
Dennis W. Arrow, Oklahoma City University School of Law

Available at: https://works.bepress.com/dennis_arrow/42/
The law of charters occupies a significant portion of the admiralty lawyer's attention because a high percentage of the world's ocean trade moves on chartered vessels. Knowledge of the practical and procedural aspects of the shipbroker's business as well as an understanding of the economic context and controlling principles of law are essential to a successful admiralty practice. These two recent works, by authors with both practical and legal experience, make a major contribution to each of the requisite areas of expertise.

Shipbroking and Chartering Practice is aptly named because it focuses on the customs and practices of the shipbroking trade. Although primarily intended as a basic textbook for nonlegal personnel in the ocean shipping industry (including brokers, agents, exporters, and shipowners), it is likely to be useful to the beginning admiralty practitioner as well.

* Professor of Law, Oklahoma City University. B.A. 1970, George Washington University; J.D. 1974, California Western School of Law; LL.M. 1975, Harvard Law School.

1. Approximately 70% of world oceanic trade is by means of chartered vessels. The remaining 30% is carried aboard "liners" operating through contracted liner agents, who rigidly fix schedules and tariffs in advance. The charter market (also known as the "open market") is classified as either "spot market" (where tonnage is fixed voyage-by-voyage) or "time-charter market" (where a charter, or "fixture," is set for a certain period of time). The time-charter market accounts for most open-market cargo. R. IHRE, L. GORTON, & A. SANDEVÄRN, SHIPBROKING AND CHARTERING PRACTICE 12 (1980) [hereinafter cited as SHIPBROKING].

2. The term is used here in its generic sense and includes not only those agents engaged in chartering, but also liner agents, port agents, loading agents, and sale and purchase agents as well.

3. Id.
Approximately half of the book is devoted to an exploration of the practical and economic background of international shipping. The opening chapters succinctly treat the problems of supply and demand, specialized cargos, intra-industry communication, and marketing. The dry cargo,\textsuperscript{4} tanker, and reefer markets are separately described and analyzed. The preliminary mechanics of "placing an order" and "advertising a position" are described in clear and comprehensible terms. The types and functions of brokers and agents are explained. The authors include a valuable list of the ethical duties of the broker.\textsuperscript{5} Though the authors note that strict business ethics are generally representative of the industry,\textsuperscript{6} selected traps for the unwary are presented and explored.\textsuperscript{7} The "context" segment of the work concludes with a thorough explanation of the mechanics of freight calculation.\textsuperscript{8}

The authors introduce legal considerations by initially distinguishing the types of chartering\textsuperscript{9} and by providing a cost-allocation chart for each.\textsuperscript{10} Next, the effects of selecting certain standardized transport clauses (F.O.B., C. & F., C.I.F., \textit{ex quay}) are explored. The text contains a chart defining the risk allocation, insurance, and transportation consequences of transport clause selection.\textsuperscript{11} Once the parties have come to terms,\textsuperscript{12} they ordinarily

\textsuperscript{4} The authors break down this market into its specialized components which contribute to an understanding of the practice and the specialized terminology of ocean shipping. The bulk, tweendecker, container, ro/ro, liner, feeder, tanker, and passenger markets are considered separately. See \textit{Shipbroking, supra} note 1, at 2-11.

\textsuperscript{5} These duties include keeping the principal informed of market developments, preserving confidentiality, investigating the counter-party to some extent, negotiating actively, carefully drafting the original charter-party (contract), and following up performance by the counter-party generally. \textit{Id.} at 21-23.

\textsuperscript{6} \textit{Id.} at Introduction.

\textsuperscript{7} \textit{Id.} at 20-24.

\textsuperscript{8} \textit{Id.} at 53-69.

\textsuperscript{9} The authors distinguished the "charter in full" (\textit{i.e.}, charterer has control over the whole vessel) from the "space charter" (\textit{i.e.}, charterer merely reserves a certain space). From a functional standpoint, the critical distinctions among a "voyage charter," "time charter," and "bareboat charter" (\textit{i.e.}, charterer assumes virtually the entire responsibility for vessel operation and noncapital funding) are noted. \textit{Shipbroking, supra} note 1, at 36-46.

\textsuperscript{10} \textit{See id.} at 50.

\textsuperscript{11} The chart is based on the \textit{Incoterms}, which achieve some standardization concerning the meaning of these terms. The authors also provide a description of some of the revised \textit{Incoterms}, including the important new "free carrier" (named point) clause, which is based on the old F.O.B. clause, but which passes
will select from the various standard charter forms available. The authors describe and present a brief history of these forms and discuss some of the common considerations and legal principles affecting the parties' form and clause selection. A description of the bill of lading in its various forms as well as a brief compilation of applicable national and international maritime law are provided. The last two chapters of the book deal with the discrete problems posed by voyage and time charters.

*Time Charters* begins where *Shipbroking and Chartering Practice* leaves off. While the latter contains no reference to case law, it is the exclusive focus of *Time Charters*. The authors have planned their exhaustive study of time charters around the most commonly used charter, the New York Produce Exchange form. The major standard clauses of that form provide the framework for the book's chapter headings under which text and extensive case summaries explain the major problem areas. For users of the Baltic and International Maritime Conference on Uniform Time-Charters (Balttime) form, the authors have prepared a separate section exclusively applicable to that form and have cross-referenced to areas of general concern in the main section of the book. Because of the absence of case law concerning the clauses of modern tanker forms, little attention is devoted to this specialized area apart from reproduction of the widely used STB Tanker Time Charter Party form.

Because most time charter disputes are settled in either London or New York, the authors attempt to cover both British and United States law on the subject. In Great Britain, case law constitutes the legal authority on the subject. In contrast, few
United States charter disputes reach the courts because the bulk are resolved through arbitration. Though the decisions of arbitrators do not have binding force in any judicial proceeding, they are usually the final disposition of the particular dispute and are widely circulated in the shipping industry. These decisions are published and indexed under the aegis of the Society of Maritime Arbitrators as well as in *American Maritime Cases*. In practice, all parties proceed as if arbitrators' awards have precedential value, at least in relation to other arbitration proceedings. Thus, United States time charter law is largely arbitration law.

The authors comprehensively treat both British and United States law. Within each topic heading (standard form clause), British law is used as a foundation for discussion, and a separate “American Law” section is inserted to deal with areas of conflicting law and problems unique to the United States system. The case summaries are focused, succinct, and effectively integrated with the textual material of the authors. The Harter Act, the United States Carriage of Goods by Sea Act (1936), and the United Kingdom Arbitration Act (1950) are reproduced in appendices.

*Time Charters* provides an excellent synthesis of a complex area of case law heretofore only incompletely compiled. Although it does not purport to be exhaustive (no single volume work could be), its treatment of the legal ramifications of standard-form clauses is sufficiently complete to be valuable to the experienced practitioner in admiralty and to serve as a beginning reference point for an arbitration panel. The work certainly merits its growing reputation among practitioners in this specialized area of law.

---

20. *Id.*, *passim*.