
IMPLICATIONS OF SHIP ARREST ON THE CHARTERER

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ABSTRACT

Ship arrest is a strong legal tool in maritime law. It can greatly impact the contracts and business dealings of charterers. This paper examines how ship arrest affects charterers in both voyage and time charterparties. It specifically examines delay clauses, hire obligations, and off-hire provisions. It investigates whether hire must be paid during detention periods and discusses how risk is shared between owners and charterers when arrest stems from third-party claims. By analyzing key cases, such as *NYK Bulkship (Atlantic) NV v Cargill International SA (The Global Santosh)*, the study shows that the effects of arrest mainly depend on how the contracts are written, not on vague ideas of “sphere of risk.” The paper stresses that careful wording of off-hire and indemnity clauses is vital for fair risk sharing and to avoid unexpected financial issues. It concludes that clear contract language and quick actions by charterers are key to reducing financial losses from ship arrest.

Keywords: Ship Arrest, Charterer, Charterparty, Delay Clauses, Hire Payment, Off-Hire, Maritime Law.

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INTRODUCTION

Ship arrest plays a key role in maritime law as a legal tool that allows claimants to secure maritime claims through proceedings in rem. While its function as a security method is well known, its contractual effects can be complicated, especially in the context of charterparties. When a chartered vessel is arrested, operations may be disrupted, and the distribution of financial risk between the owner and the charterer becomes unclear. Charterparties share operational and commercial risks through specific clauses that cover delay, laytime, hire, demurrage, and off-hire. However, these clauses do not always explicitly mention delays caused by third-party claims. Consequently, courts often need to interpret contract language to decide whether hire continues to be payable or if the charterer can halt payment during the arrest period.

The relationship between ship arrest and charterparty duties raises important legal questions. Should arrest be seen as part of the owner's risk, since the vessel is the owner's asset? Or should liability strictly depend on whether the arrest results from the charterer's actions or failures? Court rulings show that the answer mainly depends on how the contract is written rather than general fairness principles. This paper looks at how ship arrest impacts charterers under voyage and time charterparties. It examines delay clauses and off-hire provisions, and assesses how courts have dealt with third-party arrests. By investigating risk allocation in leading cases, the study aims to clarify the legal situation and emphasize the need for careful drafting to prevent commercial uncertainty.²

RESEARCH OBJECTIVES

- To examine how delay and off-hire clauses work in voyage and time charter contracts.
- To look at how liability is shared between owners and charterers during times of detention or arrest.
- To evaluate the legal effects of ship arrest on the charterer's duty to pay freight or hire.
- To assess whether current contracts effectively deal with third-party arrests.

² Evi Plomaritou, *A Review of Ship owner's and Charterer's Obligations in Various types of Charter*, 4JSOE 307 307-310 <http://www.davidpublisher.com/Public/uploads/Contribute/550a993f0831a.pdf>

RESEARCH QUESTIONS

- What are the delay clauses in a charterparty, and who bears responsibility for delays when a vessel is detained due to a ship arrest?
- How are freight under a voyage charter and hire under a time charter structured and paid by the charterers?
- What is the impact of the ship arrest on the Charterer?

RESEARCH SIGNIFICANCE

This research paper looks at the effects of ship arrest on charterers, focusing on delay clauses and contractual responsibility issues. It addresses the important question of whether a charterer must keep paying hire during the ship's arrest. By reviewing existing case law, the study seeks to clarify the legal obligations of charterers in these situations. It also examines the practical outcomes of ship arrest. While quickly arresting a vessel by an owner or charterer might effectively enforce contractual rights, it may not always be the best strategy. This paper provides a thorough assessment of the legal and commercial effects of third-party ship arrests on charterers, offering useful insights for practitioners, policymakers, and academics in maritime law.

LIMITATION OF THE RESEARCH

This study looks at how ship arrest affects the charterer. It focuses on delay clauses and the charterer's duty to pay the owner. It is limited to international conventions on the carriage of goods by sea and other laws that apply to the responsibilities of the charterer and the owner under a charter party.

REVIEW OF THE LITERATURE

Maria Gerakaris, *The Global Santosh*, JPS (2016).

The paper is a summation of the Court of Appeal ruling on the meaning and application of additional clause 49 of the amended New York Produce Exchange (NYPE) form. The clause contains that the vessel will be off-hire in case of capture, seizure, detention, or arrest, unless

capture, seizure, detention, or arrest takes place by the personal act, omission, or default of the charterers or their agents.

B. Espineura, *The Impact of Freedom of Contract and the New Procedure in International Maritime Transport*, ITL (2022).

This article describes the main aspects of liability regime in delays in the two main maritime contracts, which are time charter parties and voyage charter parties.

Robert Gay, *Damages which are not disposed of by demurrage: what is a separate type of loss*, JIML (2012).

This article provides the definition of losses, as a result of delay. It maintains that losses which are not identical to delay as such and to the normal costs of waiting at port should be considered as independent losses which can be recovered on top of demurrage. Such losses can be the destruction of the ship or cargo as well as costs incurred to avoid the destroy.

Evi Plomaritou, *Review of the Shipowner/Charterer Obligations in the different types of Charter*, JSOE (2014).

This paper provides an overview of the key concerns that may occur in charter parties in the key charter types. The discussion is based on the steps of the chartering process pre-fixing, fixing, performance and post-fixing according to the English common law. It recaps the division of responsibility and expenditure between shipowner and charterer and deals with the topic in a business way.

Lars Gorton, *The Liability for Freight*, SISL (1957).

In this article, the liability issue of freight is explored and the party liable is specifically established. The analysis will commence with the Scandinavian law and the comparison of the same with the English law which has a special practical importance in the context of charter parties in ocean transportation.

