging operations take place alongside the charterers own establishments, it is usual to contract "free in and out". To avoid doubt about the liability for other charges it is advisable to extend the phrase "free in and out" to "f.i.o., stowed and trimmed", or "Loaded, stowed, trimmed and discharged free of expense to the vessel". Cases have occurred where under an f.i.o. contract eharterers have contended that stowing and trimming charges were for the shipowner's account.

Ventilation and Dunnage. In charters for the carriage of rice, soya beans,and similar commodities, there is often a clause to the effect that the charterer is to provide and pay for ventilating appliances and dunnage, that mats are to be at the ship's expense and that rush or soft mats are not to be used, and that the ship is to be responsible for damage due to insufficient dunnage and mats. The clause may also stipulate that hatchways are to be opened during the voyage as often as weather permits, and that all ventilation cowls are to be trimmed from the wind.

War. Sometimes a C/P will contain a "war clause". The "Centrocon" form, for example, provides that "If the nation under whose flag the Steamer sails shall be at War, whereby the free navigation of the Steamer is endangered, or in a case of blockade or prohibition of export of grain and seed from the loading port, this charter shall be null and void at the last outward port of delivery or at any subsequent period when the difficulty may arise, previous to cargo being shipped".

The following War Risk Clauses are designed to clarify the positions of the two parties involved and to agree what action should be taken in the event of a war such as the Israel/Egypt or Iraq/Iran conflict starting during the voyage.

1. No bills of lading to be signed for any blockaded port and if the port of discharge be declared blockaded after bills of lading have been signed, or if the port to which the ship has been ordered to discharge either on signing bills of lading or thereafter be one to which the ship is or shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government, the owner shall discharge the cargo at any other port covered by this charter-party as ordered by the charterers (provided such other port is not blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered.
2. The ship shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the vessel

sails or any department thereof, or by any Government or any department thereof, or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any committee or person having, under the terms of the War Risks Insurance on the ship, the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done, the same shall not be deemed a deviation, and delivery in accordance with such orders or directions shall be a fulfilment of the contract voyage and the freight shall be payable accordingly.

Weighing Charges (Coal C/P's). The following provision is sometimes made. "If receiver elects to weigh the cost is at his expense, and if the owner provides a check weigher it is at the owner's expense. Any deficiency alleged on the authority of such weighing is to affect freight only, provided that a statutory declaration is made by the master and officers that all cargo received has been delivered".

TIME CHARTER-PARTY CLAUSES AND TERMS

Different forms of time charter-parties, like voyage charters, vary considerably, although they have many features in common. The following paragraphs are intended to give a general idea of the substance of the more important clauses frequently used, with notes on performance of the contract.

Contracting Parties. The C/P will indicate the names of the owner and charterer, or those of their respective agents, and will be signed and witnessed in the same manner as a voyage charter.

Description of Ship. The name of the vessel and her position at the time of executing the contract will be shown together with her deadweight and cubic capacity, the latter in terms of grain space and bale space, and in some cases the deadweight capacity will be guaranteed. Where the deadweight is guaranteed to be "about ..... tons, that is held to mean within a small percentage either way. The vessel's capabilities in the matter of speed and fuel consumption will be given, and a statement of the type of fuel to which such consumption refers. It is highly important that there should be no misrepresentation in respect of any of these particulars.

Delivery and Redelivery. There is usually a very precise agreement as to when and where the ship is to be delivered to the charterer, and when and where she is to be redelivered back to the owner at the end of the period of hire. On delivery a "certificate of delivery" will be drawn up and signed by the master, the owner's agents

and the charterer's agents to show (i) the date and hour of delivery, (ii) the quantity of bunkers on board at the time, and (iii) the quantity of boiler water and galley fuel on board. On redelivery a similar "certificate of redelivery" will be made out and signed. What is called an "on survey" is held immediately prior to delivery and an "off survey" prior to redelivery. Both parties are represented on these surveys by comparison of which any excess damage can be assessed. Such damage must be made good at the charterers expense, but fair wear and tear is always excepted. If the C/P requires the ship to be "redelivered in the same good order as when delivered" and there is damage for which the charterer is responsible, the owner is not entitled to refuse to accept redelivery, but the charterer will be liable not only for repair costs but also for detention during repairs. If the time for redelivery is fixed irrespective of where the vessel may be, and the owner resumes control while the ship is on the high seas, the time at which he does so is deemed to be the time of redelivery.

Final Voyage. It is seldom likely that the completion of the last voyage will coincide exactly with the termination of the period of hire. Unless the contract provides otherwise there is no breach on the part of the charterer if he redelivers within a reasonable time after the ending of the charter period so long as he acted reasonably in sending the ship on the final voyage. But if the contract shows clearly that the charter must not be extended beyond a fixed date the charterer will be in breach in failing to redeliver by that date, unless he can prove that he had good reason to suppose that the voyage would be finished in time. Hire for any such extended period will be payable at the charter rate, not at the market rate if that is different. Where the C/P makes special provision for the final voyage, it usually takes the form that the period of hire may be extended at the rate agreed in the C/P (which may be the market rate if higher than the charter rate) and under the conditions of the C/P for as long as may be necessary to complete the last voyage. This entitles the charterer to send the ship on a voyage which cannot possibly be completed before the end of the term of hire, but does not entitle him to send her on a new voyage after the term of hire has expired. If the last voyage ends at a port other than the agreed port of redelivery, the owner is entitled to resume control of the ship there and then, and the charterer has no right to send her on a new voyage to the agreed port. Where a vessel is chartered for a fixed period and is redelivered before the end of that period, the charterer is liable for hire at the agreed rate in respect of the unused portion of the term.

Cancelling Date. There will usually be a clause to the effect that if the ship is not delivered by a certain date the charterer has the option of cancelling the contract. As a general rule an option to cancel must be exercised within a reasonable time or it cannot be exercised at all, except by mutual consent. In one form of C/P it is provided that, if the

ship cannot be delivered in time, the owner shall require the charterer to declare whether he will exercise his option to cancel and the charterer must answer this within 48 hours.

Trading Limits and Other Restrictions. These vary widely from one case to another. A ship may, for instance, be let on time charter for a voyage or for a number of consecutive voyages on a particular route. On the other hand, a charter may be for world wide trading, with or without restrictions regarding particular areas. Sometimes the charterer's powers are restricted to sending the vessel only to "good and safe ports". A reference to an "ice-bound place" as distinct from an "ice bound port" covers not only a port but also the approaches to that port. Provision may be made for the master to have liberty to leave a port if he fears that the vessel may become frozen in or damaged by ice. In some cases, too, the owners may put a ban on the carriage of certain kinds of dangerous goods.

Hire Money. Every time C/P will, of course, contain a clause stating the rate of hire agreed and the method of payment. The most common arrangement is for hire to be paid monthly in advance and pro rata for part of a month. Unless agreed otherwise, "month" means calendar month, but where a fraction of a month is involved that month would be treated as a period of 30 days. Some charters do provide for hire to be payable "per month of 30 days". The liability to pay is continuous from the moment of delivery to the moment of redelivery unless some event occurs to take the ship off hire under the "off-hire clause". However, if by some breach of contract on the part of the shipowner the vessel is delayed in performing the service required by the charterer, hire paid during the period of delay would be taken into account in assessing the measure of damages due to the charterer.

Off-hire Clause. This clause, sometimes referred to as the "breakdown clause", usually provides that in the event of time being lost in certain specified circumstances which prevent the vessel from working for more than 24 hours, payment of hire shall cease until she is again efficient to resume the service required of her. If the time lost does exceed 24 hours, hire is not payable in respect of the first 24 hours of the breakdown. If the C/ P uses the words "hindering or preventing the working of the vessel", that brings partial breakdowns within the scope of the clause as well as total breakdowns, say, for instance, where an accident has put some (but not all) of the winches out of service. However, even without this extended wording, it has been held that partial interference with working has been a sufficient prevention to take the ship off hire. The clause comes into operation only when time is lost in rendering the particular service required by the charterer at the time. In a case where a ship's main engines broke down so that she had to be towed for a considerable part of the voyage, it was held that

hire was not payable during the period on tow but that she came on hire again while discharging with the aid of her own appliances which were efficient for that prupose. If the working of the ship is prevented by "deficiency of men" the clause does not operate unless the ship is undermanned in the ordinary sense of that term; a case where the whole crew go on strike is not covered. Where an accident to cargo has caused damage to the ship which necessitated putting into port to repair the ship, it has been held that the ship was off hire during the detention. On the other hand, where it was the condition of the cargo and not the condition of the ship which made it necessary to put into port, the off-hire clause did not operate. Unless the C/P provides otherwise, the term of hire is not extended by the length of periods off hire during the term.

This clause is anything but simple, and has produced much litigation. It is, therefore, very important that the master should never sign his agreement to an off-hire period without precise instructions from the owners who should be informed by the master of all the facts of the case of which he-is certain.

Withdrawal of Ship if Hire Not Paid When Due. Time charters are frequently claused to the effect that if hire money is not paid on the due date the owners are entitled to withdraw the ship from the charterer's service, but this does not mean that the owner may withdraw the ship merely because hire is not received on the date agreed for payment. If hire is payable on a deadweight basis, the charterer is not obliged to make any payment until the vessel's deadweight has been disclosed to him. If withdraival is made, payment of hire money ceases at the time of such withdrawal which is deemed to be redelivery, but if the owners are forced under protest to take back the ship on account of the charterer wrongfully repudiating the contract after hire has become due, the whole of the overdue hire is recoverable. Suppose, for example, that hire is payable every 90 days in advance and, say, one week after payment has fallen due the charterer repudiates the C/P and during the following week the owners are compelled to take the ship back into their own service. They will in those or similar circumstances be entitled to hire for the full 90 days.

Indemnity Clause. An important clause in many time C/P's is to the effect that "The master shall be under the orders and direction of the charterer as regards employment (i.e., employment of the ship, not of persons), agency, or other arrangements and the charterer hereby agrees to indemnify the owners for the consequences or liabilities that may arise from the master or officers signing B's/ L or other documents or complying with such orders, as well as any irregularity consequent thereon in the ship's papers". Apart from the provisions of any "prohibition clause", this gives the charterer freedom of choice as to the manner in which the ship is to be employed during the charter period,

and safeguards the position of the owners by giving them the right of indemnity against the consequences or liabilities which may arise from the master's compliance with the charterer's orders. The term "employment" as used in this clause does not embrace navigation or the incidents thereof. Unlike the situation under a demise charter, the master remains responsible to the shipowner for the safety of the ship and cargo, and must himself decide, amongst other things, whether it is safe to leave port, to proceed on the voyage, or to enter a port he fears unsafe. One effect of the clause is to make the chaiterer's agents the ship's agents for such purposes as attending to customs, but it does not authorise them to hire appliances for discharging cargo, if that is the work of the ship, without the consent of the owner or the master.

Even without this clause, an indemnity may be implied by law if the owners incur liability to a B/L holder which they would not have incurred under the terms of the C/P. There is an implied undertaking by the charterers to present B's/L which conform with the C/P and which do not expose the owners to liability in excess of that to which they are exposed under the C/P.

The indemnity clause may regulate the situation with regard to claims due to bad stowage and claims for short delivery of cargo, relieving owners from responsibility where charterer's stevedores are employed. If the charterers order a method of stowage which will adversely affect the seaworthiness of the ship, the master should intervene whether the C/P expressly makes him responsible for good stowage or not. Whenever his attention is drawn to anything likely to cause a claim, he should notify the charterers' representatives in writing holding them responsible, keeping in mind that in the first instance the claim may be brought against the owners under the terms of the B/L.

The clause gives charterers the right to require changes in the appointments of masters, officers, or engineers if dissatisfied with the conduct of any of them.

Time Charterer's Liabilities. Where a time-chartered ship is damaged as a result of the negligence of the charterers or their servants, the owners are entitled to recover the full amount of the loss, unless the C/P expressly makes an "exception" of such negligence.

Seaworthiness. In the law of Scotland, and most probably in English law although it appears not to have been put to the test, there is an implied warranty that a time-chartered ship shall be seaworthy at the time when she is delivered to the charterer. This does not extend to an obligation that she shall be seaworthy at the commencement of each voyage made under the charter, but if the ship starts on a subsequent voyage in an unseaworthy state through the negligence of the master, the owners will be liable for the consequences unless they are expressly excepted therefrom. It is usual for the C/P to provide that the owners are to maintain the ship in a thoroughly efficient state in hull and

machinery throughout the period of hire. If, therefore, accidents occur or events arise which cause the ship to be inefficient, the owners must take all reasonable and proper steps promptly to restore her efficiency.

Liens. It is usual for a time C/P to give the owners a lien on all cargoes, sub-freights for hire, and G/A contributions, and to give the charterer a lien on the ship for hire paid in advance and not earned. Reference is made to this in the section on "Liens" in Chapter 2.

Where there is a bona fide dispute as to liability, the exercising of a lien may be fraught with all manner of difficulties. If the master thinks he has good and sufficient reason to exercise lien on cargo, he should keep in his possession no more than is sufficient for the purpose and apply to the owners or their agents for instructions without delay.

Loss of Ship. If the ship is lost payment of hire will cease from the time of the loss. It would appear that "loss" includes constructive total loss. Unearned hire paid in advance is returnable.

Commission. There will be a clause providing for payment of commission to the broker who negotiated the charter. One form has been quoted in the section on "negotiations of charters".

The broker is not a party to the contract but, should it be necessary, the charterer can be compelled to sue as a trustee for him to recover commission due to him under the clause.

General Average. The usual provision is made for G/A to be settled according to York-Antwerp Rules, 1974, but the clause may provide that hire money is not to contribute to general average.

Owners' and Charterers' Responsibilities and Exemptions. A clause makes the owners responsible only for delays, losses, and damages caused by want of due diligence or other personal act or omission or default of themselves or their manager, and expressly relieves them of responsibility for damage or delay whatsoever and howsoever caused even if caused by the neglect or default of their servants. (This, however, should be read in the light of other clauses which impose express obligations on the owners). Charterers are made responsible for loss or damage caused to steamer or owners by goods being loaded contrary to the terms of the charter, improper or careless loading or stowage, or other improper or careless acts on their part or that of their servants.

Cargo and Passengers. Another clause places the whole reach and burden of the ship, including lawful deck-capacity, at charterers' disposal, reserving the usual spaces for ship's use. Sometimes the C/P provides that all passenger accommodation shall be at charterers' disposal, but the following clause may be used viz., "The owners shall

(subject to charterers paying them in addition to the hire 70 per cent. of the gross amount of passage money in accordance with rates prevailing in the trades concerned) provide and pay for all provisions, subsistence, and other requisites normally required for passengers and for any additional personnel normally required on board by their carriage".

Sailing Directions and Logs. A common provision is "Charterers to furnish Captain with all instructions and sailing directions and Captain and Engineer to keep full and correct logs accessible to Charterers or their Agents".

Advance. There may be an agreement for charterers or their agents to advance to the master, if required, necessary funds for ordinary disbursements for the ship's account at any port, at an agreed rate of interest, such advances to be deducted from hire.

