CHANGING FACADE OF CONTRACTS IN THE MARITIME INDUSTRY

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ABSTRACT

Open vessels and high seas have been the essence of history. The sailors went out in search of habitation, spices, culture in ever long rides to discover the undiscovered. Even in the 21st century the major trade practices take place by seas. This makes it very important to have concurring rules for the safety of the carriages and the trades of the sea. Under Indian law, when in doubt of authoritative development, an endeavour should be made to accommodate the pertinent terms of an agreement if conceivable and not treat any contract as inactive surplusage. Indian courts host held that if a get-together tries to summon an end condition in the agreement, it is officeholder upon the party to rigorously follow the procedural necessities specified in the agreement to impact a legitimate end.

INTRODUCTION

The marine industry is booming since the beginning of time, however, due to the invention of steamboats and motor ships, it has been highly commercialized. As of 2020 approximately 80 per cent of the total international trade takes place through the water. It is mainly due to the cost efficiency and convivence attached to the marine industry that it depended on in this manner. This can be seen when the container's ever given blocked the Suez Canal for approximately a week, completely disrupting trade worldwide, holding a value to approximately $9 billion per day. [i]

Shipping and trades are based upon general contract principles and in the proponent English law (as they were the leading traders and shippers in the past). The parties should be clear from

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the outset about the main terms of the transaction and how this is reflected in the contractual documents. A party to such transactions should also be clear as to who is responsible for what and what each party is paying for to avoid confusion and potentially lengthy and costly litigation should things go wrong. The Convention on the Carriage of Goods by Sea (Hamburg Rules), approved in 1978, was intended to establish a fair balance between the interests of the different parties involved in shipping transport contracts, and safeguarding the rights of shippers. [ii]

Maritime contracts relate to business done or transacted upon the sea and in seaports, and over which the courts of admiralty have jurisdiction concurrent with the courts of common law; such contracts include according to civilians and jurists, among other things, charter parties, affreightments, marine hypothecations, contracts for the marine service in the building, repairing, supplying and navigating ships; contracts and quasi-contracts respecting averages, contributions and jettisons, and policies of insurance.[iii]

Maritime laws are fundamental to govern the laws of open waters. Unlike the contracts under the Contracts Act, 1872 where there is consideration of only two parties in marine contracts, there are more than two parties, for instance, in the Suez Canal, who should be held liable for the losses incurred, should it be the shipping company or the seller? To govern such instances, there is a requirement for perquisite contracts which will be discussed further.

The concept of the charter contract was initially developed in the field of maritime law. It is usual to make a rough distinction between the three following types of maritime charter contracts, of which only two are considered as "real" charter agreements: -

> (1) Voyage charter agreements, i.e., agreements concerning the chartering of an equipped ship (ship with crew) for one or more determined voyages or voyages.
>
> (2) Time charter agreements, i.e., agreements concerning the chartering of an equipped ship for a specified period, the particular voyages to be determined later on by the charterer.
>
> (3) Bare-hull (bareboat) charter or demise charter agreements (charter by demise), i.e., agreements concerning the “chartering” of a non-equipped ship.[iv]

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As the time protracted, changes in the system of contracts were elaborated in the marine time industry, leading to convenience and practical applicability. The new procreated list of contracts has been explained in the following paragraphs.

CHARTER AGREEMENT

A charter agreement is an agreement between two principal parties. It is, when first issued, the best available evidence of the contract of carriage between Carrier and shipper (almost certainly the only written evidence) and at best only eventually is said to contain the contract when it reaches the hands, unconditionally and adequately, of an 'innocent' third party for value.[v]

Charterparty contracts that go under this heading are a 'hybrid.' Being on a time form and remuneration being by way of a daily rate of hire, and they logically fall within the broader genus of time charter parties. However, they have features that give them the flavor of a voyage charter, not the least of which is that the geographical route, together with named ports, is included in the charter party wording. Thus, the voyage the charterer intends that the ship is to perform is delineated together with the charterer's estimate of how long that performance is likely to last. Very frequently after that stated number of days, two different words are inserted, e.g., ‘about 50/60 days without guarantee’.