RESEARCH METHODOLOGY

This research uses a legal analysis method. The study mainly looks at court decisions, laws, and standard charterparty forms to examine how risk is allocated when ships are arrested. It

focuses particularly on English maritime law because of its significant impact on international shipping. The study reviews leading sources to understand how delay clauses, off-hire terms, and indemnity mechanisms work.

It also employs secondary sources, like scholarly articles and respected maritime law books, to provide context for court decisions and to highlight business implications. Additionally, the research explores standard contracts, such as NYPE and BIMCO clauses, to assess drafting practices. Through this framework, the study aims to find consistency in legal principles and their real-world effects for charterers facing arrest situations. It has guaranteed academic rigour and quality in the study.

CHAPTER- 1

DELAY CLAUSES IN CHARTERPARTIES: RIGHTS, OBLIGATIONS, AND RESPONSIBILITIES OF OWNERS AND CHARTERERS

Any delay taking place in the currency of a charterparty adds to the cost of the operation of the voyage. The main question that emerges is how to distribute the extra costs, for example, who should assume the financial impact of such delay and how the parties can control this risk by using the contractual terms. Despite the existence of different solutions, the allocation of the delay risk will be finalized with references to the particularities of the charterparty and their interpretation by the courts. This discussion is split into two segments: 1. Voyage Charterparty
2. Time Charterparty

VOYAGE CHARTERPARTY

Freight on a voyage charterparty is calculated on the estimated voyage. The profitability of the owner is based on the successful completion of approach voyage and carrying voyage. Broadly, the risk associated with delay at these phases is covered by the shipowner, and the charterers are covered by the risk associated with delay at loading and discharge operations.

On Approach and Carrying Voyage Delay

There can be delay during the approach voyage and the carrying voyage because of several reasons. The overall guideline is that the risk of delay lies on the ship owner unless it is subject to an exception provision. The charterer is not able to cancel the contract because of delay,

especially during the approach voyage unless: The time loss is so great as to exasperate the purpose of the contract, mala fide was provided on the Estimated Time of Arrival (ETA). There is an exercise of the cancellation clause. The charterer is obliged to make reasonable use of any contractual right. In case the charterer is slow in giving instructions, and the slowness leads to loss to the owner, the charterer can be held responsible to damages. Nevertheless, the owner has no right to cancel the contract on his own will unless the delay is a frustration.³

Port Charter and Berth Charter

To transfer the risk of shifting delay to the charterer, the owner has to meet all the requirements of the contract that are required to activate the start of the laytime. The first difference that should be made is between a port charter and a berth charter. In a port charter, when the ship comes inside port limits, any delay in arriving at the berth caused by waiting in line with the other vessels or due to poor weather is usually at the expense of the charterer. In a berth charter the vessel should arrive at the nominated berth prior to the commencement of laytime hence the congestion delay is still the risk of the owner. In case there is a delay caused by the failure to make a valid Notice of Readiness, or the vessel is not ready, it is still the owner who bears the risk. There is a tendency to have clauses in charterparties which alter this risk distribution. Examples include: Or as near as she can safely be, allowing to be discharged when she gets to another port; Reachable berth clauses, which permit the owner to make a shift where the charterer is lacking in nominating an accessible berth because of berth congestion; “Cargo available at the port, covers the owner in case of non-readiness of cargo; The inclusion of a WIBON (Whether in Berth or Not) clause enables the vessel to tender a valid Notice of Readiness even when not physically berthed. This shifts the risk of delays from berth congestion or waiting time onto the charterer.⁴

Delay in Discharge and Loading

As soon as the provisions of the contract related to the beginning of the laytime are met, the risk of the delay during the loading or discharge shifts to the charterer. In the case of non-definite laytime, the charterer will have to finish cargo operations in a reasonable period.

³ Javier Andres Franco Zarate , *Risk of Delay in Charterparties*,8 RM 1,1-9(2009) <https://dialnet.unirioja.es/servlet/articulo?codigo=3133619>

⁴ Maria Espineira , *Allocation of Frisk of Delay in Time and Voyage Charterer*, ILT (Accessed on January 4,2026,7.00PM) http://itl-legalconsultants.com/news_eng/allocation-of-risk-of-delay-in-time-and-voyage-charterparties/

Exception clauses may interrupt laytime. Delay In this scenario delay can be returned to the owner. To be subject to an exception, there should be three conditions that are met:

1. The charterer has to demonstrate the happening of the excepted event;
2. The event should be within the special wording of the clause;
3. The owner should not be responsible of the delay.

In the case of overrun of laytime, demurrage will be paid at an agreed rate. Nevertheless, demurrage liability might not exist in cases when the delay is comprehended in an exception clause or is caused by the fault of the owner. The parties can indicate a certain number of days of demurrage or can leave it to amount calculation at the agreed rate.

TIME CHARTERPARTY

Under a time charterparty, the charterer must pay hire continuously throughout the charter period, unless the vessel is covered by an express off-hire clause in the charterparty. If the vessel cannot provide the required service because of detention or arrest, whether hire is still payable depends on the wording of the off-hire clause and the reason for the detention. When a third party seizes a vessel during a time charter, the risk allocation hinges on whether the arrest stems from the actions or failures of the charterer or those for whom the charterer is accountable. If the arrest occurs because the charterer has violated a contract, such as with cargo claims related to poor loading or unloading, the vessel will stay on-hire and hire will still be due.

On the other hand, if the arrest results from issues that fall under the owner's responsibility, like maritime liens or claims not linked to how the charterer used the vessel, the vessel may go off-hire for the duration of the detention, depending on the terms of the relevant off-hire clause.