Bunkers on Delivery and Redelivery. A typical arrangement is for "Charterers at port of delivery and Owners at port of redelivery to take over and pay for all coal or oil fuel remaining in Steamer's bunkers at current price of the respective ports. Steamer to be redelivered with not less than ..... tons and not exceeding ..... tons coal or oil fuel in steamer's bunkers". (Current price means the price generally in force and charged at the particular port without any contract discount).

Overtime. A usual provision is for the steamer to work day and night if required, and for the charterers to refund owners their outlays for all overtime paid to officers and crew according to the law of the steamer's flag.

Dry Docking. In time charters for long periods, the owners undertake to dry dock the vessel at the usual intervals in order to keep her in an efficient condition, hire ceasing during the period in dock.

Boiler Cleaning. The usual arrangement is for cleaning of boilers, if necessary, to be done during service, but if that is impossible the charterers are to give owners necessary time for cleaning. Should the steamer be delayed beyond 48 hours, hire ceases until she is ready again.

Division of Expenses. The usual apportionment of expenses between owners and charterers has been outlined in Chapter 3 under "Employment of ships". Further to what has been said there, it may be noted that one form of C/P makes it incumbent on the charterers to provide amongst other things "dunnage and shifting boards, except whatever are already on board.". Another form simply requires the ship to be "in every way fitted for ordinary cargo service". In a case where the latter form was used, and the question of who should pay the

cost of providing and erecting shifting boards was in dispute, it was held that the charterers were liable. It was pointed out that the charterers knew the nature of the cargo to be carried and that, under another clause, they were to pay "all other charges and expenses whatsoever". It would seem that what applies to shifting boards applies equally to bins and feeders.

Subletting. As in the case of a voyage charter, there is generally a clause giving charterers the option of subletting the vessel, but holding them responsible to the owners for due performance of the original charter.

Prolongation Clause. This gives the charterer the option of continuing the charter for a further period (or periods) beyond that originally agreed, subject to the owners being given due notice in writing.

War. By one form of C/ P the following special provisions apply in case of war, viz., "Steamer not to be sent on any voyage before owners have been able to cover her full value against war-risk. Charterers to refund owners any war premium, and if same is not paid promptly on production of receipt this to be considered as non-payment of hire. No passengers to be carried unless charterers procure guarantees, satisfactory to owners, that the passengers do not expose steamer to the risk of being sunk or captured or to any other war risk. Steamer not to be sent on any voyage exposing her to attacks of submarines or aircraft or to the risk of being sunk by mines or otherwise. Charterers not to load goods which appear on the contraband list of any belligerent powers unless they procure guarantees ..... that such goods will not be considered as contraband".

Supercargo. Sometimes charterers reserve the right to keep on board at any time and for any length of time during the charter term, and at their expense, one of their experienced officers to act as "supercargo". The C/P may require owners to provide him free of charge with officer's accommodation and to victual him at an agreed charge per day. Where a liner company charters a tramp to be employed on one of their regular routes, they may consider it essential to have on board an officer who knows the "run" and who is familiar with prevailing conditions in the various ports of call. He will be expected to do all he can to protect the charterers' interests without presuming to interfere with the management of the vessel. In no way does his presence lessen the master's responsibility for stowage, and it hardly needs to be said that, unless he is capable of displaying the utmost tact, his post will not be an enviable one.

Salvage. Should a time-chartered vessel succeed in earning a salvage award the question arises as to how it should be apportioned. Therefore there is usually a C/ P clause to indicate what the parties have agreed. A typical form is "All salvage and assistance to other vessels to be for

Owner's and Charterers' equal benefit after deducting Master's and Crew's proportion and all legal and other expenses including hire paid under this Charter for the time lost by salvage, also repairs of damage and fuel consumed. Charterers to be bound by all measures taken by the Owners in order to secure payment of salvage and of fixing amount of same".

Arbitration. The "arbitration clause" in a time C/P may provide for the nomination of a single arbitrator in case of disputes arising under the charter, or it may require each party to appoint its own arbitrator and for the two to appoint an umpire in the event of their disagreement. (See Chapter 2 for further information).

Indemnity for non-performance. A clause sometimes called (or, strictly speaking, miscalled) a penalty clause usually provides that the indemnity (or "penalty") for non-perfomance of the charter shall be proved damages.

MATE'S RECEIPTS

A mate's receipt is a receipt, given and signed by the mate for goods actually received on board the ship, which should be drawn up carefully to show the identification marks and numbers from tally books (not copied from boat notes or shipper's notes). The ship's own receipt forms should be used in preference to signing amended boat notes as is sometimes done. Ship's receipt books normally provide triplicate forms. One copy goes to the lighterman or other person delivering the cargo to the ship, another to the ship's agents, and the third is kept in the book for use on board (e.g., for preparing manifests and cargo plans.

Until he issues a B/L the shipowner will usually hold the goods on the terms of his usual B/L, and this may be expressly provided for in the M/R. If ownership of the goods is to be transferred before the B/L is issued, due notice of the transaction should be given by the shipper to the shipowner or his agent as the property does not pass from vendor to purchaser merely by endorsement and delivery of the M/R. The latter is not legally recognised as a document of title, and the shipowner is entitled to issue the B/L to the person who presents the M/R unless he has had prior notice that such person has no right to its possession.

As B's/L are subsequently signed by the master or agent (more often the latter) on production of M/ R's, the mate must be sure that the particulars shown on the receipt truthfully describe the apparent order and condition of the goods. Where justified, the mate should add appropriate qualifying remarks such as "stained cases", "cases secondhand and renailed", "bags torn and resewn", and so on. He should sign only for the actual numbers checked by the tally on the ship's behalf,

adding where necessary "... more in dispute, if on board to be delivered". Where it is not possible to check weights, the receipt should be claused "said to weigh...", or "shipper's weight only", or with some other appropriate remark. Similarly, when it is impossible to verify the contents of cases and other packages, the receipt should describe them as "said to contain...". The mate should also add any other clauses or remarks necessary to protect the ship against claims for loss or damage that may arise from causes beyond the ship's control.

TIME SHEETS

A time sheet is a document drawn up in respect of a voyage-chartered ship to assess the amount of demurrage due to the ship or the amount of despatch money due to the charterer or consignee, as the case may be. Usually separate time sheets are required at the port of loading and port of discharge, respectively, but where lay days for loading and discharging are reversible a single time sheet at the port of discharge only will be needed.

A well drawn up time sheet would show the following particulars: –

1. The date and time of the ship's arrival in port.
2. The date and time of the ship's arrival in her berth.
3. The date and time when the ship is ready to load or discharge.
4. The date and time of tendering notice of readiness.
5. The date and time of notice being accepted.
6. The date and time when work begins.
7. The date and time when lay days begin to count.
8. The number of hours on each day when work is done.
9. The rate of loading or discharging as agreed to in the C/P.
10. A statement of times when work could not be done, or was not done, with the reason therefor.
11. The quantity of cargo loaded or discharged each day.
12. The total quantity loaded or discharged.
13. The date and time when loading or discharging is completed.
14. The date and time when bills of lading are presented and signed at the loading port.

The document should be signed by the master and by the charterer or consignee or their respective agents. If the parties fail to reach agreement, the master should sign "under protest" and note a protest. Alternatively, he may sign "subject to owners' approval", acquaint the owners with all relevant facts, and leave it to them to re-open the matter in respect of matters in dispute.

Several examples of demurrage and despatch calculations are given in Chapter 18.

BILLS OF LADING

Functions of a B/L. In respect of goods shipped in a general ship a bill of lading fulfils three separate functions, as follows: –

l. It is a receipt signed by the master or the agent on behalf of the shipowner, for goods received on board or elsewhere into the shipowner's custody.

2. It is evidence of a contract between a shipper and a carrier for the carriage of goods by sea, In itself it is not a contract in the sense of being a document signed and witnessed by or on behalf of both parties. It is signed only by the shipowner's representative whose signature is not customarily witnessed. The original contract may be made by word of mouth or in some other way, but the fact that a B/ L has been issued provides evidence that a contract does exist. It may evidence the whole contract or only part thereof.

3. It is a document of title to the goods described in it. That is, in the absence of proof of fraud, or in the absence of an intention that the B/L holder should not acquire ownership of goods, the holder of a B/L for the time being is regarded as the rightful owner of the property described in the bill.

When a B/L is issued by a ship trading under charter, it may occur that the terms of the B/L are different from those of the C/P and doubts may arise as to which apply. Briefly, the rules are: –

1. A B/L in the hands of a shipper, who is also the charterer, is a mere receipt and not a contractual document at all. So long as the B/L remains in his hands the goods are carried on C/P terms. This may be qualified if it appears from the wording of the two documents that shipowner and charterer intended the C/P to be varied by the B/L, in which case the B/L terms apply.

2. Between a shipper, who is not the charterer, and the shipowner the goods are carried on B/L terms unless the shipper proves that the B/L inaccurately records their agreement in some particular.

3. In the hands of an indorsee or consignee from a shipper who is also the charterer the B/L is conclusive evidence of the terms of carriage in accordance with Section 1 of the Bills of Lading Act, 1855. (This Section is reproduced later on in this Chapter).

4. In the hands of an indorsee who is also the charterer the goods are carried on B/L terms, provided that the charterer acquired his title to the goods under and on the terms of the B/L.

Parts and Copies. B's/L are usually issued in sets of two or more negotiable "parts", together with one or more non-negotiable "copies", including the "Captain's Copy". The reason for issuing the bill in parts is to make it possible for the different parts to be sent by different routes, so increasing the likelihood of at least one part arriving at the port of destination of the goods before the goods themselves.

Arrangements for taking delivery can then be made in good time and inconvenient delays are avoided. This system has from time to time come under criticism from the legal profession on account of the risk of fraud being practiced. Commercial interests, however, have long seemed satisfied that the advantages of the system far outweigh the disadvantages. The number of negotiable parts issued is made clear by the inclusion of a clause stating "In witness whereof the master or agent of the said ship hath affirmed... Bills of Lading all of the same tenor and date, any one of which being accomplished the others to stand void. Non-negotiable copies are usually distinguished by the words **"COPY – NOT NEGOTIABLE"** being conspicuously overprinted, sometimes in large red lettering. The mere word "copy" would be sufficient though less expedient as it is very important not to mistake a copy for a part.

Dating. As goods are often sold while in transit by indorsement and delivery of the B/L for value, it is important that the B/L should be correctly dated with the actual date of shipment. Post-dating or ante-dating could lead to prosecution for fraud. The date of shipment is often of extreme importance in the contract between shipper and consignee.

Stamp Duty. B's/L issued in the United Kingdom have been, since 1949, exempt from stamp duty. Those issued abroad may or may not require to be stamped according to the revenue laws of the country of issue.

Duty to Supply B/L Forms. Basically it is the shipper's duty to supply B's/L but in practice the carrier, for a small charge, makes them out on his own forms from invoices and instructions received from the shipper. Obviously, in the case of a general ship carrying a mixed cargo it would be most inconvenient if each shipper produced a B/L differing in form and content from all the others.

Clean B/L. A B/L is said to be "clean" when it bears no superimposed clauses expressly declaring a defective condition of the goods or packaging.

Foul B/L. A B/L which is not clean in the above sense is described as "foul", dirty", "unclean", or "claused".

In accordance with a resolution accepted by the International Chamber of Shipping in 1951, a B/L should not be considered foul, and therefore unacceptable, merely because it contains: –

(a) Clauses which do not expressly state that the goods or the packaging are unsatisfactory, *e.g.*, second-hand cases, used drums, etc.

(b) Clauses which emphasise the carrier's non-liability for risks arising through the nature of the goods or packaging.
(c) Clauses which disclaim on the part of the carrier knowledge of contents, weight, measurement, quality, or technical specification of goods.

Received for Shipment B/L. This is a B/ L issued to a shipper when he delivers goods into the custody of the shipowner or the latter's agent (e.g., a wharfinger or dock authority) before the carrying ship has arrived or is ready to receive the goods. It is sometimes called a "custody bill of lading". The rules appended to the Carriage of Goods by Sea Act require that, after receiving the goods into his charge the carrier shall, on demand of the shipper, issue a B/L showing the marks, numbers(or weight) and apparent order and condition of the goods.

Shipped B/L. A B/L issued after the goods have actually been loaded into the ship is described as a "shipped bill". The rules just referred to require that after the goods are loaded, the B/ L, if demanded, is to be a Shipped B/ L. If a Received for Shipment B/L has previously been given, however, it must be surrendered in exchange for, or converted into, a Shipped B/ L by endorsing upon it the name of the ship into which the goods are loaded and the date of shipment.

Direct B/L. This is a B/L covering the carriage of goods in one ship direct from one port to another.

Through B/L. A B/L used for multi-transport which provides evidence of a contract of carriage from one place to another in separate stages of which at least one stage is sea transit and by which the issuing sea carrier accepts responsibility for the sea carriage and acts as agent for the shipper in arranging carriage from the place of acceptance to the final place of delivery. It should be noted that more than one carrier is used, hence the term multi-transport, and that the issuer only accepts responsibility for his own segment of the carriage which would be limited to that contained in the Hague or Hague-Visby Rules. He then casts himself in the role of agent as between the shipper and other carriers if the loss or damage was caused while in their hands. It is usual for the issuer of the B/L to agree that if it cannot be proved where the goods were when the loss or damage occurred, it shall be deemed to have occurred at sea and the carrier shall be liable to the extent prescribed by the Hague or Hague-Visby Rules. Sea carriers frequently undertake the responsibility of arranging through transit. For instance, a shipment consigned from London to Bangkok may be carried from London to Singapore and there transhipped for conveyance by local vessel to Bangkok. Freight for the entire journey would be prepaid to the principal sea carrier in London who, though his agent in Singapore, would arrange the transhipment and pay the freight for carriage from

Singapore to Bangkok. It has been held that where freight for the whole transit has been paid in advance, and loss occurs on one stage of the journey, no freight is recoverable in respect of the unperformed stages.

A Railway Receipt or other similar document issued by a land carrier when goods are first conveyed overland prior to being shipped overseas may be referred to as a "through bill of lading", but in law such a document is not a bill of lading at all.

Combined Transport B/L. A negotiable document which evidences a combined transport contract, the taking in charge of the goods described by the combined transport operator (CTO) at a place of acceptance, and an undertaking by him to deliver the goods at a place of delivery against surrender of the document. A provision in the document that the goods are to be delivered to the order of a named person, or to the bearer, constitutes such an undertaking. In this case the issuer accepts responsibility for the entire movement, and acts as principal with respect to the shipper and other carriers. More than one type of carriage is generally involved. When the stage of transport where loss or damage occurred is known, the CTO's liability to the shipper or consignee is decided by the international convention or domestic law applicable. (i.e. Road, rail, air, sea). Where the stage is not known, the CTO's liability is limited to a stated amount, but he is not liable where loss is due to act or neglect of shipper or consignee, defective packing, inherent vice, labour disputes, inadequacy of marks and numbers, inevitable accident.

Open B/L A B/L giving no indication whatsoever of whom the goods are consigned to would be described as "open". A holder presenting an open bill would be entitled to take delivery of the goods but would have no right to hold them against the rightful owner if there were a defect in the holder's title. The master giving delivery in such circumstances, however, would be protected.

Straight B/L. This is an American term for a B/L issued solely in favour of a named consignee. Unless it has been assigned to him by the indorsement of that consignee, no holder of such a bill other than the named consignee himself would be entitled to take delivery of the goods. Such bills are rarely issued by shipowners except, occasionally, in respect of parcels of very high value.

