

National Taiwan Ocean University
Department of Shipping & Transportation Management
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Charter Parties

I. General Discussion of Natures of Private Contracts.

A charter party: a **private contract** or an agreement;
a lease for a part of a vessel or an entire vessel.

Since it's a **private contract**, acts, laws and regulations like COGSA, Hart Act, Hague Rules, Hague-Visby Amendments, Hamburg Rules or Rotterdam Rules etc. **won't apply to it**, unless you deliberately take these acts etc. in the contract, or unless you make them a part of the contract, or unless you blend them into the contract, and having the performance governed by them if you do intend to be. Those acts, laws and regulations are mainly applied to common carriers vs. the shipping publics, to protect the shipping publics.

The doctrine of **freedom of contract**: The concept of chartering which is a private contract is that 2 people of equal knowledge and equal economic power who are negotiating and doing business with each other, and so whatever they work out in the private contract, that's the way it is, that are the things to govern the contractual relationship between them.

Contracts

A contract is an agreement that creates rights and obligations for parties enter into this contract.

So a charter party is an agreement which creates rights and obligations arising out of hiring a part of a vessel or an entire vessel.

There are requirements for a binding or a legal contract:

1. Parties must be legally competent, no minors; they must be of legal age at the time they make the contract. If you enter into a contract with somebody who is not of legal age, he can later on invalidate the contract, he can do it either before or after he reaches legal age.
2. Parties must have an interest in the subject matter;

This is usually for financial interest. The parties must have an interest in the safe arrival, continuous existence, or the transportation of whatever the cargo is or the ship is. They will be benefited by the safe arrival, or continuous existence, or the transportation of whatever the cargo is or the ship is, and be injured by its (cargo) or her (the ship) damage or loss.

3. There must be a consideration involved by both parties;

Consideration: a payment of money is usually the thing for consideration, i.e. paying money. The consideration has to be mutual on the part of both parties. The mutual consideration in the charter party is that the charterer promises to pay the charter hire (or freight) and the owner promises to perform the service.

4. Meeting of minds as expressly indicated by words or actions.

A meeting of minds makes people agree on whatever terms and conditions are in the contract!

If, for example, you put everything in the contract (e.g. a time charter party), but you leave out the name of the ship, you haven't got the meeting of minds.

Or in a voyage charter, you don't fix in the contract a clause as to who is supposed to load or discharge the ship, there is a case law saying that if there's not agreement otherwise (no meeting of minds!) then it is the owners' obligation to load and discharge the vessel.

5. Legal purpose;

You can't make a contract with the other to do something which is unlawful. You couldn't make a contract to, for example, smuggle liquor into the U.S. because it was contrary to the law at the time when the contract was made. It does not make any difference if the law changed. If the contract was unlawful at the time it was made, it could not be enforced.

There's an exception. If you make a contract with the anticipation of the law is going to be changed, and then when the law is changed, we can perform the contract, therefore, that's a valid contract.

6. Contracts must be entered into voluntarily with the legal obligation intentionally assumed and self-imposed.

If, in some ways or the other, you're forced into a contract, that's not really entered voluntarily, i.e. you enter into a contract under press, you can dissolve the contract.

7. Contracts must be reasonably specific. A vague or ambiguous contract is unenforceable.

8. There must be an offer and its acceptance in accordance with the terms of the offer.

What do you need to have an offer? Three things are required in order to have an offer:

- a. It must be communicated to the other party;
It's not effective until the other party receives the offer.
- b. The offer must be intended to be bound by it.
You really intend to do the things you put in the offer.
- c. It must be reasonably specific, unambiguous.
So the other one must know what you are offering definitely and unambiguously.

Suppose you receive an offer and are not interested in it, what your obligation to do is to **ignore it!** You don't have to tell anything by return.

Or you might **come back with your counter offer.**

How long the offer is kept valid?