Delay on the voyage's prosecution

The owner has a responsibility to act with maximum expediency. In case this duty is violated, the charterer can make a claim of damages. But when the delay is caused due to circumstances that are encompassed by exception clause, the owner is not liable.

Delay and Hire Payment

Hire in advance or at the due date is an obligation of the charterer which is absolute. Late payment is non-observance. The owner in this situation can claim damages and may also withdraw the vessel service especially when there is no anti-technicality clause.

Once the owner takes the late payment without putting any complaint, the right to withdraw could be waived unless the charterer is notified that he must be made to comply next time. The waiver of the right to withdraw can be caused by the constant acceptance of the late payments.

Delay and Off-Hire

Delay can bring the vessel off-hire under the circumstances specified in some cases including the machinery breakdown. When the ship is off-hired, the owner incurs the loss, and the hire is not payable even in the event that there is no fault on the side of the owner. There are two types of off-hire clauses:

1. Suspension during a given time;
2. Suspension on net-loss of time.

In case of a defective description of the vessel and the lack of ability of the charterer to trust the off-hire clause, the charterer can receive damages on the delay that occurred.⁵

Delay in Redelivery

When the vessel fails to be redelivered on time due to the charterer instructing the ship to continue making a last voyage outside the charter term, then this amounts to Failure to deliver the vessel back in the agreed period of the charter, as a result of the charterer giving orders, especially whereby it is ordered to make a final voyage that goes beyond the time specified in the contract, then the failure will be deemed to be a breach of the charterparty. Where this happens, the charterer is subject to paying hire on the overtime. Where market rate of hire is higher than the charter rate agreed upon, the owner is also entitled to damages based on the difference between the market rate and the contract rate during the overrun period.

⁵ Victor Pnyeghado, *Charterparty and Extra Charter Party delay Claims-an overview*, LEXOLOGY (accessed on January 4, 2026, 11. 00PM) <https://www.lexology.com/commentary/shipping-transport/>

Nevertheless, the final voyage instructions of the charterer will not be considered as illegitimate provided that they were made under the contractual trading boundaries and that they were reasonable when they were made. In this scenario, the charterer should give new and legal directives in line with the charter. Additionally, other provisions like that of the Charterers who may then choose to finish the last voyage below trading limits is a restricted defence to the charterer. These provisions enable the accomplishment of the final voyage in case of redelivery after the agreed period is slightly exceeded as long as the voyage was reasonably contemplated during the time in the charter. Moreover, a without guarantee clause can be added so as to shift some of the redelivery risks to the owner. Such a clause is aimed at providing a qualification on the strict liability upon punctual redelivery by obligating the charterer to give an estimated date of redelivery in good faith, instead of having absolute liability to pay the redelivery amount based on failure to redeliver at the stated agreed expiry date.⁶

Liability on delay during loading after arrival at the loading port

The issue as to whether or not to have the delay in loading covered under the liability in the delay of the loading following the arrival of the vessel at the loading port is largely subject to the nature of the charterparty and when the laytime commenced. The difference between a port charter and a berth charter is one which is especially important.

A shipment of steel was shipped in Xingang to Cadiz and Bilbao in the *Merida*.⁷ The issue involved in the dispute was whether the charter was a port charter or a berth charter because this would determine who should take the risk of delay. Charterparty Under the law of charterparty, as soon as a ship reaches the agreed destination and a valid Notice of Readiness (NOR) has been presented, the running of time commences. These delays in loading thereafter put the liability generally on the charterer.

At the beginning, the arbitrator paid attention to the introductory terms of the charterparty and decided it was a charter party of a port. The delay in loading was attributed to the responsibility of the charterer since the master had already tendered NOR on arrival. The court however, on appeal, took a closer look at the wording. The term was used to refer to a good and safe charterers berth. Xingang, which meant that the point of destination in the contract was not the

⁶ BIMCO, <https://www.bimco.org/contracts-and-clauses/bimco-clauses/current/> (accessed on January 6, 2026,

⁷ *Novologistics Sarl v Five Ocean Corporation (The "Merida")* — *Commercial Court* (Gross, J.) [2009] EWHC 3046 (Comm)

port itself but a certain berth in the port. To that end, the court made a decision that it was a berth charter. In that scenario, where the vessel had not yet arrived at the nominated berth and where no valid NOR could be tendered there delay in waiting to receive a berth would otherwise remain the liability of the owner.

Delay in loading falls upon the charterer in a port charter when the vessel arrives in the port and presents valid NOR. Delay in reaching the berth as a result of congestion would be the risk of the owner in a berth charter until the vessel is duly berthed and NOR successfully delivered.

London Arbitration Award: Negligence to Load Cargo

Some cases in London arbitration awards have seen the owners argue that the charterer was not able to load the cargo that was agreed upon and thus they lost the freight, including on claims of dead freight. The burden is still on the charterer even where performance that is unsatisfactory by stevedores is the cause of delay, especially in cases where the loading operations are within the area of responsibility of the charterer. In a case like this, the tribunal decided that where there was an additional cargo, the vessel had to wait in the port just as charterer instructed. This period still had the laytime or time on demurrage hit up to the time when the charterer ordered the vessel to go or he forsook any further loading. Also, when the cargo is offered at the loading port, the charterer has to be aware of costs of such a venture and also provide efficient stevedores to manage the cargo according to the specifications. Failure to do this can make the charterer liable to resultant delay or inappropriate stowage.⁸

PAYMENT OF FREIGHT AND HIRE

Remuneration that should be paid by the charterer to the shipowner falls under two categories: Freight under a voyage charter and Hire under a time charter. Hire is computed usually on a daily basis based, but is a payment to carry out the temporary use of the vessel. Freight on the other hand is a fee that is paid to transport cargo between ports and is often paid on a per ton basis.⁹