Bearer B/L. A B/L making goods deliverable "to bearer" does not require endorsement. The property passes by mere delivery.

Order B/L. The vast majority of B's/L are of this type and are negotiable documents. One part of the set must be surrendered, duly indorsed, in exchange for the goods or a delivery order. Indorsement

may be effected in either of two ways, viz., (1) by "blank indorsement" where the person to whose order the goods are made deliverable simply writes his name on the back of the bill, converting it in effect from an "order" bill into a "bearer" bill, so that any further transfer may be effected by mere delivery; (2) by "special indorsement" which is an indorsement to some named person or persons, thus converting it in effect into what has been described above as a "straight" bill.

By way of illustration, if a B/L shows that goods are consigned to "Williams & Co. or order", that will require indorsement if Williams & Co. wish to transfer it to a buyer of the goods. If they simply indorse it "Williams & Co." without mentioning the name of the buyer, that buyer can in turn pass the goods on to someone else by mere delivery of the B/L which has now become a bearer bill. On the other hand, if they indorse it "Deliver to J. Green, Ltd., or order. (Signed) Williams & Co." it would require further indorsement should J. Green, Ltd., wish to pass the goods on to someone else. It may be noted that, according to the manner of indorsement, an order bill can be converted into a bearer bill at one stage and be reconverted back by a transferee into an order bill.

If an order bill is drawn up to the order of the shippers, they must indorse the full set either in blank or to a named consignee or order. Without indorsement only the shippers themselves could take delivery of the goods.

Outward B/L. As far as this country is concerned an "outward" B/L is one issued in respect of goods being exported from this country to a destination abroad. The Carriage of Goods by Sea Act 1971 does not require a B/L issued in Great Britain or Northern Ireland to have an express statement that it should have effect subject to the provisions of the Act, but it does provide that the Hague-Visby Rules shall have the force of the law in connection with the carriage of goods by sea in ships under certain circumstances. It is usual therefore to include a Clause Paramount to make it quite clear to shippers, etc., the circumstances when the Hague-Visby Rules (or Hague Rules where appropriate) are to apply to the contract evidenced by the B/ L. An example of such a clause included in the GCBS Common Short Form Bill of Lading reads: –

> "The contract evidenced by this Short Form Bill of Lading is subject to the exceptions, limitations, conditions and liberties (including those relating to pre-carriage and on-carriage) set out in the Carrier's Standard Conditions applicable to the voyage covered by this Short Form Bill of Lading and operative on its date of issue.
>
> If the carriage is one where the provisions of the Hague Rules contained in the International Convention for unification of certain rules relating to Bills of Lading dated Brussels on 25th August, 1924, as amended by the Protocol signed at Brussels on 23rd February, 1968 (the Hague-Visby Rules) are compulsorily applicable under Article X, the said Standard Conditions contain or shall be deemed to contain a Clause giving effect to the Hague-Visby Rules.

Otherwise, except as provided below, the said Standard Conditions contain or shall be deemed to contain a Clause giving effect to the provisions of the Hague Rules.

The Carrier hereby agrees that to the extent of any inconsistency the said Clause shall prevail over the exceptions, limitations, conditions and liberties set out in the Standard Conditions in respect of any period to which the Hague Rules or the Hague-Visby Rules by their terms apply. Unless the Standard Conditions expressly provide otherwise, neither the Hague Rules nor the Hague-Visby Rules shall apply to this contract where the goods carried hereunder consist of live animals or cargo which by this contract is stated as being carried on deck and is so carried.

Notwithstanding anything contained in the said Standard Conditions, the term Carrier in this Short Form Bill of Lading shall mean the Carrier named on the front thereof.

A copy of the Carrier's said Standard Conditions applicable hereto may be inspected or will be supplied on request at the office of the Carrier or the Carrier's Principal Agents".

It appears that the "Himalaya Clause", extending to servants and agents of the carrier the same defences and limits of liability to which the carrier himself is entitled, continues to be inserted in B's/L. This may be because although the Hague-Visby Rules provide this extension to the carrier's servants or agents, they do not extend protection to his independent contractors (which the clause attempts to do) and also inclusion of such a clause would cover the situation where the Hague Rules still apply, but not the Hague-Visby Rules.

Homeward B/L. A "homeward" bill is one issued abroad to cover a shipment of goods being imported into the United Kingdom. Such a B/L may contain a Clause Paramount similar to the one shown above, although the Hague Rules seem to be accepted as being international in their application.

Common Short Form Bill of Lading. This is a Common document because it has a standard layout and bears no shipping company "logo" but upon which the shipper or agent adds the name of the actual carrier to be used for the shipment. The term Short Form means that the conditions of carriage which in a full B/ L appear in small print on the back are referred to by an Incorporation Clause on the front which states that the contract is subject to the Carrier's Standard Conditions applicable to the voyage which may be inspected or will be supplied on request to the Carrier's or their agents' offices. An example of the form of wording used is shown above under Outward B/ L.

Liner B/L. This is a B/L issued by the owner or charterer of a general ship and, so far as the shipper and consignee are concerned, is in no way related to any charter-party. The detailed contents of such bills vary widely according to the nature of the trade in which the company's ships are engaged, but the following may be considered more or less common features: –

1. The name of the ship and the names of the ports of loading and destination of the goods.
2. A description of the goods with their weight and/or measurement, and the marks and numbers of the packages. 3. The name of the consignee or, more frequently, "consigned to order", or "consigned to ..... or order".
4. The freight payable, based on weight or measurement as the case may be, except in special cases, and the discount allowed (if any). (If the shipper has given an undertaking to confine all his shipments to vessels of the Liner Conference, of which the shipping company is a member, the contract rate of freight will be subject to a discount which may amount to some 9% or 10%).
5. The remark "freight paid" will be added at the time when the freight has in fact been paid.
6. An instruction to the shipowner's agents at the port of destination of the goods to notify the fact of the ship's arrival to the consignee but without any liability.
7. A "deviation clause" reserving liberty to deviate for various purposes. This clause is often very elaborate and, in almost all cases, will include liberty to tow and be towed, assist vessels in all situations, save life and property, bunker, adjust compasses, drydock with or without cargo on board, and comply with orders given by Government and other authorities. Liberty is also reserved to sail with or without pilots, to call at any port or ports in any order (even in the contrary order to the advertised route) for the purpose of taking in or setting down cargo, mails or passengers, and there is usually added "to deviate for any purpose whatsoever whether connected with the contract voyage or otherwise". (Such wide clauses are not of much value unless it can be shown that the deviation was reasonable. To deviate purely for the carrier's convenience is not reasonable.
8. The general "exceptions clause" wherein the carrier disclaims liability for loss or damage arising from Act of God, Enemies, Restraint, Barratry, Capture, Riots, Strikes, etc. (Similar to the list of exceptions in a voyage C/P).
9. A clause whereby the carrier disclaims liability for loss or damage arising from rust, sweat, chemical or climatic action, rain, spray, etc., and insufficient marking, inadeqate packing, and so forth. (This is of no avail unless the ship is proved to have exercised all reasonable care to prevent loss or damage.

With regard to goods inadequately packed, see separate paragraph on "marginal clauses").

10. A "negligence clause" ruling out liability for loss or damage arising from the negligence of the carrier's servants (master, officers, pilots and crew).
11. A "general average" clause to the effect that, either with or without reservations, G/A is to be settled according to Y-A Rules, 1974.
12. A clause whereby the carrier disclaims responsibility for overcarriage or short landing. (The carrier is, of course, fully responsible for eventual delivery, and short landed or overcarried goods must be forwarded to their proper destination at the carrier's expense. Liner Conference members usually have an arrangement for carrying each other's overcarried and short landed goods freight free).
13. Special clauses as required by the particular nature of the goods, e.g., for refrigerated cargo "Carrier not responsible for breakdown of refrigerating machinery". (Here, also, to be protected by the clause the carrier would have to show that first-class machinery and spares were installed, and that properly qualified maintenance personel were engaged).
14. The "Paramount clause" if required by statute or if agreed to by the parties when not required by law. This clause renders the exceptions and negligence clauses redundant, and they may therefore be omitted.
15. Both to blame collision clause and New Jason clause (described elsewhere in this Chapter).

Note: – By the Unfair Contract Terms Act 1977, if a contract for carriage of goods by sea is made with a person who "deals as consumer", the carrier will not be permitted to rely on a clause excluding or restricting his liability for breaking the contract, or entitling him to render any perfomance other than that which was reasonably expected of him, unless the court considers it to be reasonable to do so. A person "deals as consumer" when he does not make the contract in the course of a business and the other party does, and such a person might be involved in this way when he sends personal property, such as furniture or personal belongings, as cargo to a place abroad. By the same Act (s.2)(l) a carrier cannot by a contract term exclude or restrict liability for death or personal injury resulting from negligence, but this is unlikely to apply to the carriage of goods by sea.

Marginal Clauses in B's/L. The master or agent who signs a B/L has the right and the duty to insert any marginal clause. he considers necessary to protect the interests of the carrier, so long as such clause is not repugnant to or inconsistent with the Hague Visby or Hague Rules where those rules apply. The right, however, is one that should not be

abused. It should be remembered that most exports are financed by credits in some form or another, the "documentary credit" system being a method commonly employed. Usually the negotiating bank will not permit the exporter to draw on a letter of credit unless he supplies, amongst other documents, a "clean" set of B's/L, or unless he undertakes to indemnify the bank against any liability it may incur through accepting a "claused" bill. For that reason, if for no other, marginal clauses should not be inserted unless they are really necessary. If, for instance, goods are described in the body of the B/ L as "unprotected", there is no need to add a marginal clause stating that the goods are not adequately packed, or unpacked. That does no-one any good and may cause the shipper unnecessary difficulties.

The exception "inadequate packing" protects the carrier when it is not obvious on a reasonable inspection that the goods are not suitably packed to withstand the ordinary hazards of the voyage. On the other hand, if it is quite evident to those receiving the goods for shipment that they are improperly packed, or are not packed at all, then they should either be rejected in that condition, or given the extra care in the matter of handling and stowage that their special condition warrants.

Clauses framed to describe the pre-shipment condition of goods must be valid in law. For example, such a clause as "Ship not responsible for bursting of bags or for loss of contents" is not valid in a B/ L subject to the Hague Rules, as it disclaims a responsibility imposed by those Rules and, accordingly, affords the carrier no protection whatever. A clause recommended for use when it is considered that packing is inadeqate reads: –

> "Attention is drawn to the packing of these goods, which in the opinion of the Carrier is insufficient. All the Carrier's rights and immunities in the event of loss of damage to the goods arising by reason of the nature or quality of that packing and/ or its insufficiency are hereby expressly reserved".

In the case of goods completely unpacked (e.g., uncrated motor cars) which have not been described in the body of the B/L as "unprotected" or "unpacked", the clause recommended for insertion in the margin reads: –

> "The goods hereby acknowledged are unprotected, and all the Carrier's rights and immunities in the event of loss of or damage to the goods by reason of that fact are hereby expressly reserved".

Cargo may sustain damage of various kinds prior to shipment, and it is not possible to draft a general clause to cover all cases. Therefore, whenever goods are offered for shipment in a damaged or defective state, the B/L should be claused with a factual statement particularising, in clear and unambiguous terms, the nature of the damage or defect, e.g., "patches of rust showing where paint chipped off".

Waybill or Sea Waybill. This is a non-negotiable document which provides a receipt for the goods by the carrier and evidence of the contract of carriage for the goods described on it. It is not a document of title to the

goods. It is a "received for carriage" document which can be converted into a "shipped" or "loaded on board" document by appropriate notation, signed and dated, by the carrier. The waybill is not intended to replace the B/ L where it is necessary for an exporter to retain a clear title to the goods until security of payment has been assured. It is very suitable for use where there is a possibility of documents arriving at destination after the goods and therefore can be used in trade between multi-national and associated companies,(e.g. Fords), open account sales and transactions in which goods can be consigned to a trusted third party in the country of destination, such as a local agent or, by prior arrangement, an overseas bank. It may also be used when there are no payment requirements for goods such as household/personal effects, samples, documents, etc.

A waybill, when used, is usually in Short Form with a short Incorporation Clause on the front referring to the carrier's detailed conditions of carriage, which are available separately from the carrier's, or his agents', offices. Because the waybill is not a document of title, the consignee does not usually need it to take possession of his goods. Release of cargo is given to the consignee or his agent on the basis of conditions laid down by the carrier at destination, which include proof of identity and authority. This should normally mean that there is no need to wait for documents such as the B/L to arrive before delivery can be taken and should therefore reduce, in appropriate cases, the possibility of liability for demurrage charges at the terminal.

Waybills can be used with documentary credits if the documentary credit specifically authorises their acceptance. They can also be used when documents, or bills of exchange, are transmitted through a bank for collection, but if the U.K. bank is required to advance finance on the strength of the documents, it will normally be necessary to supply a shipped B/ L.

B/L issued pursuant to a voyage C/P. As stated previously the C/ P itself frequently contains a specimen of the form of B/ L to be used but, in any case, where goods are being carried under two contracts of affreightment it is important that those contracts should be consistent with one another. Where charterer and shipper are one and the same person, the B/ L issued is a mere receipt for the cargo received on board, the contract of carriage being embodied in the C/P. But should the charterer assign his interest in the goods to some third party by indorsement and delivery of the B's/L, he assigns not only the goods but the whole contract of carriage as well. At that stage the B/ L acquires the full status of a receipt, plus evidence of contract, plus document of title. Therefore, if the B/L does not already make clear that the terms, etc., of the C/P apply, an incorporating clause should be added to the effect that "Freight and all other terms, conditions, exceptions and exemptions, including the negligence clause, as per charter-party".

Vsually a B/ L issued pursuant to a C P is a much shorter and more

simple document than a liner B/L because the detailed provisions of the contract contained in the C/P are incorporated into the B/L by reference.

A problem which may arise in respect of a B/L issued by a chartered ship is whether the shipper (when he is not the charterer) has contracted with the shipowner or with the charterer, that is to say, whether the master has signed the B/L as agent of the owner or as agent of the charterer. As it is a general rule that the master has a legal authority to sign B's/L on behalf of the shipowner who employs him, anybody who ships goods in the vessel, and who is unaware that the ship is chartered, is warranted in assuming that the master is acting under his ordinary authority and is signing the bill on behalf of the owners of the ship. Even where there is an agreement that the master should sign B's/L on behalf of the charterer, that does not appear to affect the liability of the shipowner unless the fact that the master is acting as agent of the charterer is brought to, the knowledge of the shipper. It has been held in one particular case that "In the case of a voyage charter with a cesser clause the B/L contract is generally between the shipowner and the shipper, and this is so even though the C/P provides that the master shall sign B's/L as the agent of the charterer, if the shipper is ignorant of this provision".

B/L issued by a time-chartered ship. The position may be summed up briefly as follows: –

1. In the case of a demise charter the B/L contract is always between the charterer and the shipper.
2. In the case of a simple time charter where the master is to sign B's/L without prejudice to the C/P, the B/L contract is usually between shipowner and shipper, but, as against the charterer, the shipowner remains bound by the unaltered terms of the C/P. But where the charterer presents bills to the master for signature, and they impose on the shipowner an obligation greater than that imposed by the C/P, the charterer must indemnify the shipowner for all losses he suffers by reason of such increased obligation. Where, as sometimes happens, the charterer makes a freight agreement with the shipper and issues and signs B's/L headed with his name, the contract will be between charterer and shipper.