- Till it is accepted. **Once you accept the offer, you have the contract.**
- Till you **either reject it or come back to the offeror with your counter offer**, which is the same thing. If he offers at \$15.- per ton, and you come back and say not \$15.- but \$12.-, you then make a counter offer which kills the original offer. And suppose you're not interested in the counter offer, you don't have to do anything with it, you can ignore it. Then the original offer is dead. But suppose later on you find you can't do business at \$12.- and you come back to him and say "OK! I will take the \$15.- per ton." But he is no longer obligated to give you for \$15.- which was the offer he made, because the offer at \$15.- is dead.
- Till the offer **expires in a reasonable time**. If he offered you something for \$15.00 and you're not interested in it, so you didn't reply to him. But now you can't come back to him and say "Hey! You remember, 6 months ago, you gave me that offer at \$15.00 per ton for carriage of my cargo, now I'll take it." It's already expired after a reasonable time. What's the reasonable time? It depends on what kind of business you're doing. If you're doing shipping business now, I can say all segments of shipping market are fluctuating and volatile quickly, it may be only a short time, a few minutes, a couple of hours or a day.
- The offer may have a termination day/time. Say you have a termination time for the offer at 3:00 pm (...*the offer is valid till 3:00 pm today...*) today, if you don't reply something by 3:00 pm today, then the offer is dead. You can't come back at 10:30 pm and say "I accept your offer!" You're out of time, he maybe has already acceptance from somebody else.
- The destruction of thing of contract itself, the subject matter.

E.g. the ship sinks; the cargo burns up; the offeror is dead; the offeror goes bankrupt.

- The revocation of the offer before acceptance. If there is not a termination time in the offer, then before you accept it, he can revoke it and take it back so that the revocation kills the offer. So the offer can be revoked before it is accepted.

You must have an offer and its acceptance in accordance with the terms of the offer.

When you have the acceptance, you have the contract, even the acceptance made over the telephone.

When is the acceptance effect?

A charter party doesn't have to be in writing and the acceptance is just as valid and binding as a written contract. Somehow, there're certain kinds of contracts that have to be in writing, but none of them applies to charter party. But please bear in mind, **the agreement to arbitration has to be in writing**. For instance, according to the United States Arbitration Act, it provides that an agreement to arbitrate, in order to be enforced, must be in writing.

When both parties (Owners and Charterers) reach the agreement on main terms of charter party, they'll have the "Recap" (recapitulation) first that recapitulates the main terms of the charter party made by the brokers who are brokering the fixture. Then both parties will still have to negotiate the **charter party details** (c/p details, detailed wordings and minor clauses) to conclude a fully clean fixture. The brokers will draw up the written charter parties (2 originals) for signature by both parties according to the Recap and the agreement to the charter party details after a full and clean fixture is concluded.

Indication, Offer and Counter Offer, Accept/Except...:

Scanned papers of P.145~162, from the book "The Essential Guide to Chartering and the Dry Freight Market", by Nick Collins, Clarkson Research Studies, 2000.

補充內容

Acceptance 接受/承諾，何時生效？

1. 當報價人按他所訂的①條件、②承諾方式與③時限之前，收到被報價人所給之承諾時才算有效。報價人未特別明訂，則通常以報價人報價的方式回覆。但並非強制的，重要的是要讓報價人收到。(傳遞給報價人)
2. 口頭承諾(Oral acceptance)
倘報價人並未在報價中特定要被報價人以何種方式答覆其承諾，則

口頭承諾與書面承諾有同等效力。

但倘因此而有糾紛時，原告必須負舉證之實。

3. 在報價及對該項報價之承諾中含有附帶先決條件（前提條件）

“Subject”（Subject to ...）

如 subject to details, *Collins* 書 P.148~P.150

如果有這樣的附帶先決條件在承諾中，而被報價人也接受，那合約是否成立？

按 U.K 的法律與判例：

每一項細節（合約細節）包含附帶條件都必須雙方完全同意，而附帶先決條件也必須得到滿足，合約才能成立，對雙方才有約束力。

按 U.S.A. 的判例：

雙方必須對所有“必要的條款”（essential terms）都同意，合約才算成立。→縱有一些次要的條款（minor terms）雙方尚未取得協議，仍有合約成立。哪些是 essential，哪些是 minor？→到法院或仲裁時決定。

因此任何條款涉及金錢的獲得與損失都應當在主要（必要）條款來協商。*Collins, P.150*

4. 被報價人回以“...accept, except...”即“A/E basis” *Collins, P.151*

被報價人答覆，“除了以下所列的條件以外，我接受每一件條款”，因此，以下他所列的條件就是他不同意的，而雙方必須再協商至雙方完全取得協議。因此被報價人形同再給予一還價，並非表示“承諾”之意。It is not an acceptance.