FREIGHT

Unless otherwise stated, freight is earned in the United States and in the United Kingdom under

⁸ SSM, <https://www.steamshipmutual.com/publications/articles/jumbostow0908> (accessed on January 7, 2026, 7.00PM)

⁹ HANDYBULK, (accessed on January 7, 2026,9.00PM) <https://www.handybulk.com/hire-and-freight/>

general law through delivery of the cargo. The judicial power has come to the conclusion that freight is not realized only by having made part of the voyage. Under general maritime law, freight is usually earned upon delivery of the cargo, unless the charterparty states something different. However, parties often change this through clauses that say freight is “earned on shipment” or “freight earned, vessel lost or not lost.” When these clauses are included, freight can be due even if the cargo is lost later.

Without a contractual change, freight is not usually payable if delivery is not completed. Still, if non-delivery is due to the charterer's fault, the charterer may still be liable. A mere delay does not prevent the owner from receiving freight, as long as the contractual voyage is completed and reasonable care has been taken. When only part of the cargo is delivered, freight is generally recoverable based on the amount delivered. However, if cargo completely loses its commercial identity, freight may not be earned unless stated otherwise in the contract.¹⁰

Freight and Damaged Cargo

In case a portion of the cargo is lost, the owner is entitled to a relative portion of freight in relation to the amount that has been delivered. In cases of delivery of the whole cargo, even in a dilapidated state, full freight is usually paid, but then the goods are delivered in specie (for example, in their original form, however, damaged). Freight may not be due in case the cargo has lost its identity and can no longer be recognised in specie.

Quantum Meruit

In some situations, owners have tried to demand extra freight on a quantum meruit basis, e.g. when a voyage was prolonged because of some event like closure of the Suez Canal. Such claims have been uniformly rejected by the courts except where brought out clearly by the contract.

Pro-rata Freight

Freight is generally not paid at the time the voyage is commenced, but upon completion of the entire voyage. But pro-rata freight can be admitted in cases when the voyage is interrupted due

¹⁰ Laws Gorton ,The Liability for Freight ,SISL(accessed on January 5,2026,5.00PM)
<https://www.scandinavianlaw.se/pdf/38-18.pdf>

to accident, outbreak and other unavoidable circumstances and cargo is discharged at a middle port. This is technically not full freight but full compensation of part freight.

Advance or Prepaid Freight

During dry cargo trades, owners can insist on pre-freight. Where freight is clearly stated to be prepaid and earned at shipment, it cannot be returned even if the cargo is lost or the voyage is disrupted, unless the contract says otherwise. In order to safeguard themselves, owners usually include a clause like that of freight earned, retained and irrevocable, vessel lost or not lost. Different clauses provide that freight is earned on shipment, and cannot be recovered even in case of loss of the vessel.

Back Freight

Back freight is one that is paid by the shipper in cases where cargo is not taken by the receiver and has to be shipped back. It however, is not payable in case of non-acceptance due to fault of the vessel.¹¹

Lump Sum Freight

Lump sum freight refers to a fixed sum that is paid regardless of the actual cargo volume transported so long as the owner has ensured that the capacity agreed upon is availed to the charterer.

CHARTER HIRE

Penalty Clause

Historically, some voyage charterparties included clauses called “penalties” for not fulfilling the contract. These clauses usually limited damages to an amount that did not go beyond the agreed freight. However, according to modern contract law principles, clauses labelled as penalties are mostly unenforceable if they do not reflect a true estimate of loss. In today’s charterparty drafting, such clauses are rarely used in their original form. Instead, parties use clear liquidated damages provisions or demurrage clauses to manage risk in a way that is easy

¹¹ GCS , <http://generalcargoship.com/charter-party-freight-clause.html> (accessed on January 8 ,2026,12.00PM)

to predict commercially.

Payment

It will be calculated based on the some rate per time unit i.e. fractional month or per month. Hire under a time charterparty is calculated on the basis of the agreed daily or monthly rate for the use of the vessel for a specified period, and is not dependent upon the quantity of cargo carried. It is usual to provide that prior to payment in this form the payment will be made at regular periods, in the type of the Baltime charter, namely, the semi- monthly. The payment can be done in money form. It means that the payment will be made through the commercially accepted way to transfer the funds and, in this case, the result will be to grant an unconditional right to the transferee to utilize the funds as soon as possible. The responsibility of payment of the hire by charterer is absolute unless the off- hire clauses are suspended. The suspension of hire will not occur, when the impact due to the contingencies has not been taken care of by the off hire clause. The charterer remains liable to pay the hire at the rate on which the hire is to be paid, which is calculated with reference to the anticipated risk, unless it is inextricably linked to the amount of hire.¹²

Withdrawal

Withdrawal of the vessel for non-payment of hire constitutes termination of the charterparty for breach, and must be distinguished from contractual cancellation rights which may arise prior to the commencement of performance. The exchange form in the New York Produce is usually the withdrawal. In case the hire is not paid on a regular basis and on time, the owners will withdraw the charterers service. The withdrawal is not to be recognised equal to the cancellation. The general principle connected with this was treated in Luckenbach V Pierson,¹³ and in this case, Withdrawal notice is efficient, although the vessel was at sea, by reason of the cargo being on board, till the discharge of the cargo, a withdrawal shall not be made properly. The effect of a notice withdrawal is on terminating the charter. Prior to the effect of withdrawal, in case payment is accepted, then there is no option of the owner withdrawing even though they have provided the notice from withdrawing.¹⁴The withdrawal will be in force, after the