Signing of Bills of Lading. Except in connection with bulk oil and similar cargoes and, very often, other homogeneous cargoes carried in tramp vessels, it is not usual nowadays for B's/L to be signed by the master of the ship. Liner owners at their principal offices, and their agents at outports and abroad, maintain special departments where B's/L are signed by persons authorised for the purpose. Whoever signs, however, it is important that all precautions should be taken to ensure: –

1. That the B/L is in proper form, i.e., usually the shipowner's own form, or the form prescribed by the C/P.
2. That it is correctly dated with the date of shipment.
3. That mate's receipts showing (a) that the goods are actually on board, and (b) the apparent order and condition of the goods and details of any shortage, have been surrendered.
4. That marginal clauses as required, but only those really necessary and lawful, have been duly inserted to show the apparent order and condition, and quantity.
5. That freight, if pre-payable, has been paid.
6. That, if the ship is under charter, that the owners' rights under the C/P are preserved. (See below).

When the master signs B's/L for goods received on board a voyage-chartered ship he should endorse on them the number of the lay day on which the goods were loaded or, if the ship is already on demurrage, the number of the demurrage day together with a statement as to whether the demurrage has been paid or not and, if not, the amount outstanding. this will then transfer the liability to subsequent B/L holders and enable the master to enforce the lien for demurrage (assuming such lien has been contracted for) at the port of discharge. In the same way, and for the same reason, any other charges against the cargo such as unpaid freight, advance freight or deadfreight should be likewise endorsed on the B's/L.

Finally, the person signing B's/L should note carefully how many parts there are to the set and sign them all.

Signing for Bulk Cargoes. A master cannot be made to sign a B/ L stating that goods have been received on board which he knows have not been loaded. When loading bulk cargoes it is often difficult to know with certainty exactly what quantity has been loaded, and therefore to avoid the possibility of claims for short delivery the ship should endeavour to check shore figures by whatever means are available, say by draught check or volume calculations, before signing for the quantity shown on a B/L presented for signature. Whether there is a discrepancy or not will probably depend on the nature of the cargo, the port and its facilities, the size of the ship, and perhaps other factors, such as the accuracy of calibration of the ship's tanks and the difficulties involved in taking draught readings at some berths. Experience suggests that if the B/L figure *differs* from the ship's figure by more than one half of one per cent (0.5%), then the master has good grounds for questioning the accuracy of the B/L figures.

If the difference between the ship's and B/L figures exceeds 0.5% every effort should be made to discover the reason for the difference. If this is not possible then the master should take one of the following courses of action to protect the ship's owners: –

(a) delete the B/L figure, insert the ship's figure and initial the alteration; or

(b) endorse the B/L with the remark "x tonnes in dispute", or

(c) refuse to sign it, but then pass it to the agents with clear instructions in writing about signing on his behalf, or

(d) tear up the B/L presented and issue his own B/L using the company's or a well recognised form.

Note: – If action (c) is adopted the agents should be informed.: –

(i) of the quantity and description of cargo they are authorised to sign for;

(ii) that they are not authorised to sign any B/L unless the terms, conditions and exceptions of the current C/ P dated.....and/or the Hague or Hague-Visby

Rules or equivalent legislation are specifically incorporated in the B/L;

(iii) that the destination shown in the B/L should be consistent with the C/P provisions which should then be stated;

(iv) that all the B's/L must be correctly dated; and

(v) that on no account should B's/L marked "freight prepaid" be issued without the authority of the ship's owner's, to whom reference should be made on any other matter concerning signing and issuing of B's/L.

If the B/L figure is within ® 0 5% of the ship's figure it is probably in order to sign it, but if the B/L figure exceeds the ship figure by more than one tenth of one per cent (0.1%), the master should note the difference in letters addressed to charterers and shippers, notifying the ship's owner what has been done.

Unless the C/P provides otherwise, a shipper cannot demand the master's signature to more than one set of bills for a bulk cargo shipped without separations. The practice of giving B's/L for separate parcels loaded in different holds may be to the owners' detriment unless the B/L is claused to the effect that excess of out-turn in one hold shall be set off against shortage in another, in which case each bill should be claused "weight and quantity unknown".

B's/L must be signed within a reasonable time of being presented. It is not reasonable to delay signing for a particular parcel until bills for the whole cargo are tendered.

Master's Authority to sign B's/L. If the ship is not under charter, the owner is bound by any term in a B/L signed by the master which is (a) within the master's ordinary authority, (b) outside his ordinary authority but within special authority given him, (c) within his ordinary authority but contrary to special instructions, if the shipper did not know of such instructions, and (d) outside ordinary or special authority known of by the shipper if the shipowner, by word or deed, subsequently ratifies the B/L.

If the ship is chartered, the master has no authority to sign a B/ L in

terms different from the C/P without special instructions from the owner, or unless the C/P provides that he may.

Letters of Indemnity. In the interests of honest trade it is essential that a B/L should never contain a false description of the condition or quantity of the goods. A person who buys goods he has never seen on the strength of their B/L description is entitled to a square deal, and if he fails to get one, has a remedy in prosecution for fraud. Cases do arise where a shipper, to avoid difficulties over the financing of a shipment (and sometimes for even less worthy reasons), offers the master or agent of the shipowner a "letter of indemnity" or "back letter" in return for clean bills of lading in circumstances where a qualified bill would appear to be justified. In such letter the shipper gives an undertaking to indemnify the shipowner in respect of any loss or liability the latter may be faced with as a result of issuing clean bills. No master should ever lend himself to this practice, which could possibly result in his being found guilty of conniving at fraud. In any case a letter of indemnity has no legal standing whatever. It is binding in honour only, and cannot be sued upon should the shipper who issues it go back on his word. In certain trades, however, it appears that some shipowners and their agents are prepared to issue clean B's/L in exchange for letters of indemnity but, it should be said in all fairness, only in special circumstances in accordance with a resolution adopted by the International Chamber of Commerce. This resolution includes the following principle, viz., that in cases which involve bona fide and substantial grounds for dispute as to condition, number or amount of the goods, the Chamber is of opinion that a solution involving the elimination of letters of indemnity should be sought on the line of an understanding between buyer and seller, but that in the meantime the safeguards at present existing provide valuable assistance in eliminating certain malpractices and represent a very earnest effort, especially on the part of the carriers, although there is a difference of opinion as to their efficacy. The safeguards referred to are (1) that the acceptance of letters of indemnity should be communicated to the shipowners or their agents at the port of discharge, and (2) that the shipowners should, on application by the underwriters concerned, disclose to them the existence of such letters of indemnity should a claim arise. It will be evident that the issue of clean B's/L in respect of a shipment which is in some way defective is very much against the interests of cargo underwriters.

The Harter Act and New Jason Clause. In English law, as under the laws of most other maritime countries, a shipowner cannot escape liability for loss caused through his own personal negligence or default. Neither can he for loss caused through the fault or negligence of his servants, unless he is freed from such liability by the terms of the contract of carriage. but where he is freed by the terms of the contract,

he can claim a general average contribution from cargo owners where a G/A sacrifice or expenditure has followed an accident of navigation.

In the United States of America the position is not the same. By their Harter Act (see Appendix) it is made illegal to insert any clause in a B/L exonerating the ship from liability for loss through negligence, but the same Act goes on to say that if the vessel is properly manned and equipped, etc., the owner shall not be responsible for losses arising from faults or errors in the navigation or management of the vessel, Act of God, public enemies, inherent fault or defect of cargo, or loss through attempting to save life or property at sea.

In spite of this, however, it is a ruling of American common law that even though the ship is freed from liability in that way, it still does not entitle the shipowner to claim G/A contribution from cargo in a case where there has been a fault or error in navigation or management of the vessel. For that reason it became a custom to insert a clause in B's/L covering goods carried to or from the U.S.A. entitling the shipowner to claim a G/A contribution from cargo by the terms of the contract of carriage.

In 1904 the validity of this clause came under test in the case of a ship named Jason and after a very lengthy period of litigation the U.S. Supreme Court finally, in 1911, upheld it validity. Following that case, the clause became known as the "Jason Clause". More recently, the clause has been redrafted and extended to include salvage charges, and is now known as the "New Jason Clause", and it is recommended that it should be inserted in all B's/L and all C/P's whether the ship is going to or from the United States or not. The present clause reads: –

> "In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the carrier is not responsible, by statute, contract or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred in respect of the goods.
>
> "If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and.any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery".

Although to some extent superseded by the U.S. Carriage of Goods by Sea Act, 1936, the Harter Act is still on the U.S.A. Statute Book, and because it has proved beneficial to shipowners generally, -it is recommended that all contracts of carriage to or from the U.S.A. should be claused (in addition to the N.J.C.) in the following way: –

> "It is mutually agreed that this contract is subject to all terms

and provisions of, and all exemptions from liability contained in, the Act of Congress approved on the 13th day of February, 1893".

The "ejusdem generis" Rule. This rule (explained in the section on C/P exceptions clauses) does not extend to bills of lading on account of the negotiability of those documents. B/L exceptions, in order to be effective, must be particularised.

The Bills of Lading Act, 1855. This Act provides: –

1. Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.
2. Nothing herein contained shall prejudice or affect any right of stoppage in transitu or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement.
3. Every bill of lading in the hands of a consignee or indorsee for valuable consideration representing goods to have been shipped on board a vessel shall be conclusive evidence of such shipment against the master or other person signing the same, notwithstanding that the goods may not have been shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not been in fact laden on board.

It has long been a custom to treat a B/L as a negotiable instrument by which title to the goods described in it may be transferred and upon which money may be advanced. It will be seen that Section I of the above Act gives statutory effect to this custom, and provides that the person who assigns the B/L to another does not merely transfer the property in the goods represented in the bill, but assigns to him the whole contract of carriage. Section 2, however, protects the carrier of the goods by its provision that liability to pay the freight remains with the original shipper until such time as the consignee or indorsee has performed his part. Although it is usual to speak of a B/L as a negotiable instrument, it would be truer to refer to it as a transferable instrument, as it is not fully negotiable in the same sense that a bill of exchange is. The essential features of negotiability are that the holder of the instrument for the time being (i) possesses a right of action in his own name, and (ii) is unaffected by equities, and can obtain a good title (though there are some exceptions) despite any defect in the title of the person from whom he received the instrument. The holder of a B/L

acquires no better title than that of the person from whom he took it. Even if he is a bona fide holder for valuable consideration, he will still be affected by any previous defect in title.

A merchant who buys goods by having a B/L transferred to him will naturally want the best guarantee that can be given that the goods have in fact been shipped. For that reason, Section 3 of the Act, with the exception stated therein, makes the B/L conclusive evidence of shipment against the master or other person signing it. Since masters of ships are not usually men of very substantial means, the right of action against the master may not be of very much value. As far as the shipowner is concerned, the B/L constitutes only prima facie evidence, but even in his case such evidence can be displaced only by clear unambiguous notice in the B/L that the goods were defective or short in quantity at the time of shipment.

Stoppage in Transitu. Section 2 of the Bills of Lading Act, besides confirming the shipowner's lien on the goods for freight, allows the seller of the goods to retain the right conferred on him by the Sale of Goods Act, 1979, to stop the goods while they are in transit on their way to the buyer, if it comes to his knowledge that the latter has become insolvent. The right of "stoppage in transitu" may be exercised by taking possession either of the goods themselves or of the documents of title thereto. It may be also exercised by giving notice to the carrier who, within a reasonable time, must pass the notice on to his servant. The notice will be of no effect if it is addressed to the consignee only, and not to the owner or master of the ship carrying the goods. If part delivery has already been made, the right may still be exercised on the remainder of the goods unless the circumstances show an agreement to waive the right. A carrier who receives notice of stoppage must re-deliver the goods in accordance with the seller's directions, and the seller is under an obligation to pay freight and incidental expenses of the stoppage.

The right of stoppage, which in any case is inferior to the shipowner's lien for freight and other charges (if any), will be defeated once the goods come into the actual or constructive possession of the buyer or his agent. In other words, the right exists only while the goods are "in transit", i.e., in the hands of a middleman. For this purpose goods are deemed to be in transit "from the time they are delivered to a carrier by land or water, or other bailee or custodier for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee or custodier". The precise point at which transit ceases has to be determined by the facts of the case, and much will depend on the nature of the contract of sale. If, when goods have reached their appointed destination, the carrier acknowledges to the buyer or his agent that he holds the goods as bailee for the buyer or his agent, the transit is at an end. If the carrier remains in position after the, buyer has rejected the goods, even if the

seller has refused to take them back, transit is not at an end. If goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances whether they are in the possession of the master as a carrier, or as the buyer's agent. Delivery to the buyer's own ship is a delivery to the buyer. If the carrier wrongfully refuses to deliver the goods to the buyer, transit is at an end. So it is when (a) the buyer or his agent obtains possession before the goods have arrived at their appointed destination, or (b) when the goods reach the hands of an agent who is to keep them pending further instructions from the buyer. Where a document of title (e.g., a B/L) has been transferred to any person as buyer or owner of the goods, and that person by way of sale transfers the document to a person who takes it in good faith and for valuable consideration, the unpaid seller's right of "stoppage in transitu" is defeated.

Purpose of the Hague Rules. Until well into the eighteenth century Parliament did not introduce any legislation governing the sea carriage of goods, and even then the few Acts which made their appearance were in favour of shipowners, exempting them from or limiting their liability in various circumstances. With the rapid growth of international sea transport it became the fashion to insert all manner of far-reaching exceptions in C/P's and B's/L. With regard to C/P's that was not considered to be a particularly serious matter since shipowners and charterers are able to contract with one another on more or less equal terms. But in the case of B's/L there were ever increasing complaints that carriers were by contract evading their obligations to a most unfair extent. It has already been pointed out that B's/L affect not only the original parties thereto, namely shipper and shipowner, but also consignees and indorsees and, to some extent, insurance interests as well as bankers who accept the documents as security for money advanced to their customers. Shipowners, for their part, defended their many devices to protect themselves on the grounds that, once a ship has left her home port to start a voyage, ship and cargo are beyond the personal control of the shipowner who has to place complete reliance on what is done by the master and crew, agents, stevedores, port authorities, and others. Shippers and consignees, on their side, complained amongst other things that an unfair burden of proof was thrust on them whenever they had cause to try and establish the carrier's liability for loss of or damage to goods during transit. Some means, therefore, had to be found to regulate the situation and provide for the balance being held fairly between the two sides. As sea carriage is largely international, it was obvious that little good would result from isolated action by one country alone. The eventual outcome was that a meeting of the International Law Association was held at The Hague in 1921, at which representative bodies of interested parties attended with the object of agreeing what the rules relating to bills of lading should be. A set of rules, thereafter known as the Hague Rules,

was agreed, and it was hoped that such rules would be adopted by the various maritime nations and given the force of law through the media of suitable statutes. With the passage of time some 68 countries have passed legislation giving statutory effect to the Hague Rules either with or without modifications. In Great Britain and Northern Ireland such effect was given by the passing and bringing into force of the Carriage of Goods by Sea Act, 1924.