One frequently encountered dispute emerging from the use of trip charters is the question of determining the correct measure of damages flowing from a repudiation by the charterer because of, e.g., an inability by the charterer to supply the intended cargo (this may be because a sub-charterer has defaulted in that regard). Trip charters do not ordinarily specify the amount of cargo to be carried. They will, of course, specify the type of cargo, e.g., fertilizer. Thus, in assessing the damages flowing from a repudiation of a trip charter, regard should be had not to the notional loading of a full cargo and the subsequent length of a notional voyage to carry and discharge and the daily hire payment over that estimated period, but rather to what are the minimum obligations which the defaulting charterer should be content to discharge.

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WHARFAGE AND DOCKAGE AGREEMENT

A wharf is a structure on the harbor shore where ships are docked to load and unload cargo or passengers. The duty paid for the privilege of using a wharf is called the "wharfage." A dock is an area of water for building or repairing or loading and unloading ships and ferries. Dockage is the fee charged for a vessel to use a dock.

Generally, wharfage and dockage claims are within the jurisdiction of admiralty courts. This is because a wharf is a necessary terminus of every voyage. Wharf accommodation is necessary for navigation and is indispensable for ships, vessels, and water-craft of every name and description, whether employed in carrying freight or passengers or engaged in the fisheries. Thus, wharfage is inseparable from the ship and incurred for the benefit of all interested therein.[vi]

However, admiralty jurisdiction depends on whether the ship was taken out of navigation by using the wharf. If it is not taken out of navigation, wharfage claims come within admiralty jurisdiction. A ship is not taken out of navigation when the wharf is used only for the restoration of the ship between two voyages. That is, restoring the ship after one voyage preparatory to another.[vii]

Overseas Tankship (UK) Ltd v Morts Dock & Engineering Co Ltd [viii] the appellants were the charterers of the Wagon Mound. She was in the harbour in Sydney taking onboard furnace oil. Servants of the charterers negligently permitted the escape of oil into the water. The spilled oil was carried over by the wind and the tide to a wharf belonging to the respondents at which they carried on the business of shipbuilding and repair. Some of their employees were at that particular time carrying out repairs to a ship that was moored alongside the wharf, and in the course of the operations, they were making use of welding equipment. One of the respondents' managers noticed the floating oil and stopped the welding operations to consult the wharf manager, who assured him that it was pretty safe to continue working since previous experience had shown that sparks were unlikely to set fire to floating oil. With due caution, therefore, work recommenced, but a piece of molten metal fell from the wharf setting fire to a piece of cotton waste which happened to be floating on the oil. This, in turn, set the oil aflame, and the respondents' wharf was extensively damaged.

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SHIP REPAIR CONTRACTS

Major ship repair contracts are agreements for major ship repair works at a ship repair yard. Significant repairs are complicated or large-scale repairs that may necessitate the ship to be taken out of service. Most large-scale repairs, particularly those carried out in a ship repair yard, require the supervision of a classification society. The ship must be readied for repair at a ballasting facility for oceangoing ships, notable tankers. The tank must be thoroughly cleaned, and its 'slops' (greywater and hydrocarbon residues) must be pumped ashore according to environmental regulations. Such contracts can be modified to include ship conversion work.

There is nothing to prevent an owner whose ship needs necessary repairs after a collision from taking the opportunity of repairing his ship (owners' repairs) whilst the ship is repairing collision damage, and he is entitled to be reimbursed in full for detention costs provided the detention period is not increased due to his own repairs.

The Dress[ix] In November 1961 the vessel President Arthur collided with the Daressa. The Dress was solely at fault. President Arthur was detained for 23 days repairing. Her owners, during that period, would have earned a commercial profit of just over $30,000 and also could have received an operating differential subsidy of a little over $36,000 payable by the Federal Maritime board. The board refused payment on the ground that the sum was legally recoverable from the owners of Daressa. In the consequent dispute, Daressa's owners argued that the loss of the subsidy was caused not by the collision but by the decision of the board to refuse to pay and that in any event, the loss was not reasonably foreseeable by them. It was held that loss of subsidy was proximately caused by collision, which was lost during the vessel's retention.