¹² Francis Jo Bren, Freight and Charter Hire , 49 Tul.L.Rev 956(956-967)(1975) https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/tulr49§ion=56
12 229 F. 130 (1915)

¹³ 229 F. 130 (1915)

¹⁴ Middi Osaemedike , Payment of Hire and Right to withdraw Vessel, ACADEMIA (accessed on Jan 8,

cargo has been discharged and the hire recovered by the owner only up to the time of the completion of the discharge and in case of the cargo remaining on board, up to the withdrawal time, damages may be claimed by the owner which the ship was lowered on less profitable employment. The withdrawal notice has been made 22 minutes prior to the payment being made in addition to being valid in case of *Tenax S.S Co v The Brimnes*.¹⁵ Then in the event of failure of the bank to pay the funds or clerical mistakes, the hire is not paid in time, but not through fault or negligence of the charterer. Now advanced charterers attempt at preventing withdrawal in that ground by inserting the clauses as a result of the notice of the failure to pay issued by the owners to the charterers so that rectification of the error shall occur.¹⁶

Off hire clauses

The hire will not be paid under the given conditions like when time is lost because of failure of vessel in rendering the service. They are off hire clause which is actually designed as a suspension of hire in the *Yaye Mary* case, the off- hire clause refers to the fact that, at that time, the ship was not in the working condition owing to the injury, therefore, payment will not be made by the charterer he did not get anything so he is not obliged to pay it, in spite of the fact that the owner did not cause the occurrence of the off hire. In *Clyde commercial steamship co v west India Steamship co*¹⁷, here it was decided that, in case of the quarantine issue involving the employment of the charterer in the case in point, that the off hire will not be there, and because of the men sickness on board, the ship prevented the performance, then the vessel will be the off hire. The exception clause cannot stop the charterer to exercise an off hire in this case the causes of off hire are primarily the excepted clauses. In the strike cases the grant of men deficiency was then in the off-hire clause. The general rule, here, is, that in the event that the strike is against the owner, the vessel could not be engaged in the service of the charterer and is off hire. However, where the longshoremen of the charterer is the cause of the strike, who declined to exercise since they desire to organize the employees of the charterer, the off hire will not apply. Under the Off-Hire Clause, the charterer is not obliged to pay hire when the vessel or its machinery breaks down or is otherwise unavailable for service, such as during

2026,8.00

PM)

https://www.academia.edu/9618293/PAYMENT_OF_HIRE_AND_THE_RIGHT_TO_WITHDRAW_VESSEL

¹⁵ *Tenax Steamship Co v Owners of the Motor Vessel Brimnes* [1974] EWCA Civ 15

¹⁶ Myola Kozachenko, Hire Payment in Time Charterer – a condition or not – Legal Perspective, SAFR (accessed on January 11, 7.00PM) <https://www.shippingandfreightresource.com/hire-payment-in-time-charters-a-condition-or-not-a-legal-perspective/>

¹⁷ *Clyde Commercial S. S. Co. v. West India S. S. Co.*, 169 F. 275 (190 *Tenax Steamship Co v Owners of the Motor Vessel Brimnes* [1974] EWCA Civ 15

discharge or repairs. The Average accident does have a definition, it is not a predicted physical harm that prevents the complete utilization of the vessel. Under the New York Produce Exchange form, the clause of the Off-Hire Clause is time loss that occurred due to average accidents to cargo. Unless fire was present with respect to the cargo and the damage is not suffered by the ship though despite the fact that the ship has to deviate to refuge port, an off hire has not been granted. Periodical dry docking of the vessel, in case the vessel is ordered to a dry dock by the charterers and such time is lost before docking, off hire is not permitted because in an order by the Charterers the vessel was operating.¹⁸

When Is Hire Continued?

Controversies are quite common when it comes to starting and restarting the hire especially when the vessel has been repaired after breaking down. The questions always tend to focus on the exact time when time starts again once the vessel is rendered inefficient. It is a common argument by charterers that hire to the vessel should be discharged immediately a vessel has become incapable of rendering service and that they need not be required to make payment when the vessel is not under their effective control. Where the charterparty contains a condition that hire will be suspended until the vessel is in an efficient condition to resume her services, hire will actually restart only when the vessel is once more in seaworthy condition.

And until the Classification Society determines that the vessel meets fit to come back into service, the charterer has no right to treat the vessel as back on hire.

Is Suspension of Hire The Only Remedy of the Charterer under the Off-Hire Clause?

It can be argued that the off-hire clause functions only to put on hold the payment at the times when no service is delivered. As a matter of fact, the clause represents the principle of no service, no hire. Nevertheless, the existence of such suspension does not in any way bar a claim in damages where the owner breached other contractual duties. The clause is not to be interpreted to exonerate the owner of duties performed under the charterparty in lieu of liquidated compensation in form of suspension of hire. In that regard, although the major corrective measure in the off-hire clause consists of the suspension of payment, it does not

¹⁸ Colin Ferris, Off Hire Clauses and how to Time Charterer, FDD(accessed on January 6,6.00 AM)
<https://www.swedishclub.com/upload/12/Off%20hire%20clauses%20Triton%201-2010.pdf>

necessarily dispel other measures of correction in case of independent violations.

Freight Demand under bill of Lading

As it has been identified, a shipowner can require payment of freight on the bill of lading, as long as the same freight has not been paid. This right is irrespective of the fact that full hire has been paid to the head charterers. The ruling makes it clear that the right of the owner to bill of lading freight is not prone to the common fights between the owners, charterers, and shippers on who rightfully should receive the payment.