The Carriage of Goods by Sea Act 1971. Application. With the introduction of new modes of carriage, particularly the advent of the container and change in the value of money, the Hague Rules needed amending, and in 1968, after meetings by interested parties, the Hague Rules 1924 were amended by Protocol signed at Brussels on 23 February 1968, the amended version being called the Hague-Visby Rules. The Carriage of Goods by Sea Act 1971 was passed to give effect to these rules in the U.K. but the Protocol did not come into force internationally until 23rd June 1977. On that day the Carriage of Goods by Sea Act 1971 repealed the 1924 Act and became the relevant statute for the U.K. In 1979 a further Protocol concerning limitation amounts was agreed to and brought into force on 4th February 1984 by section 2 of the MS Act 1981. It should be noted that for the time being the provisions of the Hague Rules will continue to apply in states which have not enacted the Hague-Visby Rules. The 1971 Act and Schedule are reproduced as Appendix 1.

The Act applies to:

(a) any contract for the carriage of goods by sea in ships where the port of shipment is a port in the U.K., and the contract provides for the issue of a bill of lading or similar document of title;
(b) any bill of lading if the contract in or evidenced by it expressly provides that the amended Hague Rules shall govern the contract;
(c) any non-negotiable receipt, marked as such if it expressly provides that the Rules are to govern the contract as if the receipt were a bill of lading. (But Art. III, para 4, second . sentence, and para. 7 are not to apply).

Where a bill of lading expressly provides that the Hague-Visby Rules shall govern the contract for carriage of live animals or deck cargo, or a non-negotiable receipt provides that the Rules are to govern the contract as if it were a bill of lading, the Act applies even though the cargo consists of live animals or deck cargo. "Deck cargo" means cargo which by the contract of carriage is stated as being carried on deck and is so carried.

Where the Act applies, the absolute warranty of seaworthiness implied in contracts for the carriage of goods by sea is abolished.

Instead the carrier must exercise due diligence to make the ship seaworthy.

Nothing in the Act is to affect the operation of any sections of the M.S.A. 1979 or later enactments which give the carrier the right to limit his liability in appropriate circumstances.

Schedule:-Rules relating to Bills of Lading.

Art. 1 – Definitions.

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

(b) "Contract of carriage" applies to contracts covered by a bill of lading or similar document of title, but only for that part of the contract which relates to the carriage of goods by sea. It includes any bill of lading or similar document issued under the terms of a charter-party, but only from the moment at which such bill of lading regulates the relations between a carrier and a holder of the same.

(c) The term "goods" includes goods and articles of every kind, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried;

(d) A "ship" means any vessel used for the carriage of goods by sea.

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

Art. II.– Risks.

Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

Art. III – Responsibilites and Liabilities.

1. The carrier is 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; and (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. Note: – The words "before and at the beginning of the voyage" mean the period from at least the beginning of the loading until the vessel starts on her voyage.

2. Subject to the provisions of Article IV, the carrier is to properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

3. After receiving the goods into his charge, the carrier, master or

carrier's agent, is, on the shipper's demand, required to issue to the shipper a bill of lading showing among other things (a) the leading marks necessary for identification of the goods, (b) either the number of packages or pieces, or the quantity or weight, as the case may be, as furnished in writing by the shipper, and (c) the apparent order and condition of the goods. The master or agent can refuse to show marks in the bill of lading if the marks on the goods or containers will not ordinarily remain legible until the end of the voyage, and he need not show information which he has reasonable grounds for suspecting is inaccurate for the goods actually received, or which he has had no reasonable means of checking.

4. Such a bill of lading is *prima facie* evidence of the receipt by the carrier of the goods described therein.

5. The shipper is deemed to have guaranteed to the carrier the accuracy at the time of shipment of marks, number, quantity and weight, furnished by him, and the shipper is required to indemnify the carrier against all loss or damage and expenses which arise as a result of inaccuracies in such information. *Note:* – The carrier still remains liable to any person other than the shipper, but if as a result of inaccurate information received from the shipper and incorporated in a bill of lading the carrier settles a claim, he then has right of action against the shipper.

6. Unless notice of loss or damage is given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery of them, or, if the loss or damage is not apparent, within three days, such removal is prima facie evidence of the delivery by the carrier of the goods described in the bill of lading. The notice in writing need not be given if the state of the goods has been the subject of a joint survey at the time of the receipt. In any event the carrier and the ship is discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods, or the date when the goods should have been delivered. In the case of any actual loss or damage the carrier and the receiver shall give all reasonable facilites to each other for inspecting and tallying the goods.

6bis. Action for indemnity against a third person may be brought even after one year if brought within the time allowed by the law of the Court seized of the case.

7. After the goods are loaded the carrier, master or carrier's agent must, if the shipper so demands, issue a "shipped" bill of lading. Alternatively at the carrier's option, if the shipper has already taken a "received for shipment" bill, it may be converted into a "shipped" bill by the carrier, master or carrier's agent noting on it at the port of shipment the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment.

8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the-ship from liability for loss or damage to or in

connection with goods arising from negligence, fault or failure in the duties and obligation provided in this Article or lessening such liability otherwise than as provided in these Rules, is null and void and of no effect.

Art. IV. Rights and Immunities.

1. Neither the carrier nor the ship is liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy as required by Article III. Whenever loss or damage has resulted from unseaworthiness, the carrier has the burden of proving that he exercised due diligence to make the ship seaworthy.

2. Neither the carrier nor the ship is responsible for loss or damage arising or resulting from: –

(a) act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship;
(b) fire, unless caused by the actual fault or privity of the carrier;
(c) perils, dangers and accidents of the sea or other navigable waters;
(d) act of God;
(e) act of war;
(f) act of public enemies;
(g) arrest or restraint of princes, rulers or people, or seizure under legal process;
(h) quarantine restrictions;
(i) act or omission of the shipper or owner of the goods, his agent or representative;
(j) strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general;
(k) riots and civil commotions;
(1) saving or attempting to save life or property at sea;
(m) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods;
(n) insufficiency of packing;
(o) insufficiency or inadequacy of marks;
(p) latent defects not discoverable by due diligence;
(q) any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof is on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

Note: – The shipowner cannot rely on the "excepted perils" listed above, if he has not carried out his obligation to exercise due diligence to make the ship seaworthy and the fact that he has not is the cause of

the damage, nor can he do so if the vessel makes a deviation not permitted by the Act.

3. The shipper is not responsible for loss or damage sustained by the carrier or the ship unless due to the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation is not an infringement or breach of these Rules or of the contract of carriage, and the carrier is not liable for any loss or damage resulting therefrom. *Note:* – Whether a particular deviation is reasonable or not is a question of fact in each case.

5. The maximum liability of the carrier or the ship for any loss or damage to or in connection with the goods is an amount equivalent to 666.67 units of account per package or unit or 2 units of account per kilogramme of gross weight of goods lost or damaged whichever is higher, unless the nature and value of the goods have been declared by the shipper before shipment and inserted in the bill of lading. The total amount recoverable is based on the value of the goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged. The value of goods is to be fixed according to the commodity exchange price, or, if there is no such price, according to current market price, or, if neither of the above apply, by reference to the normal value of goods of the same kind and quality. The unit of account mentioned in this Article is the special drawing right as defined by the International Monetary Fund (IMF). The value on a particular day of one special drawing right is to be treated as equal to such sum in sterling as the IMF have fixed as being the equivalent of one special drawing right for that day, or if no sum has been fixed for that day, for the last day before that day for which a sum has been fixed. (The value of one SDR is published daily in the Financial Times and in December 1988 was approximately UK Pnd 0.74).

Where goods are stowed in a container or on a pallet or similar article of transport, the number of packages or units enumerated in the B/L as packed in such article of transport shall determine the liability of the carrier; otherwise the container or pallet is to be considered the package or unit. By agreement the carrier and shipper may fix another maximum amount provided such maximum is not less than the amounts above named.

The carrier is not entitled to limit liability as above if it is proved that the damage resulted from the act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that the damage would probably result.

6. Goods of an inflammable, explosive or dangerous nature to whose shipment the carrier, master or carrier's agent has not consented with knowledge of their nature and character, may at any time before discharge, be landed at any place or destroyed or rendered innocuous

by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent become a danger to the ship or cargo, they may be dealt with in like manner by the carrier without liability on the part of the carrier except to general average, if any.

Art. IV bis. The defences and liability limits provided for in the Rules apply in any action against the carrier in respect of loss or damage to the goods whether the action be founded in contract or in tort.

If an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor) such servant or agent is entitled to avail himself of the defences and liability limits which the carrier is entitled to invoke under the Rules. The above is not to apply if it is proved that the damage resulted from act or omission of the servant done with intent to cause damage or recklessly and with knowledge that damage would result.

Art. V. Surrender of Rights and Immunities and Increases of Responsibilities and Liabilities.

A carrier is at liberty to surrender in whole or in part, all or any of his rights and immunities,. or to increase any of his responsibilities and liabilities under the Rules, provided such surrender or increase is embodied in the bill of lading issued to the shipper.

The Rules are not applicable to charter-parties, but if bills of lading are issued in the case of a ship under a charter-party, they are to comply with the terms of these Rules. Nothing in these Rules is to be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

Note: – If a charterer and shipper are one and the same person it would seem that the shipowner is not bound to issue a B/ L in the form required by the Act, as a B/L in such hands is merely a receipt. But if such bill is issued and subsequently indorsed to a third party, it would upon such indorsement become a contract within the meaning of Art. 1 (b), as between shipowner and indorsee the goods would be carried on B/L terms, and the B/L would be construed as being subject to the provisions of the Act.

Art. VI. Special Conditions.

This article permits a carrier, master or carrier's agent to enter into any agreement in any terms with a shipper of any particular goods, with respect to responsibility and liability of the carrier for such goods, or his obligation as to seaworthiness, provided the terms are not contrary to public policy, that the carrier's servants or agents carefully load, handle, stow, carry, care for and discharge the goods, that no bill of lading is issued, and that the terms agreed are embodied in a receipt which is non-negotiable and marked as such.

Any such agreement is to have full legal effect.

The above is not to apply to ordinary commercial shipments made in the ordinary course of trade, but only to shipments where the charterer or condition of the property carried or the terms and conditions of carriage reasonably justify a special agreement.

Note: – From time to time it becomes necessary to carry special cargoes, or to carry cargoes in a special manner, by way of experiment. Once the trade has got beyond the experimental stage, the cargo concerned will come into the category of an ordinary commercial shipment and the special conditions will no longer apply.

Art. VII. Limitations on the Application of the Rules.

Nothing in these Rules is to prevent a carrier or a shipper entering into any agreement as to the responsibility and liability of the carrier or the ship for loss or damage caused to the goods during custody, care and handling prior to loading on, and following discharge from, the ship which carried the goods by sea.

Art. VIII. Limitation of Liability.

These Rules are not to affect the rights and obligations of the carrier under any statute for the time being in force relating to a shipowner's right to limit his liability.

The United States Carriage of Goods by Sea Act, 1936. In most respects the American Act closely resembles our 1924 Act, but there are some differences the most important of which are as follows:

1. The American Act seems to require from the carrier an absolute undertaking to provide a seaworthy ship, inasmuch that what was the substance of sect. 2 of the British Act is omitted. Yet both Acts bind the carrier before and at the beginning of the voyage to exercise due diligence to make the ship seaworthy.
2. Unlike our own Act which applied only to outward B's/L, the American Act applies to shipments to or from ports in the United States in foreign trade.
3. Deviation for the purpose of loading or discharging cargo, or embarking or disembarking passengers is prima facie regarded as unreasonable under the American Act.
4. The carrier's maximum liability is fixed at $500 per package lawful money of the United States, or in the case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency.

It appears that there is no legislation pending in the U.S.A. to embody the provisions of the 1968 Brussels Protocol to the Hague Rules. Indeed there seems to' be no reasonable possibility of the United States ratifying that Protocol. Instead, the State Department has backed "UNCITRAL" (United Nations Commission on International

Trade Law) in its efforts to produce an entirely new International Convention on ocean bills of Lading.

The Hamburg Rules 1978. For many years shippers and importers in the developing countries have complained that the Hague Rules unfairly protected the shipowner, and placed too heavy a burden on the shipper and consignee. The United Nations Commission for International Trade Law (UNCITRAL) worked for several years on a new convention to try to remedy this alleged complaint and in March 1978 at a conference in Hamburg attended by representatives from 78 states and observers from shipping, trade and insurance interests the results of their labours were adopted as the United Nations Convention on the Carriage of Goods by Sea, 1978, to be known as the Hamburg Rules. The Convention is to be brought into force one year from the date of deposit of the twentieth instrument of ratification.

There is no required minimum proportion of the tonnage of the world fleet specified before the Convention can come into force, as with other Conventions.

The intention of the Rules is to bring carriage of goods by sea more into line with the rules that apply for carriage of goods by air, rail and road. To this end they attempt to make definite changes regarding liabilities of carriers, which are summed up in the "Common Understanding" contained in Annex II of the Conference's Final Act which although not a legal provision reads: –

"It is the common understanding that the liability of the carrier under this Convention is based on the principle of presumed fault or neglect. This means that, as a rule, the burden of proof rests on the carrier but, with respect to certain cases, the provisions of the Convention modify this rule".

The main provisions of the Rules are: –

Denunciation of the Hague Rules. When the Convention comes into force, any state party to it will have to denounce the Hague Rules, whether amended or not, and apply the new Rules.

In the definitions, "goods" includes live animals, and where goods are consolidated in a container or pallet etc., "goods" includes such article of transport, or packaging, if supplied by the shipper.

Scope of application. The provisions apply to all contracts of carriage by sea between two different states if: –

(a) the port of loading or port of discharge in the contract is in a Contracting State; or
(b) one of the optional ports of discharge in the contract is the actual port of discharge and is located in a Contracting State; or
(c) the B/ L or other document evidencing the contract is issued in a Contracting State; or
(d) the B/L or other document evidencing the contract provides

that the provisions of the Convention, or the legislation of any State giving effect to them are to apply.

The provisions of the Convention are not to apply to charte'r parties, but where a B/L is issued pursuant to a charter party, the provisions of the Convention are to apply to that B/L if it governs the relations between the carrier and the holder of the B/L, not being the charterer.

Liability of the Carrier. The carrier is responsible for the goods during the period when the carrier is in charge of them, that is from when he takes over the goods from the shipper, during the carriage, and until he has delivered the goods by handing them over to the consignee.

The carrier is liable for loss resulting from loss or damage to the goods, as well as from delay in delivery, if the occurrence which caused the loss or delay occurred while they were in the carrier's charge, unless he can prove that he, and his servants and agents took all measures that could reasonably be required to avoid the occurrence and its consequences. A person entitled to make a claim for loss of goods, may do so if the goods have not been delivered within 60 consecutive days of the agreed delivery date, or of a reasonable delivery date.

The carrier is liable for loss of or damage to the goods, or delay in delivery, caused by fire, if the fire is proved to be due to fault or neglect on the carrier's part, or his servants or agents, or fault or neglect on their part in taking all measures that could reasonably be required to put out the fire and avoid or mitigate its consequences.

With respect to live animals, the carrier is not liable for loss, damage or delay in delivery resulting from any special risks inherent in that kind of carriage.