SEAFARER'S EMPLOYMENT CONTRACTS

These are contracts directly in the lines of labor laws and the labor law convention of the ILOC. It mandates the shipowner/employer to have written employment agreements with all seafarers working on seagoing ships. The payment of wages of seafarers shall match the standards formed by MLC.

This contract helps the seafarer to know about the working conditions, working hours, wages and facilities provided on the vessel. This contract is important from the Fair- Trade Practice

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perspective. The agreement must be signed by both the parties, i.e., the seafarer and the employer/shipowner.

A written employment contract must be concluded between the seafarer and the shipowner or the employer or the one who has assumed the responsibilities of the shipowner or the employer. The contract must be concluded no later than at the start of the employment; and for ship-employed seafarers no later than at the start of the ser-vice on board. The seafarer must have a chance of going through the employment contract and seeking advice about its terms before signing it.

MARINE SALVAGE

Marine Salvage is the process of rescuing, repairing, and refloating a ship, its cargo and crew, and other properties from unforeseen imminent peril. Ship salvage operations are mandatory and must be accomplished rapidly and without delay to repair, remove shipwrecks, clear out the passage for further navigation, and reduce marine pollution.[x]

There are various types of salvages, such as offshore salvage and harbor salvage. The future need for salvage services is related to the future risk of vessel accidents. Several factors can be expected to affect the future accident rate. On the negative side, low freight rates, brought about by the downturn in the world economy and over tonnage markets, have put shipowners under financial pressure, leading to a lowering of maintenance and crewing standards. Indeed, some owners have succumbed to this pressure. Compounding this problem is the aging of the world fleet, a trend that heightens the need for maintenance.[xi]

Suppose salvage is not performed under a contract. In that case, the rescuer must act voluntarily aside from any legal duty to act, other than the acknowledged duty to assist those in peril at sea or attend after a collision. If the owner or the owner's agent is still on the ship, they can refuse offers of assistance. A vessel found entirely deserted or abandoned without hope or intention of recovery is considered derelict and is fair game for anyone who comes across it. It is not true, however, that the rescuer or salvor automatically becomes the owner of the property. The owner always has the option to reclaim his property by paying an appropriate reward.

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CONTRACT OF AFFREIGHTMENT

Contract of Affreightment is an agreement between a charterer and a shipowner, where the shipowner agrees to transport a specific number of goods for the charterer at a specified period. Under this agreement, the charterer is obligated to pay the freight whether the goods are ready for shipment or not.

Given the long-term nature of the contract, a COA is almost always tailor made to meet the specific needs of the parties concerned. These parties are the shipper or buyer of the cargo who is often motivated by requiring certainty for the costs of transportation. The shipowner is concerned with providing assured long-term employment and flexibility for his owned or chartered in tonnage. COAs enable the shipowners to be flexible and allow the vessels to be fitted into a pattern of trade that maximises laden as against ballast distances and allows such arrangement to be concluded at very competitive freight rates.

As a result, COAs contain very few standardised terms, other than the individual voyage charter terms that govern each lifting once the vessel has been tendered for loading. The least standardised part of the contract will be the shipping programme and nomination provisions. These provisions are the most abused or contested over the period of a lengthy COA.[xii]

Under English law, being required to do something within one working day usually excludes the day in which the notice is given. The day that the notice is given is usually excluded from the calculation of the period. On this basis, if owners nominated the vessel on Monday evening, the charterers have until close of business on the Tuesday to accept (Zoan v Rouamba [2000]). However, if the notice is given after business hours on the Monday, the usual presumption is that the notice is treated as having been received the following day (Rightside Properties v Gray [1974]). It all depends on whether evidence shows that the owner's nomination on the Monday was made within or after working hours. Even if the nomination were made after working hours on Monday, it would seem that the provision that a working day to be a minimum of 8 working hours would be sufficient to show intention by the parties to give the charterers a whole working day to respond, as an exception to the general rule.

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CONCLUSION

Maritime laws are a long way from the land laws. It is very not the same as the laws that work ashore. The agreement is the fundamental piece of the Maritime law. No action can occur with no sort of understanding in water bodies. Whether for entertainment in the ocean like scuba jumping or water skiing, we need to consent to an arrangement to get access to something similar. Consequently, Maritime Contracts are essential for smooth agreements occurring on untamed water between the contracting parties.

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