Such a right is especially useful in situations where the owner has the fear that the charterer cannot deliver on the future and the freight under the bill of lading is about to become due. The NYPE form, in clause 18, provides the owner with a lien on sub-freights and sub-hire to amounts of money that are payable under the charterparty. Nonetheless, this kind of lien does not occur until there is still hire. When the charterer has not yet defaulted, the owner can have no lien over the sub-freight or sub-hire. However, the owner can pay directly without the lien provision where freight is payable under the bill of lading. Considering the prevalence of the NYPE form, and the lack of an express clause to the contrary, this stands can have profound commercial consequences and in particular in areas such as the tanker trade where similar forms are being used.¹⁹

Deduction of Hire

Express clauses allowing deduction of hire are often found in charterparties, such as address commission, brokerage, port disbursements, domestic bunkers and off-hire periods. Owners would tend to dispute such deductions. Where the charterer achieves the reasonable and bona fide calculation of the loss caused by breach of the owner, it was held in the *Nanfri* that the deduction made is not the default in discharge of payment. In a case where the breach by the owner is shown to have deprived the charterer of the use of the vessel in respect of which hire has been paid in advance, the charterer may offset by deduction an amount of hire subsequently due. This right however comes about only in those cases in which the owner has deprived the charterer of the use of the vessel wrongly, rather than in cases of minor default.²⁰

¹⁹ *ALPHA MARINE CORP V MINMETALS LOGISTICS ZHEJIANG CO LTD (THE MV "SMART")* [2021] EWHC 1157 (Comm)

²⁰ Dr .Arun kasi , Hire Deduction and Reductions : Implications of Resorting to the self help Remedy,

Deduction of Freight

Deduction of freight can only be done when there is an express clause in the charterparty which allows the deduction of freight. Where there is no definite contractual agreement, freight is still to be paid in full.

CHAPTER – 4

EFFECTS OF SHIP ARREST ON THE CHARTERER

In the case of *Navigation Key Inc v MV Manticore*²¹, the court of Gujarat declined an arrest application because no concluded or binding charterparty or a fixture existed between the parties. The case shows that claims to the vessel can be dismissed at the first level in the lack of a legally binding charter arrangement.²²

Types of Charterer

There are three main categories of charterers namely:

1. Bareboat and Demise Charterer
2. Voyage Charterer
3. Time Charterer

In every category, different rights and obligations are supposed, which can be very relevant even in case of arrest of the vessel.

Remedies to a Charterer on arrest of the vessel

In a case where a vessel has been arrested on the basis of a claim which is not covered by the charterparty like a collision claim, launched by a third party, charterers will normally seek to apply the provisions of the charterparty to the solution of their problems. Practically, the charterer must inform as soon as possible the owner that the vessel is to be treated as off-hire and send a notice of protest retaining his right to claim damages due to losses resulting because

LEXOLOGY (accessed on May 6 2023, 6.00AM) <https://arunkasico.com/bulletin-mlb-4-2021/>

²¹ Navigation key Inc v MV Manticore- Feb 2022

²² Zarir Bharutcha ,Gujarat High court refuses arrest of vessel at first instance ,MONDAQ(accessed on January 15 ,2026,12.00PM) <https://www.mondaq.com/india/trials-amp-appeals-amp-compensation/1161584/gujarat-high-court-refuses-arrest-of-vessel-at-first-instance>

of the delay occasioned by the arrest. The distribution of the risk under the contract will end up relying upon the terms of the off-hire and indemnity provisions.²³

Whether Vessel Off-Hire when Arrested by a Third Party

The question as to whether a ship will be on hire at the time of arrest is subject to the cause of the arrest and to the terms of the charterparty in question. In the case of *Mookda Naree*²⁴ the tribunal had to decide whether there was still payable hire where the vessel was arrested because of the action of a sub-charterer. The arbitration determined that in case of charterers being arrested due to their fault or negligence, they have a duty to pay hire. The vessel was still on hire under the head charter and sub-charter since the sub-charterer did not secure the claim on cargo and he did not receive the vessel release. In the head charter, clause 86 stated that, whilst trading in ports of West Africa, charterers were to take responsibility to claims to third party cargo (with the exception of those incurred due to unseaworthiness), and to provide security to prevent or release arrest and that the vessel would continue to be on hire in such conditions.

But when the tribunal interpreted the charterparty together as a whole the court of adjudication found that Clause 86 only applied to cargo claims arising out of the chartered cargo. Since the claim in question was within that parameter, the issue of responsibility was likewise allocated. In cases where the arrest was not covered by the contractual distribution of risk, the vessel had been off-hired in the period in question, and no hire was due.²⁵ The fact of an arrest does not automatically stop the obligation to pay hire. The key factor is whether the cause of the arrest is due to the charterer's performance of contractual duties or if it comes from the owner's area of risk. The off-hire clause must be understood based on the immediate cause of the detention. The hire is payable unless time is lost due to the vessel's inability to render the service required under the charterparty.