Limitation of Liability. The liability of the carrier for loss or damage is limited to an amount equivalent to 835 units of account per package or other shipping unit, or 2 5 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher. The liability for delay in delivery is limited to an amount equivalent to two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage. Where a container, pallet or similar articles of transport is used to consolidate goods, the package or other shipping units enumerated in the B/L or other document, as packed in such article of transport, are deemed packages or shipping units for the purpose of calculating the limit of liability. Except as aforesaid, the goods in such container are deemed one shipping unit. The carrier is not entitled to limit his liability if it is proved that the loss, damage, or delay resulted from an act or omission of the carrier done with intent to cause such loss, or recklessly and with knowledge that such loss, damage or delay would probably result.

Deck Cargo. The carrier is entitled to carry the goods on deck only if such carriage is agreed to with the shipper, or with the usage of a particular trade, or is required by statutory rules or regulations. If the carrier and the shipper have agreed that the goods shall or may be carried on deck, the carrier must insert in the B/L, or other document, a statement to that effect. In the absence of such a statement, the carrier has the burden of proving that an agreement for carriage on deck has been entered into; however, the carrier is not entitled to invoke such an agreement against a third party, including a consignee, who has acquired the B/L in good faith.

Carriage on deck contrary to the above provisions makes the carrier liable for loss or damage, and carriage of goods on deck contrary to express agreement for carriage under deck, is deemed an act or omission of the carrier and loss of his right to limit liability.

Liability of the Shipper. The shipper is not liable for loss sustained by the carrier, or for damage sustained by the ship, unless such a loss or damage was caused by the fault or neglect of the shipper, his servants or agents, nor is any servant or agent of the shipper liable, unless caused by fault or neglect on his part. The shipper must mark or label in a suitable manner, dangerous goods as dangerous, and inform the carrier of the dangerous character of the goods, and if necessary, the precautions to be taken.

Transport Documents. When the carrier takes charge of the goods, he must, on demand of the shipper, issue to him a B/L. The B/L must include particulars such as the general nature of the goods, leading marks, dangerous character (if any), number of packages or pieces, and the weight of the goods or their quantity otherwise expressed, all as furnished by the shipper. Also the apparent condition of the goods, carrier's name and address, name of the shipper and consignee, the port of loading and date taken over, the port of discharge, number of original B's/L, the place where the B/L issued, the signature of the carrier or a person acting on his behalf, a statement that the goods shall, or may be carried on deck (if applicable), the freight payable by the consignee.

After the goods have been loaded on board, the carrier must issue to the shipper a "shipped" B/L stating that the goods are on board a named ship(s) and the date(s) of loading, or amend any such previously issued B/L to show the same information.

Where a shipped B/L is issued it is prima facie evidence of the loading by the carrier of the goods described therein, and proof to the contrary by the carrier is not admissable if, the B/ L has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the description of the goods therein.

Claims and Actions. Unless notice of loss or damage, stating the

general nature of the loss or damage, is given in writing by the consignee to the carrier not later than the working day after the day when the goods were handed over to the consignee, such handing over is prima facie evidence of the delivery by the carrier of the goods as described in the document of transport.

Where the loss or damage is not apparent, the above provisions apply if notice in writing is not given within 15 consecutive days after the day when the goods were handed over to the consignee.

If the state of the goods at the time they were handed over to the consignee has been the subject of a joint survey by the parties, notice in writing need not be given of loss or damage ascertained during such survey.

No compensation shall be payable for loss resulting from delay in delivery unless a notice has been given in writing to the carrier within 60 consecutive days after the day when the goods were handed over to the consignee.

Any action is time-barred if judicial or arbitral proceedings have not been instituted within a period of two years commencing on the day on which the carrier delivered the goods, or where no goods were delivered, on the last day on which the goods should have been delivered.

In judicial proceedings, the plaintiff, at his option, may institute an action in a court which, according to the law of the State where the court is situated, is competent, and within the jurisdiction of which is situated one of the following places: –

(a) the principal place of business of the defendant; or

(b) the place where the contract was made provided that the defendant has there a place of business, branch or agency through which the contract was made, or

(c) the port of loading or the port of discharge; or

(d) any additional place designated for that purpose in the contract of carriage by sea.

By December 1987 the convention had been ratified and acceded to by 11 States, and therefore had not yet been brought into force. The Convention has not been ratified by the U.K. government.

Miscellaneous Words and Phrases used in B's/L. It is not uncommon for a C/P to contain the clause "B's/L shall be **conclusive evidence** against the shipowners of the quantity of cargo received on board". In the absence of any such clause it is open to the shipowner to show that a person assuming to sign a B/L on his behalf, had, in fact no authority to do so. Further, no master or agent has the owners' implied authority to sign for goods which have not been shipped. But where the "conclusive evidence" clause is used, the shipowner will be bound even by an unauthorised acknowledgement of the shipment of a greater quantity than has actually been shipped. Even without the clause the shipowner is placed 'in the extremely difficult position of

having to prove that the quantity stated in the B/L is inaccurate. However, if the B/ L statement is qualified by the words "**weight unknown"**, then the bill is not even prima facie evidence against the shipowner of the actual quantity shipped.

Where a B/L setting out the weight and description of goods also contains the words **"Weight, contents, and value unknown"**, the original statements of weight and description will be taken to have been made by the shipper and not verified by the master or agent who signed and issued the bill, in which case the shipowner is not estopped from proving the actual weight of the goods at the time of shipment.

If a B/L describes, in error, goods of one kind as goods of some other kind, the shipowner cannot escape liability for loss of the package on the grounds that the B/ L does not truly represent the actual goods shipped. The endorsement "weight, contents, and value unknown" in that case could make the B/L a contract for the carriage of the package and its contents, no matter what those contents may be.

In accordance with Art. III (3) of the Carriage of Goods by Sea Act the shipowner must declare in B's/L subject to the Act, should the shipper so in demand, the quantity or weight or number of packages as furnished by the shipper in writing, unless (i) he has reasonable grounds to suspect inaccuracy of the shipper's figures, or (ii) he has no reasonable means of checking these figures. This statement, together with the required declaration as to leading marks and the apparent order and condition of the goods on shipment, are by Art. III (4) prima facie evidence of the facts represented, and the onus of proving them inaccurate will rest on the shipowner. If he chooses to declare the weight only, a qualification "weight unknown" will be of no effect. If weight and number of packages are both declared, the qualification "weight unknown" makes the B/L prima facie evidence of the number but not of the weight. If a declaration of both weight and number is qualified by the words "weight and number unknown", the B/L will be prima facie evidence of both, as such a qualification is contrary to the requirements of the Act.

Whether statements in a B/L are conclusive evidence of facts they represent or not, the shipowner is estopped from proving them false, if (i) the person who signed the bill had the shipowner's authority so to represent, and (ii) the indorsee acted on the representation in the belief that it was true and sustained damage by reason of not being true. With regard to (i), statements by a master in a B/L as to weight, measure, or quantity do not estop the shipowner from denying their accuracy, because, as already stated, the master has no implied authority to sign for goods which have not in fact been shipped. The master likewise has no authority to represent the particular quality of goods shipped. With regard to (ii), the fact that a B/ L holder took up the bill without objection is usually evidence enough that he relied on the representations contained in it. But the position may be different if the indorsee or consignee named in the B/ L receives notice of a sufficiently

conclusive nature that a material representation in the bill is inaccurate at the time when it is still in his power to refuse to take up the bill.

The words **"quality unknown"** do not qualify the representation that goods have been shipped in "apparent good order and condition". Such representation refers only to the external condition of the goods, while "quality" refers to their internal condition or to something which is not usually apparent except to a specially skilled person. Accordingly, a shipowner is not estopped from proving the bad quality of goods on shipment, unless the defect is apparent from the external condition of the goods.

The words **"condition unknown"** are not a sufficient qualification of the statement "shipped in apparent good order and condition" to convey to the indorsee of a B/L that damage to the goods was apparent on shipment. The shipowner, in such case, is therefore estopped from denying their good condition at the time of shipment.

Where a statement in a B/L is qualified by words such as "said to be", "said to contain", or "said to weigh" the shipowner is not estopped from proving the true facts, as he is deemed merely to be repeating what was represented to him by the shipper.

If a B/L containing a conclusive evidence clause specifies the respective quantities of different kinds of goods (e.g., deals, battens, and boards), the carrier is bound by the amount of each kind as specified. A shortage of one kind cannot be set off against an excess of another kind. The consignee is not bound to accept an excess of any particular kind, but if he does, he will be liable for freight on the excess. He will not, however, be bound to credit the shipowner with the value of the surplus amount.

Where in a "received shipment B/L" the representation that the goods are in apparent good order and condition is qualified by a stamped endorsement "signed under guarantee to produce ship's clean receipt", that is regarded as an effective qualification should the mate's receipt show, that at the time of the actual shipment, the goods were in some way defective. In such case the shipowner is not estopped from proving the true condition of the goods on shipment.

Presentation of B/L in Foreign Language. If the master of a ship is presented with a B/L for signature which is printed in a language he does not understand, he should have it translated by some competent but disinterested person, and add any necessary qualifying clauses before signing it. If unable to find a translator, he should have his own form of B/L made out and sign that. Should it be refused, the master should deposit it with the British Consul and note protest. A protest may, of course, prove to be useless if the bill is later indorsed to a third party. In such a case, and in cases where similar difficulties arise, the master should in addition inform his owners without delay of all the relevant facts. If possible, he should report the matter to the agents of the owners' P & I Association.

Refusal to accept qualified B/L. If a charterer or shipper objects to the insertion of a qualifying clause in a B/L, the master may sign it "under protest". The words "signed under protest" following the master's signature will have the effect that the B/L will not be conclusive evidence against the master. Further steps, as suggested in the previous paragraph, should be taken in the shipowner's interests.

Where the master is under a contractual obligation to sign "clean" B's/L, he must do so. In that case it is most important to reject goods which cannot truthfully be described as being in apparent good order and condition. (Note what has been said earlier about letters of indemnity).

STOWAGE

Deck Cargo. It is not permissable to stow goods on deck unless there is either a binding custom of the trade, or an express agreement with the shipper, to do so. Where goods are improperly carried on deck the shipowner, in relation to the owners of such goods, is reduced to the status of a common carrier. He loses the benefit of all but common law exceptions, and is placed in the same position as if the ship had unjustifiably deviated from the contract route.

If deck cargo is jettisoned for the safety of the ship, that will not amount to a general average act unless there is a binding custom to carry such goods on deck. If carried on deck by agreement, and properly jettisoned, the act will not give rise to a G/A claim against other cargo owners, but if there are no other cargo owners the owners of the jettisoned goods may have a claim against the ship.

The Hague-Visby Rules do not apply to deck cargo, but if goods in respect of which there is an agreement to stow on deck are, in fact, given underdeck stowage, the Rules will apply. Also, if deck cargo is covered by a B/L or non-negotiable receipt which expressly provides that the Rules are to apply, they will have effect as if Article I(c) did not exclude deck cargo.

Goods carried in a shelter deck or other approved covered space which does not form part of the ship's registered tonnage are not classed as deck cargo for commercial purposes, but may be for the purpose of the payment of dues.

Use is often made of the clause "on deck at shipper's risk". Following the rule that courts always adopt that construction of a doubtful clause which is adverse to the party for whose benefit it was inserted, it was held that a C/P clause "ship to be provided with a deck load, if required, at full freight but at merchant risk" did not exonerate the shipowner from a G/A contribution occasioned by a jettison of part of the cargo.

In a case a United States court gave a ruling which renders somewhat mythical the benefit enjoyed by a carrier under the Hague

Rules whereby he is exempted from liability for loss or damage in respect of goods carried on deck provided the goods are stated in the B/L to be on deck and are in fact so carried. In the case reported a cargo of timber was loaded on deck and to facilitate further loading of deck cargo at the next port of call some fork lift trucks were stowed on deck with the timber. Bad weather during the voyage caused the trucks to move with the.result that the timber lashings carried away and the deck load was lost. In the ordinary way the terms and conditions of the B/L would have given the carrier immunity from liability, but the Harter Act (superseded but not abolished by the United States Carriage of Goods by Sea Act) was brought into play. The Harter Act, it was ruled, not only applies prior to loading and subsequent to discharge, but it also applies to deck cargoes.

Bad Stowage. Where the contract of affreightment is subject to the Hague or Hague-Visby Rules, the carrier cannot avoid liability for loss or damage arising from negligent or improper stowage. Even where those Rules do not apply, such liability remains unless there is a specific agreement otherwise. In many countries legislation prohibits shipowners from contracting out of their liability for losses due to bad stowage, but no such restriction is recognised in Great Britain except where the Hague or Hague-Visby Rules operate. To enable the carrier to avoid such liability, the exceptions clause should include: "Any loss or damage occasioned by the negligence, default, or error in judgement of the pilot, master, mariners, engineers, stevedores, or other servants of the shipowner, in relation to the navigation, management and/or stowage of the ship or otherwise". However, not even this exception will give protection if the bad stowage is such as to render the ship unseaworthy. In giving judgement in favour of the shipowner in one particular case, it was remarked that "Bad stowage which endangers the safety of the ship may amount to unseaworthiness, but bad stowage which affects nothing but the cargo damaged by it is bad stowage and nothing more, and still leaves the ship seaworthy for the adventure, even though the adventure be the carrying of that cargo". This was a case where the shipowner was lawfully protected by an adequate exceptions clause.

DELIVERY OF GOODS

In the liner trades it is usual for the consignee to present his B/L, or where goods are carried under a waybill to provide evidence of identification, to the carrier or his agent and receive in exchange a delivery order. This is the consignee's authority to take delivery of the goods from the ship, wharf or terminal. In other cases the B/L itself may be presented to the ship when delivery is claimed.

If a B/ L is presented to the master, he should see that it is properly

indorsed and that freight and other charges, if any, have been paid or secured. He can then "sight" the bill by dating and signing it, and give delivery in exchange for a proper receipt. The original bill, or the master's copy, may he signed by the consignee as a form of receipt for retention by the master. A delivery order may be dealt with in the same way.

The fact that the person with a proper title to the goods usually holds the B/L generally ensures that delivery is made to the right person, but as B's/L are normally issued in sets of two or more parts it could happen, through mistake or fraud, that the separate parts are not all indorsed to the same person. The master, however, is always entitled to give delivery to the first claimant who presents a B/L which is in order, provided he has no grounds to suspect fraud and has no notice of any other claim. If it should happen that delivery is made to a person who has no proper title, the indorsee who is the rightful owner has no remedy against the shipowner or master. His right of action is against the person who assigned the B/L to him. In the most unlikely event of two persons presenting simultaneous claims for delivery, the master should, in the first instance, refuse delivery to either of them. What are called "interpleader proceedings" can then be taken in a court of law. In effect, the master declares to the court that he has the goods in his possession and is willing to deliver them to the rightful owner, but does not know who the rightful owner is. He leaves it to the court to decide and grants delivery of the goods accordingly. Meanwhile, to avoid delay to the ship, the goods may be placed in a warehouse under the control of the shipowner or his agent so that the lien for freight and/or other charges is preserved. If the correct procedure is not followed the master could find himself in a very difficult position. By withholding goods from a person who is entitled to them, or giving delivery to one who is not, he may be considered guilty of the offence of "unlawful conversion".