5. Extend 要求報價人延長其報價的時效：必須取得報價人的同意

6. When is the acceptance effective ?

(1). “...accept, except...”：

I accept everything except certain things listed below, and so everything I accept, I am bound by it, and then they have to work out only the things they say “except”.... In this way, you come back to the other with the counter offer, so the original offer is dead.

(2). Oral contract

Oral contract is just as binding as a written contract. Plaintiff has the burden to prove what the terms & conditions are.

(3). A Contract with “Subject...”

“Subject details”

“Subject to Board approval”

“Subject stem”

...

Do you have a contract with subjects ?

In U.S.A. :

You must have agreed on the essential terms.

If you agree on the essential terms and haven't agreed on some minor details, you still have the contract.

In U.K. :

Every single detail, no matter how minor it is, must be agreed on, otherwise there's no contract.

- (4). Acceptance is effected when it is received by the offeror as per the way and the time set by the offered if the offeror purposely makes them required.

7. Revoke an offer : Revocation

The revocation is effective when the other receives it.

8. “Receive” : You receive it when it is delivered to your place of business during the usual business hours or to your residence.

9. Governing Law :

- (1). To be agreed & provided in the contract
- (2). Otherwise, the law at the place where the contract is made, and the contract is made where it is accepted.
- (3). There're things that you can put limitations on this :
 - A. In the U.S., the COGSA applies to all imports & exports.
 - B. In the U.K., the COGSA applied to only exports from the U.K.
 - C. In Taiwan, Cl.39, 40, 41, 42, 43, 44, 45... 請查閱海商法法條.

10. Ambiguity :

- (1). If there's any, the court and arbitrators will try to clarify it. The rule is the ambiguity will be decided against the party who caused it, against the party who made the C/P, gave the pro forma C/P, basing on whose C/P is
如 B/L, any ambiguity will be decided against the company that issues it if the court or the arbitrators can't resolve what was the intention of the parties.
- (2). There's an order :
Handwritten→ Typewritten→ Stamped or Pasted→ Printed clauses

11. The Parole Evidence Rule 口頭證據規則：

Where a contract is made wholly in writing, evidence is not admissible to add to, vary or contradict the written terms.

The parole evidence rule was stated by P.O. Lawrence J. in *Jacob v Batavia and General Plantations Ltd* as follows:

“It is firmly established as a rule of law that parole evidence cannot be admitted to add to, vary or contradict a deed or other written instrument. Accordingly, it has been held that (except in cases of fraud or rectification, and except, in certain circumstances, as a defense to an action for specific performance) parole evidence will not be admitted to prove that some particular term, which had been verbally agreed upon, had been omitted (by design or otherwise) from a written instrument constituting a valid and operative contract between the parties.”

有一項牢不可破的法律規則就是不採信任何會添加、更改或反駁一契據或其他書面文書的口頭證據。按此一規則（除了是在欺詐或矯正的案件與，在某些情況下，除了對特定作為的訴訟當成一種抗辯以外）只要有一書面文書在雙方之間構成有效並可執行的合約，則任何口頭證據將不會被採用以證明，針對某些特定條件，雙方曾有達成某一口頭協議，但(在設計上或以其他方式)在該一合約上這一口頭合約卻被遺漏了。

Illustration:

A shipping contract was made on standard terms which allowed the forwarding agents complete freedom in the manner of transport of the goods. However, they had told the owners of the goods to be shipped that the goods would not be shipped on deck. The cargo owners were allowed to prove the assurance. The majority of the Court of Appeal held that the contract was partly oral, partly written, and partly created by conduct.

如果已有一書面合約存在，而且此一書面合約在外表上看來已是完整而沒有瑕疵的書面合約，則如果有任何一方聲稱在書面合約成立之前雙方曾有達成另一口頭協議，此一口頭協議與書面合約的內容有相矛盾，則此一口頭協議將不得做為法院或仲裁訴訟中的證據。此一口頭協議的證據將被禁止在法庭中採用，否則書面合約將毫無效用。

12. Anything you put in the final C/P that is contrary to what you have in the fixture recap, then it's the final C/P that rules things.

13. You can introduce evidences of agreements that made after the written

contract was made, because those evidences of agreements are simply amendments to the contract. You can make an addendum or addenda to the contract. You can make an addendum/to the contract. You also can have oral amendments.

14. Dispute resolution;
 - ① Court litigation;
 - ② Arbitration;
 - ③ Mediation;
 - ④ Reconciliation.