A Third Party Arrests a Demise Chartered Vessel

It was brought under the Senior Courts Act 1981 section 21 in proceedings relating to the vessels, *Vasco da Gama* and *Columbus*, which were demise chartered to *Mythic Cruise Ltd and*

²³ Eugho Cheng, Points to Consider if your ship is arrested ,WEST (accessed on January 15 ,2026,6.00AM) <https://www.westpandi.com/news-and-resources/news/points-to-consider-if-your-ship-is-arrested/>

²⁴ *Mookda* [2021] EWHC 558 (Comm)

²⁵WFW, <https://www.wfw.com/articles/mookda-naree-off-hire-when-a-vessel-is-under-arrest/> (accessed on January 18, 2026 ,10:00 PM)

Lyric Cruise Ltd respectively.²⁶ According to section 21(4), there are some statutory conditions that should be fulfilled to have an action in rem being done. The charterers in this case were not demise charterers at the time proceedings were instituted but they were running the ships at the time the cause of action occurred. As a result, both the statutory requirements were not met, and the conditions of carrying on the action were not met.²⁷

Arrest of a Voyage Chartered Vessel by a Third Party

In the *Adelfa*,²⁸ the receivers of the cargo alleged minor damage and refused to accept delivery. As a consequence, the vessel was arrested by the Libyan courts, which upheld the receivers' claim, resulting in liability on the part of the owners. The owners subsequently claimed demurrage from the voyage charterers and paid an indemnity to the cargo interests. The umpire determined that the charterparty had been frustrated at the time of the Libyan court's judgment, as discharge had become legally impossible. It was further held that no operative repudiatory breach had been committed by the charterers following the frustrating event. The owners argued that frustration was unavailable to the charterers because the arrest and delay were attributable to the cargo receivers.

Mr Justice Popplewell held that under a voyage charter, the charterer undertakes to discharge the cargo and may be liable in damages or demurrage if discharge is not effected within the agreed time. However, the charterer does not undertake that the vessel will not be arrested by third parties such as cargo receivers. The arrest in this case was not caused by any breach of duty owed by the charterer under the charterparty. Nevertheless, where arrest by a third party results in delay, the time lost may fall within the charterer's sphere of responsibility in the calculation of laytime or demurrage, depending upon the contractual allocation of risk. The voyage charterer is expected to take reasonable steps to procure the vessel's release, including the provision of security where appropriate.²⁹

Arrest of a Time Chartered Vessel by a Third Party

In *Global Santosh*,³⁰ In *NYK Bulkship (Atlantic) NV v Cargill International SA*, the Supreme

²⁶ *Taxidiotiki-Touristiki-Nautiliaki Limited (t/a Aspida Travel) v Columbus*

²⁷ IISTL <https://iistl.blog/tag/ship-arrest/> (accessed on January 19, 2026, 12.00PM)

²⁸ *Adelfamar S.A. v Silos E Mangimi Martini S.p.A (the "Adelfa")* [1998] 2 Lloyds Rep 466

²⁹ CPC <https://charterpartycases.com/case/363-adelfamar-s-a-v-silos-e-mangimi-martini-s-p-a-the-adelfa-1998-2-lloyds-rep-466> (accessed on January 20, 2026, 2.00PM)

³⁰ *NYK Bulkship (Atlantic) NV v Cargill International SA (The Global Santosh)* [2016] UKSC 20

Court clarified how to interpret off-hire clauses in cases of arrest. The Court rejected the previous “sphere of risk” analysis used by the Court of Appeal and instead focused on strict contractual interpretation.

The key question was whether the arrest came from the “personal act, omission, or default” of the charterer or its agents while fulfilling obligations under the time charter. The Supreme Court found that the sub-charterer’s failure to unload the cargo within the agreed time did not count as performing a right or obligation under the main time charter. This meant that the vessel was off-hire during the detention period.³¹ The decision highlights that responsibility during arrest relies on specific contractual terms, not on general principles of fairness in business. It confirms that actions by sub-charterers are not automatically blamed on the time charterer unless they relate to obligations under the charterparty.³²

Critical Analysis

The legal decisions show that off-hire clauses are tools for sharing contractual risk, not rules based on fault. The principle of “no service, no hire” reflects the expectation that payment relates to the vessel’s availability for work. However, how these clauses work relies heavily on precise wording.

If the arrest results from issues linked to the charterer’s actions, the vessel usually stays on hire. On the other hand, if detention is outside the charterer’s responsibility, hire may be put on hold. This situation becomes more complicated in layered chartering structures, especially when sub-charterers or agents are involved.

Authorities stress the need for clear drafting in sub-charters to prevent mismatches in liability. Unclear off-hire or indemnity terms often lead to lawsuits and considerable commercial uncertainty. A fair risk distribution requires clear terms regarding arrest situations, including third-party claims not related to cargo operations.

In the end, clear drafting, timely notice procedures, and aligned risk sharing are crucial to

³¹ Maria Gerakarar , the Global Santosh- Off hire while under arrest due to Charter’s agent fault, JOP (accessed on January 25, 9.00PM) <https://jacksonparton.com/news-and-articles/2016/7/2/>

³² David Semark , *Charterers and Ship arrest* , SA(accessed on May 5, 8.00PM) <https://shiparrested.com/wp-content/uploads/2019/06/David-Semark-.pdf>

reducing financial disruption caused by ship arrests.

CONCLUSION

Ship arrest poses significant legal and commercial challenges for charterers. The consequences of detention mainly depend on the contract's wording, especially in off-hire and indemnity clauses. Courts have confirmed that hire does not automatically stop when a ship is arrested; instead, liability depends on whether the detention results from the charterer's actions or from risks assigned to the owner. This analysis shows that careful drafting of charterparty clauses is crucial to avoid unexpected issues during an arrest. Charterers must meet their operational obligations and take immediate action to safeguard their interests. In today's maritime business, managing risks effectively in arrest situations requires both legal accuracy and business insight.

RECOMMENDATIONS

1. Charter parties should explicitly define off-hire clauses, delay provisions, and risk allocation to avoid disputes during ship arrests.
2. Charterers should ensure compliance with cargo handling and operational obligations to prevent arrests resulting from their negligence.
3. Immediate notice to owners and proper documentation of vessel arrest or off-hire events is crucial to preserve claims for damages or hire suspension.
4. Both owners and charterers must remain aware of the local laws regarding ship arrest in different jurisdictions.
5. Charterers and sub-agents should be trained in operational procedures to reduce liability in case of third-party arrests or delays.
6. Employing widely recognized charter party forms (e.g., NYPE, Baltime) ensures predictable allocation of delay risks and remedies.