M.S. Act dealing with Delivery of Goods. Part VII of the principal Act (Sections 492-500) contains the law relating to delivery of goods imported into the United Kingdom. The following is a brief summary of the provisions thereof.

Customs Entry, etc. Where the owner of goods imported from foreign parts into the United Kingdom fails to make entry of them or fails to land or take delivery of them, the shipowner may enter them, (at the Customs) and land or unship them as follows: –

(a) At any time after the time for delivery agreed in B/L or C/P.

(b) If no time is agreed, then at any time after the expiration of 72 hours (S. & H.E.) from the time of the report of the ship. Where the shipowner lands goods as provided above, he must cause them to be placed: –

(a) In the wharf or warehouse named in the B/L or C/P, if they can conveniently be received there.

(b) Otherwise in a wharf or warehouse where goods of a like nature are customarily placed, or (if dutiable) in a bonded warehouse.

If before the goods are so landed, the owner of them offers to take delivery, he must be allowed to do so, and his entry will be preferred to the shipowner's.

If, for convenience in assorting, goods are landed at the wharf where the ship is discharging, and the owner has entered them and offered to take delivery, and convey them to some other wharf, the goods shall be assorted and, if demanded, delivered to the owner within 24 hours. The expense of landing and assortment is to be borne by the shipowner.

If, before the goods are landed, the owner has entered them for landing at a wharf other than that at which the ship is discharging, and has offered to take delivery, and the shipowner has failed to make that delivery and also failed at the same time of the offer to notify the goods owner when the goods can be delivered, then the shipowner must before landing the goods give the owner of them (or the owner of the wharf) 24 hours' written notice of his readiness to deliver the goods. If the shipowner lands the goods without giving such notice, he does so at his own risk and expense.

Shipowner's Lien. If, when goods are landed and placed in the custody of a warehouseman, the shipowner gives the warehouseman written notice that they are to remain subject to a lien for freight and/or other charges to an amount mentioned, they will in the hands of the warehouseman continue to be subject to that lien, and the warehouseman must retain them until the lien is discharged.

The lien will be discharged; –

(1) On production to the warehouseman (by the goods owner) of a receipt for the amount claimed and delivery of a copy thereof, or on production of a release of freight from the shipowner.

(2) On deposit (by the goods owner) with the warehouseman of a sum of money equal in amount to the sum claimed (without prejudice to any other remedy the shipowner may have to recover freight, etc.).

The person making the deposit may, within 15 days, give the warehouseman written notice to retain it, stating in such notice the amount he admits to be payable (or that he does not admit any sum to be payable).

If such notice is given, the warehouseman must notify the shipowner and, according to circumstances, pay him the amount admitted to be payable and retain the balance, or retain the whole deposit. After 30 days from the date of the notice, unless the shipowner has instituted legal proceedings against the goods owner and notified the warehouseman to that effect, the warehouseman must pay back the

balance or deposit retained to the goods owner. The warehouseman will then be discharged from all liability.

If the lien is not discharged and no deposit is made as above, then the warehouseman may, and if required by the shipowner must, after 90 days from the time when the goods were placed in his custody (or earlier, at his discretion, if the goods are perishable) sell the goods by public auction for either home use or export or, alternatively, sell sufficient of them to satisfy the charges against the goods.

Before selling them, however, the warehouseman is obliged to give notice by advertisement either in two local papers or in one local paper and one London paper, and if the goods owner's address is known send him notice by post. The title of a purchaser is not affected by omission to send this notice, and the purchaser is not bound to inquire whether notice has been sent.

The proceeds of sale are applied as follows, in the order of priority stated: –

1. If sold for home use, payment of customs or excise duties.

2. The expenses of sale.

3. The warehouseman's charges and shipowner's charges in priority as agreed between them, or failing agreement as follows: –

(a) rent, rates and charges due to the warehouseman.

(b) shipowner's claims for freight and other charges.

The warehouseman is legally entitled to rent and has power to do, at the goods owner's expense, whatever is reasonably necessary for the proper custody and preservation of the goods. He has a lien on the goods for such rent and expenses.

Delivery Abroad. If, at a port of discharge abroad, the consignee fails to appear and take delivery of the cargo the master should, subject to instructions from the shipowner or his agent, after the lapse of a reasonable time, himself attend to the matter of customs entry and other formalities and discharge the goods to a warehouse where they can remain subject to lien. This may be difficult if there is no suitable warehouse under the control of the shipowner's agent, or if the warehouseman is not prepared to act as the master's agent. It is important that the right of lien should not be lost through parting with actual or constructive possession of the goods. It may be possible in some cases to arrange for a bank to pay the freight and accept delivery on behalf of the absent consignee. Although it would be prudent to advertise for the consignee, there is no legal necessity to do so. As stated earlier, it is the consignee's duty to look out for the public announcement of the ship's arrival.

Failure of B/L to arrive. Where the consignee claims delivery of goods, but cannot produce the B/L because that document has been lost or has failed to arrive before the ship has reached the port of

discharge, the master may deliver the goods to him against adequate security. This usually takes the form of a letter of indemnity from a banker. Here again, owner's or agent's instructions should first be obtained, if possible.

The "London Clause". As it is important that liners should maintain their schedules, and that chartered ships should be free to take up new fixtures as soon as possible, shipowners are naturally concerned that discharging operations should commence with the minimum of delay. For this reason, and to obtain the quickest relief from their responsibility for the cargo, it is frequently the case that their B's/L will contain the so-called "London Clause". This reads, "The shipowner shall be entitled to land these goods on the quays of the dock where the steamer discharges immediately on her arrival, and upon the goods being so landed the shipowner's liability shall cease. The clause is to form part of this bill of lading, and any words at variance with it are hereby cancelled". Where this clause is used, the Sections of the M.S. Act dealing with delivery of goods will not apply.

DISCHARGE OF CONTRACTS OF AFFREIGHTMENT

As explained in some detail in Chapter 2, contracts may be discharged by agreement, by performance, by breach, by subsequent impossibility of performance amounting to frustration, or by operation of the law. Contracts embodied in charter-parties and bills of lading are not exceptions, and all that has been said in the earlier Chapter relating to contracts in general applies to those particular forms of contract as well.

Discharge of C/P by Agreement. If the shipowner and the charterer agree to release one another from the obligations they have contracted to perform, the contract is thereby discharged. But an agreement of that kind can be enforced only so long as neither party has perfomed any of his duties under the C/P. Another form of discharge by agreement may arise where each party agrees to replace the original C/P by a new one. Such an agreement need not necessarily be expressed, but may be inferred by conduct of the parties. Suppose, for example, that the charterer offers goods for shipment which are of a different kind from those described in the C/P. If the shipowner learns of this offer in time he may, of course, refuse to carry such goods. But more often than not he will have no knowledge of the offer until the goods have already been shipped and the vessel has sailed from the loading port. The question then arises as to what action the shipowner can take. There are two actions available to him, viz. (I) he can elect to treat the original C/P as subsisting, or (2) he can elect to treat the original contract as having been discharged and replaced by a new one.

If he chooses (I) he will be entitled to freight on the non-contract goods at the charter rate, and in that case, all the other terms of the C/ P, including the demurrage clause, will continue to be enforceable. On the other hand, if he chooses (2), he will be entitled to freight on the non-contract goods at the market rate instead of the charter rate, and such terms of the original C/P as are not inconsistent with the carriage of non-contract goods will, by implication, become incorporated in the substituted contract. The original demurrage clause will not be considered consistent with the carriage of the non-contract goods. It may in some cases be difficult for a court or an arbitrator to decide which of the two alternatives the shipowner has, in fact chosen. If he accepts freight at the C/P rate, that will be strong evidence that his intention was to affirm the original contract. On the other hand, if the master has permitted the loading of the non-contract cargo without protest, that is no evidence that the owner has affirmed the contract because, as has been stated elsewhere in this book, (i) the master has no ordinary authority to contract on behalf of the shipowner, and (ii) he has not authority to vary by agreement with the charterer the terms of a contract to which he himself, is not a party.

Repudiation. If A and B enter into a C/ P contract and, before the time for performance arrives, A informs B of his intention not to perform his obligations thereunder, the contract is discharged by agreement if B accepts the repudiation. In such case B is excused from performing his part when the time comes, and he has a right to any damages he may suffer as a result of A's repudiation.

Should B, however, decide to hold A to the latter's obligations, the C/P is not discharged. It continues to subsist for the benefit of, and at the risk of, both parties. Moreover, if the contract is subsequently discharged by some cause for which A is not responsible, B will have no claim against him, because an unaccepted repudiation is of no legal effect. This situation arose in one particular case where, on arrival of the vessel at the loading port, the charterer refused to load her. The master, who presumably in those days (over one hundred years ago) had the owners' authority so to act, instead of accepting the repudiation and seeking a cargo elsewhere, continued to demand a cargo from the charterer. Before the lay days had expired war broke out between England and the country where the ship was lying, whereupon the C/ P was discharged by operation of law. The shipowner, therefore, had no claim against the charterer in damages for non-performance of the contract.

It is not necessary that the party who decides not to perform his obligations when the time comes should expressly inform the other party of his intention. Such an intention can be inferred from the conduct of the first mentioned party. X chartered his ship to Y on condition that the ship would be placed at Y's disposal as soon as she was released from a government requisition. Later, whilst the ship was

still under requisition, X sold her to Z "free from charter engagements". It was held that Y had a right of action for damages for non-performance of the C/P before the agreed date of delivery, as it was not reasonable to suppose that X would have re-purchased the ship in the meantime.

Frustration. The topic of discharge by "subsequent impossibility of performance amounting to frustration" having been adequately dealt with in Chapter 2, there is no need to say more about it here.

SHIPMENT OF GOODS

The exporting and marketing of goods are obviously in themselves extremely wide subjects, any detailed treatment of which could not be attempted in a book of this kind. It may, nevertheless, be useful to include a few brief remarks indicating something of what goes on in connection with goods which must come under the direct care of masters and officers of ships during the major part of the journey from seller to buyer.

Contracts of Sale. No doubt it would be ideal from his point of view, if, say, a manufacturer in the United Kingdom with goods to sell abroad could quote an **Ex-Works** price in sterling and leave the overseas buyer to take delivery from the factory and attend himself, or through his own agent, to all the troublesome procedures involved in getting the goods to their destination. Equally, it would suit the buyer ideally to have the goods delivered to his own premises free of all charges and at an inclusive price quoted in the currency of his own country. Naturally, neither of these methods will suit both parties, and it becomes necessary to arrange a contract of sale which will be mutually acceptable to both seller and buyer.

There are several different types of quotations in everyday use, but in respect of goods carried by sea the most common are the F.O.B. quotation and the C.I.F. quotation.

Under an **F.O.B**. (free on board) contract: –

The seller's duties are: –

1. To supply the goods in conformity with the contract of 'sale.
2. To deliver the goods on board the vessel named by the buyer, at the named port of shipment, in the manner customary at the port, at the date or within the period stipulated, and notify the buyer without delay of such delivery.
3. To obtain at his own risk and expense any necessary export licence or other authorisation for the export of goods.
4. To bear all costs and risks of the goods until they have effectively passed the ship's rail (e.g., dock dues and loading charges – but not necessarily stowage costs, which are normally

borne by the ship. Whether the seller is legally responsible for port rates seems to be doubtful, but for convenience and because the rates are relatively small, it is customary to charge them to the seller).

5. To provide at his own expense the customary packing unless by custom the goods are shipped unpacked.
6. To pay any lighterage charges, and to bear the cost of clearing the goods through the customs.
7. To pay for any checking operations (weighing, measuring, counting, checking quality, etc.).
8. To provide, at the buyer's request and expense, a certificate of origin.
9. To produce to the buyer or his agent evidence that the goods have in fact been shipped. (What form this takes depends on the custom of the port. In some ports signed bills of lading are required; in others a mate's receipt or dock receipt provides sufficient evidence to fulfil the contract).

The buyer's duties are: –

1. To charter a vessel or reserve space in a general ship at his own expense, and notify the seller of the name of the ship, the loading berth, and delivery dates.
2. To bear all costs and risks of the goods from the time when they have effectively passed the ship's rail at the port of shipment. 3. To pay the price for the goods as quoted in the contract.
4. To pay any additional costs arising from the failure of the named ship to arrive in time or arising from the ship being unable to take the goods.
5. To arrange, if necessary, for the shipment of the goods in a substituted vessel at the earliest possible moment.
6. To pay the costs and charges of obtaining bills of lading, certificates or origin and/or consular invoices.

To give a brief recapitulation, an F.0.B. contract of sale is a contract under which the seller delivers the goods free on board a ship, paying all expenses up to the time of actual shipment. From then on the buyer takes responsibility, pays the freight, insurance during transit, and all subsequent expenses including import duties and landing charges at the port of destination.

Under a **C.I.F.** (cost, insurance, and freight) contract: –

The seller's duties are: –

1. To supply goods in conformity with the contract of sale.
2. To contract on usual terms at his own expense for the carriage of the goods to the agreed port of destination by the usual route in a vessel normally used for the transport of goods of the contract description.
3. To pay freight charges, and to pay any unloading charges at the port of discharge which may be levied by the carrier at the time and port of shipment.

4. To obtain at his own risk and expense any export licence or other authorisation for the export of the goods that may be required.
5. To load the goods at his own expense on board the vessel at the port of shipment at the date or within the period specified, and notify the buyers without delay that the goods have been in fact loaded.
6. To obtain at his own cost, and in a transferable form, a policy of marine insurance against the risks involved in the carriage. (It is customary to provide warehouse to warehouse cover, and the seller's obligation is fulfilled if he insures for a value equivalent to the invoice price of the goods plus all charges payable by him under the C.I.F. contract).
7. To provide, at 'he buyer's expense if the buyer requests it war risk insurance in the currency of the contract, if procurable. *(N.B.–* Insurance protection must be customary. To avoid any misunderstanding, the contract should state whether insurance is to be covered by Institute Cargo Clauses (A), (B) or (C). If complete cover is required by the buyer under (A) clauses i.e. "against all risks", that should be made clear to the seller to enable him to adjust his price to take into account the additional premium involved).
8. To bear with certain exceptions should the buyer fail to give shipping instructions in time, all risks of the goods until they have effectively passed the ship's rail at the port of shipment.
9. To furnish the buyer, at his own expense and without delay, a clean negotiable bill of lading for the agreed destination, as well as the invoice of the goods shipped, and the policy or certificate of insurance. (A full set of "shipped" B's/L is required, which should be dated within the period agreed for shipment, and be endorsed for delivery to the order of the buyer or buyer's agreed representative. If the B/L refers to a C/P, a copy of the latter document must also be provided).
10. To provide at his own expense customary packing unless by custom the goods are shipped unpacked.
11. To pay dues and taxes incurred in respect of the goods up to the time of their loading (e.g., port dues and costs of clearing the goods through the Customs).
12. To provide the buyer, at the buyer's request and expense, with a certificate of origin and consular invoice.
13. To give the buyer, at the buyer's request, risk, and expense, all assistance he may need in obtaining documents required for the importation of the goods into the country of destination.

The buyer's duties are: –

1. To accept the documents tendered by the seller, so long as they conform with the contract, and pay the price as provided in the contract of sale.