BIBLIOGRAPHY**WEBSITES**

1. BIMCO. <https://www.bimco.org/contracts-and-clauses/bimco-clauses/current/> (Accessed on January 6, 2026)
2. SSM. <https://www.steamshipmutual.com/publications/articles/jumbostow0908> (Accessed on January 7, 2026, 7:00 PM)
3. HANDYBULK. <https://www.handybulk.com/hire-and-freight/> (Accessed on January 7, 2026, 9:00 PM)
4. Laws Gorton. *The Liability for Freight*, SISL. <https://www.scandinavianlaw.se/pdf/38-18.pdf> (Accessed on January 5, 2026, 5:00 PM)
5. GCS. <http://generalcargoship.com/charter-party-freight-clause.html> (Accessed on January 8, 2026, 12:00 PM)
6. Middi Osaemedike. *Payment of Hire and Right to Withdraw Vessel*, ACADEMIA. https://www.academia.edu/9618293/PAYMENT_OF_HIRE_AND_THE_RIGHT_TO_WITHDRAW_VESSEL (Accessed on January 8, 2026, 8:00 PM)
7. Myola Kozachenko. <https://www.shippingandfreightresource.com/hire-payment-in-time-charters-a-condition-or-not-a-legal-perspective/> (Accessed on January 11, 2026, 7:00 PM)
8. Colin Ferris. <https://www.swedishclub.com/upload/12/Off%20hire%20clauses%20Triton%201-2010.pdf> (Accessed on January 6, 2026, 6:00 AM)
9. Dr. Arun Kasi. <https://arunkasico.com/bulletin-mlb-4-2021/> (Accessed on May 6, 2023, 6:00 AM)
10. Zarir Bharutchia. <https://www.mondaq.com/india/trials-amp-appeals-amp-compensation/1161584/gujarat-high-court-refuses-arrest-of-vessel-at-first-instance> (Accessed on January 15, 2026, 12:00 PM)
11. Eugho Cheng. <https://www.westpandi.com/news-and-resources/news/points-to-consider-if-your-ship-is-arrested/> (Accessed on January 15, 2026, 6:00 AM)
12. WFW. <https://www.wfw.com/articles/mookda-naree-off-hire-when-a-vessel-is-under-arrest/> (Accessed on January 18, 2026, 10:00 PM)
13. IISTL. <https://iistl.blog/tag/ship-arrest/> (Accessed on January 19, 2026, 12:00 PM)

14. CPC. <https://charterpartycases.com/case/363-adelfamar-s-a-v-silos-e-mangimi-martini-s-p-a-the-adelfa-1998-2-lloyds-rep-466> (Accessed on January 20, 2026, 2:00 PM)
15. David Semark. *Charterers and Ship Arrest*. <https://shiparrested.com/wp-content/uploads/2019/06/David-Semark-.pdf> (Accessed on May 5, 2026, 8:00 PM)
16. Maria Gerakarar. <https://jacksonparton.com/news-and-articles/2016/7/2> (Accessed on January 25, 2026, 9:00 PM)

JOURNALS

1. Plomaritou, A. *A Review of Ship Owner's and Charterer's Obligations in Various Types of Charter*, 4 JSOE 307-310. <http://www.davidpublisher.com/Public/uploads/Contribute/550a993f0831a.pdf>
2. Javier Andres Franco Zarate. *Risk of Delay in Charterparties*, 8 RM 1, 1-9 (2009). <https://dialnet.unirioja.es/servlet/articulo?codigo=3133619>
3. Maria Espineira. *Allocation of Risk of Delay in Time and Voyage Charterer*, ILT (Accessed on January 4, 2026, 7:00 PM). http://itl-legalconsultants.com/news_eng/allocation-of-risk-of-delay-in-time-and-voyage-charterparties/
4. Victor Pnyeghado. *Charterparty and Extra Charter Party Delay Claims – An Overview*, LEXOLOGY (Accessed on January 4, 2026, 11:00 PM). <https://www.lexology.com/commentary/shipping-transport/>
5. Francis Jo Bren. *Freight and Charter Hire*, 49 Tul.L.Rev 956 (1975). https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/tulr49§ion=56

CASE LAWS

1. *Novologistics Sarl v Five Ocean Corporation (The “Merida”) — Commercial Court (Gross, J.) [2009] EWHC 3046 (Comm)*
2. *Tenax Steamship Co v Owners of the Motor Vessel Brimnes [1974] EWCA Civ 15*
3. *ALPHA MARINE CORP v MINMETALS LOGISTICS ZHEJIANG CO LTD (The MV “SMART”) [2021] EWHC 1157 (Comm)*
4. *Navigation Key Inc v MV Manticore – Feb 2022*
5. *Clyde Commercial S. S. Co. v West India S. S. Co., 169 F. 275 (1910)*

6. Adelfamar S.A. v Silos E Mangimi Martini S.p.A (The “Adelfa”) [1998] 2 Lloyds Rep 466
7. NYK Bulkship (Atlantic) NV v Cargill International SA (The Global Santosh) [2016] UKSC 20
8. Mookda [2021] EWHC 558 (Comm)
9. Taxidiotiki-Touristiki-Nautiliaki Limited (t/a Aspida Travel) v Columbus IISTL

STATUTES

1. Senior Courts Act, 1981
2. BIMCO-Charter Party Clause
3. NYPE 2015

BOOK

BARIS SOYER, ANDREW TETTERNBORN, SHIP OPERATIONS, 272 (1 st ed.2020)