2. To receive the goods at the agreed port of destination and bear with the exception of freight and marine insurance, all costs and charges incurred in respect of the goods during transit (e.g., general average or salvage charges) as well as unloading costs, including lighterage and wharfage charges unless such costs and charges have been included in the freight or collected by the carrier at the time when freight was paid.
3. To bear the expense of war risk insurance if provided.
4. To bear all risks of the goods from the time when they have effectively passed the ship's rail at the port of shipment.
5. To pay additional costs arising from his failure to give shipping instructions in time.
6. To pay the costs and charges incurred in obtaining the certificate of origin and consular documents.
7. To pay costs and charges incurred in obtaining the documents referred to in item 13 above.
8. To pay all import duties and other landing charges at the port of destination, and procure at his own risk and expense any import licence or other permit required for the importation of the goods at the destination.

In brief, then, a C.I.F. contract is one under which the seller must ship the goods and pay the freight together with all charges up to the point where the goods are loaded on board, and insure them while they are in transit. He must also supply the buyer with all the documents required to enable the goods to be imported. The buyer is responsible for any loss of or damage to the goods after they have been delivered to the carrier, and must pay all expenses and custom duties, etc., on the arrival of the goods at the port of destination.

It will be noted that the choice of the carrying ship is the buyer's responsibility under an F.O.B. contract, but the seller's under a C.I.F. contract.

Goods shipped on either of these terms may be bought and sold, perhaps more than once, while they are in transit. The transfer of title when this takes place is effected by delivery of the documents of title duly assigned by endorsement, or in some other customary manner.

Shipping and Forwarding Agents, and Loading Brokers. Many manufacturers, instead of attending to the shipping of their products themselves, employ a firm of shipping and forwarding agents to look after that side of their business on their behalf. Such agents will be specialists in the kind of work they undertake to perform, and will have, in particular, full knowledge of the requirements of the country to which they despatch the goods. On behalf of their principals, they book the shipping space, prepare all the documents needed, clear the goods through Customs and, if required to, arrange the insurance cover. These agents may collect the goods direct from the place of manufacture, or from some other place to which the exporter has delivered them, in either case at an agreed time.

Shippers, or their shipping and forwarding agents, do not always negotiate directly with the shipping company in whose vessel the goods are to be carried, as the company themselves may delegate that side of their business to their own special agents who are usually known as "loading brokers".

Packing and marking of Goods. This highly specialised work is of paramount importance, as the goods must not only be adequately protected against the handling and other risks incidental to sea transport, but packing must comply with the requirements of the shipping company and the Customs authorities. Moreover, if goods are not packed and marked in accordance with the terms of the contract of sale, the buyer may refuse to take delivery of them. Identification marks must be such that they will remain easily legible throughout the voyage.

Invoices. The exporter's bill of costs in accordance with the contract of sale is called an "invoice". This must contain a full description of the goods with details of the number of packages, indicating how they are marked. Suppliers of goods generally use their own special form of invoice which will be certified correct by some person authorised for the purpose. The document will show such things as the sizes of cases, their gross and net weight, and appropriate references to any import licence and/or exchange control form that may be required. To comply with Customs requirements the seller's invoice usually shows the actual value of the goods as a separate item, whilst other amounts charged to the buyer are entered elsewhere on the document.

Consular Invoices. In respect of goods exported to many foreign countries, a "consular invoice" must be prepared on an official form. Usually they must be sworn before the Consul of the importing country, or before an authorised official. The document must contain a declaration that no other invoice has been forwarded direct. Some of these documents are printed both in English and in the language of the importing country. Their purpose is partly connected with the control of imports into the country concerned (to ensure, for instance, that an imposed quota is not exceeded), and partly to ensure that the goods are charged with the appropriate duty on entry at the port of discharge. For similar reasons some countries require, in addition, a "certificate of value" and/or a "certificate of origin".

Customs Declarations. For statistical purposes, exporters are required to lodge with H.M. Customs specifications of all goods sent out of the country, whether outside the sterling area or not. Suitable forms are obtainable from the Custom House at the port of shipment.

Insurance of Goods. Although the subject of marine insurance is given fairly full treatment in Chapter 14, a brief reference here is necessary to complete the overall picture of exporting procedure.

Goods insurance may be effected through an Insurance Company or by obtaining cover at Lloyd's through an Insurance Broker. Frequently an exporter will arrange his insurance through the Insurance Department of his bank.

An exporter who has repeated need for insurance cover usually finds it most convenient to effect a "Floating Policy" or an "Open Cover" (see Chapter 14 for details), and such a twelve months' contract gives automatic cover immediately the goods come on risk whether, at the moment, the shipment has been declared or not. As soon as details of the shipment are fully known, they are declared to the underwriters, who then issue policies or certificates as required, together with debit notes for the relative premiums. Such policies and Certificates, unless made out to the order of the consignee or to bearer, must be endorsed by. the assured.

British policies normally have a "transit clause" incorporated giving cover from the time when the goods leave the exporter's warehouse in the United Kingdom to the time when they are placed in the importer's warehouse abroad or, on the expiry of 60 days after completion of discharge overside at the final port of discharge, whichever first occurs.

Documentary Credits. An exporter's method of obtaining payment for the goods he has sent abroad will depend, in the first place, on the form of contract of sale he has made with his customer overseas. There are various methods available to the seller to obtain payment from the buyer, but here it will suffice to mention, only, the method known as the "documentary credit" system, a system commonly used.

Under this system the importer at the request of the exporter makes an application to his banker to open a documentary credit through the bank's Correspondents (i.e., another bank or a branch of the same bank in the exporting country), in favour of the exporter for a sum representing the value of the shipment, such credit to be available by drafts (bills of exchange) at sight, or at a fixed number of days after sight. Any such draft must be accompanied by certain specified documents, usually some or all of the following: –

Invoices (in duplicate or more),

Marine and war risk insurance policy or certificate covering 10 per cent. above the c.i.f. value of the goods (and possibly including Institute Cargo Clauses),

A full set of "clean" on board steamship company's bills of lading through to the port of destination,

Consular invoice (in duplicate),

Certificate of quality,

Certificate of origin.

The above must be strictly correct and, with the Bill of Exchange drawn on the bank, must be presented not later than the expiry date of the credit.

The bank issues a letter of credit (revocable or irrevocable, preferably the latter) authorising the exporter to draw on the correspondent bank for the account of the importer, a bill or bills of exchange for the amount authorised in the letter.

The documentary B/E is deposited by the beneficiary (i.e., the exporter) with the correspondent bank for examination and, later, assuming the documents to be in order, a banker's draft is issued to him for the amount of the bill.

When the documents arrive in the country of destination, the issuing bank will release them to the importer on the latter's payment to the bank of the price of the goods. Armed with these documents, the importer is then in a position to obtain a delivery order from the shipowner's agents and take delivery of the goods from the ship or warehouse. *(N.B.*– Of the two negotiating banks, the one from whom the credit originates is the "issuing bank; the one which advances money to the exporter against the credit is the "correspondent" bank).

Under a somewhat similar arrangement, a documentary bill may be drawn on the importer himself, in which case the exporter sends the documents through his bank to be delivered to the importer against the latter's payment or acceptance of the accompanying bill of exchange. If this is drawn to be payable "at sight" the documents will not be handed to the drawee except against payment of the bill. Meanwhile, the goods will not be released by the shipowner or warehouseman until a "Bank Release" in proper form has been lodged. Where the consignee's credit is known to be good, the issuing bank may have issued the credit on the basis of "documents against acceptance". In that case, as soon as the consignee has "accepted" the bill by writing his name across the face of the bill, he will be entitled to have the documents delivered to him. The bill may have been drawn, say, at 30 days' sight, and in that case it becomes due for payment 30 days after the drawee has accepted it (plus the usual 3 days of grace, if any).

BILLS OF EXCHANGE

Exporters and other creditors can, of course, arrange for the amounts due to them to be paid by cheque or banker's draft, but in many cases there are disadvantages associated with such methods of payment and, therefore, most commercial transactions are financed by the use of bills of exchange.

The primary object of a bill of exchange is to enable a creditor to obtain from his debtor an instrument which is an acknowledgement of the latter's liability, and which affords a method of obtaining funds immediately, or of discharging a liability of the creditor himself by his

negotiating the bill to a third party. B's/E makes possible the settlement of debts of a number of persons by means of the transfer of a single piece of paper, thereby increasing the credit facilities necessary to trade and limiting the demand for actual currency.

A bill of exchange is defined as an unconditional order in writing addressed by one person to 'another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time, a sum certain in money, to,-or to the order of, a specified person, or to bearer.

An order which does not comply with this definition, or one which requires some act to be done in addition to the payment of money, is not a bill of exchange. With regard to the words "fixed or determinable future time", it would, for instance, be in order to draw a bill to be payable 60 days after the death of a named person, as the death is something which is certain to happen sooner or later. On the other hand, a bill made payable three months after a named person's marriage would not be in order, as there is no absolute certainty that the event will take place. The phrase "sum certain" implies that the bill must provide for the payment of a fixed amount of money expressed in some definite currency. A bill drawn, for example, for the "value of my gold and diamond ring" is not in order, as the article referred to may have a different value at different times or in the opinions of different valuers. It is in order, however, to make the sum payable by stated instalments, or to be paid with interest at a stated rate.

A cheque drawn in the normal way is a bill of exchange, since it complies with the definition given, but a cheque drawn "pay cash" is not a bill of exchange. "Cash" is not a specified person.

The following terms may be noted: –

The person who draws the bill is the "drawer".

The person on whom the bill is drawn is the "drawee".

The person to whom the amount of the bill is made payable is the "payee".

When the drawee has accepted the bill, he becomes the "acceptor".

A person who indorses a bill is the "indorser".

The person to whom the bill is indorsed is the "indorsee".

A bill both drawn and payable in the British Islands is an "inland bill".

Any bill other than an inward bill is a "foreign bill"

Days of Grace. Provided the bill is not drawn to be payable on demand, or at sight, three days of grace are, if the bill is payable in the United Kingdom, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace. Where a fixed or certain time is stated in the bill, no days of grace are added. In the case of a B/E payable abroad, the question of days of grace is a matter for the law of the country concerned. If the last day of grace falls on a Sunday, Christmas Day, Good Friday, or a day appointed by Royal

Proclamation as a public feast day, the bill is due and payable on the preceding business day. If it falls on a statutory Bank Holiday (other than Christmas Day or Good Friday) the bill is due and payable on the succeeding business day, and the same applies should the last day of grace be a Sunday when the second day of grace is a Bank Holiday.

Forms of B's/E.

Form of inland bill:

Exchange for £100 London, 24th September, 1981.

Three months after date pay this sole Bill of Exchange to the order of C. K. Williams & Co.

ONE HUNDRED POUNDS

Value received

For /
To H. Thompson & Co. Ltd., / Perkins & Son, Ltd.
Birmingham.
G. King, Director.

With respect to the above bill, Perkins & Son, Ltd., are the drawers, H. Thompson & Co. Ltd., are the drawees, and C. K. Williams & Co., are the payees

If for example, there are three parts to the set, the first will contain the words "second and third unpaid", the second "first and third unpaid", and the third "first and second unpaid". In this way it will be obvious, on sighting any one part, how many parts there are.

Form of foreign bill:

Exchange for £357·50 London, 28th January, 1981.

At thirty days' sight pay this first Bill of Exchange (second and third unpaid) to the Order of

L. G. Briggs & Co. Three Hundred and fifty-seven pounds and fifty pence

Value received.

To K. S. Providers,
Karachi,
Pakistan.

p.p. L. G. Briggs & Co.
W. Bolt (Secretary).
P. Hill (Director).

Discounting a B/E. The holder of a B/E drawn at some stated period after sight, or after date, who wishes to obtain funds immediately, may have it discounted by a banker. If satisfied that all parties to the bill are persons of integrity whose credit is sound, the bankers will pay cash for the face value of the bill less discount at the prevailing rate per cent. When the bill ultimately matures, the banker will present it for payment, and will himself receive the full face value of the instrument.

Dishonoured Bills. A bill may be dishonoured by (a) non-accep-tance when it has been duly presented for acceptance and it is not accepted within the customary time (usually 24 hours); or (b) non-payment when it is duly presented for payment and payment is refused or cannot be obtained. To enforce his rights under the bill, the holder of a bill dishonoured by non-acceptance could take action against the drawer or indorsers. The holders of a bill dishonoured by non-payment has an additional right against the acceptor. To provide evidence that he has complied with the provisions of the Bill of Exchange Act relating to due presentment, the holder should have the bill "noted" by a notary public as a preliminary to a formal "protest". Protest is essential in the case of a dishonoured foreign bill. If the services of a notary are unobtainable at the place where the bill is dishonoured, protest may be made by any householder in the presences of two witnesses.

LINER CONFERENCES

The advantages claimed for the conference system may be stated as follows: –

1. Regular and efficient cargo services are maintained with up-to-date and well-designed vessels at all times, good or bad.
2. Because the Conferences take measures to avoid sudden fluctuations in freight rates, shippers are able to plan for a considerable time ahead confident in the knowledge that rates will remain stable.
3. Shippers of all kinds enjoy equality of treatment with regard to freight rates and conditions of carriage. There is no discrimination against those whose shipments are of relatively small volume.

The competition of "outsiders" is met by encouraging shippers to confine all their shipments to Conference ships. This may be effected in either of two ways. Under one scheme basic freight rates are fixed which apply to shippers in general, but those who enter into a contract with the Conference undertaking to ship only by Conference vessels are allowed a discount concession, usually a discount of 9 per cent. on scale freights. Under an alternative scheme the Conferences offer a "deferred

rebate" of (usually) 10 per cent. of the aggregate amount of freight paid over a period of 6 months (or in some cases 12 months) to those shippers who are in a position to declare that, during the period referred to, they have not shipped goods on the routes served by the Conference by any other than Conference vessels.

The shipowner members of a particular Conference may enter into a pooling agreement designed to prevent unlimited competition between them, but not going so far as to exclude competition altogether. Under such an agreement the total freight revenue may be divided between the participating companies in some agreed proportion. An alternative scheme is for member lines to share the freight-tons of cargo carried. Should one line carry more than its permitted share, thereby becoming an "overcarrier", that line will be required to indemnify any "undercarriers", provided that the latter have properly fulfilled their obligations to continue to employ sufficient tonnage to carry their normal shares. There are other types of agreements, also, to prevent- any one Conference member from gaining an unfair advantage over the others.

To facilitate negotiations. with shippers and their forwarding agents, a Conference may establish a "booking office". It would obviously defeat the objects of the Conference to grant shippers the indisputable right to choose which ship or line their goods shall be carried by, but as far as may be practicable a booking office will endeavour to accede to shippers' requests in this respect.

Primage. At one time it was customary to add to the freight charged to a shipper a surcharge of 10 per cent. (or other proportion) which was known as "primage". Originally, primage was a reward to the master of the ship for his taking care of the cargo. At a later period of mercantile history masters gave up their right to this form of remuneration, but primage was still collected in addition to freight for the benefit of the shipowner on the principle that it represented the cargo's contribution to the payment of light dues, harbour dues, and similar expenses. With the formation and operation of Liner Conferences the practice became common of rebating primage to regular shippers at 6 months intervals. More recently, however, the custom of adding primage to freight accounts has been generally given up and replaced by either the "discount" system, or the "deferred rebate" system, as described above.