

Bilingual Textbook

双语教材

*Practice and Law:
Charter Parties*

租船实务与法律

GUO PING LÜ FANGYUAN

郭萍 吕方园 著

高等教育出版社

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Chapter 1 General Introduction

Section 1 General Introduction of Tramp Shipping (I)

Target

To have a general understanding of tramp shipping and charter party.
To introduce standard forms used in the chartering practice.
To introduce some applicable laws and international shipping practices concerned with charter parties as well as bill of lading issued under charter parties.

Guidance

● 1.1 What is tramp shipping?	1.1.1 Key words and terms
	1.1.2 Two cases
	1.1.3 Differences between tramp shipping and liner shipping
● 1.2 Characteristics of tramp shipping	
● 1.3 Kinds of tramp shipping	

Main Content

1.1 What is tramp shipping?

1.1.1 Key words and terms

Liner shipping (班轮运输 或 定期船运输): Or liner transportation, means a transportation service that is offered to the public through publication or similar means and includes transportation by ships operating on a regular schedule between specified ports in accordance with publicly available timetables of sailing dates.

Tramp shipping (租船运输 或 不定期船运输): It's different from liner shipping.

Bulk cargo (散杂货): It means those merchandise which is neither counted nor measured, but can be weighed.

General cargo (件杂货): It means those merchandise which can be counted, weighed, or measured. In modern practice, most of the general cargo is consolidated into some transportation means or tanks which are called commonly as "container". Therefore, a general cargo is called container cargo mostly (集装箱货物).

COA (contract of affreightment, 运输总合同 或 运输合同): COA means contract of affreightment.

C/P (charter party, 租船合同): C/P is abbreviation for charter party.

Charter (租赁)

1.1.2 Two cases

In liner shipping, most of the general cargoes or container cargoes are transported from one port to another according to the schedule which has been advertised by one liner shipping company. Under that contract, there's no actual or formal written contract at all between the carrier and the shipper before the performance of the voyage until one transport document called bill of lading is issued by the carrier, it's authorized agent or the master when the cargo has been taken over or loaded on board. However, in practice, for the service of international trade, we may have a lot of choices means transportation shall be chosen. Before we discuss tramp shipping, let's assume two cases.

Case One

If you are a dealer and you want to import 100,000 iphone7s from the United States to China. What kind of transportation will you choose? Maybe some of you will think, the transportation can be performed by air/ by land / by sea. But the transportation by land is impossible because there is the Pacific Ocean between China and the United States. The transportation by air is very expensive for it is such a big box of 100,000 iphone7s. Compared with the above two transportation modes, transportation by sea is a good choice. You may find a ship or you may just contact one shipping company to transport iphone7s from the United States to China. Also in that way, you may choose liner shipping, because it is easy to find the line and the shipping company from some public media, providing such service. That's what you have learnt under liner shipping.

Case Two

Let's assume that the cargo is not Apple electronic products, it is grain. There are 100,000 tons grain which should be transported from the United States to China. What kind of transportation will you choose? Of course, you will choose transportation by sea. Is container ship possible to ship the 100,000 tons grain from the United States to China? Well, it's not convenient and it's not economic. So in such situations, the best way to choose is tramp shipping. Because tramp shipping is usually good to carry some bulk cargoes. Bulk cargoes mean those with no package or less package, which are different from container goods. That is to say those general cargoes can be consolidated into any type of container, transportable tank or flat or any similar unit load as well as any equipment ancillary to such unit load.

1.1.3 Differences between tramp shipping and liner shipping

For shippers with only a small quantity of cargo available, chartering of any whole vessel is hardly in practice. Their requirements are normally catered for by regular liner services which operate between major ports or alternatively they may make use of the services of tramp vessels which sail from port to port in search of cargo.^①

In liner shipping, the shipowner (carrier, operator) runs a regular service between more or less fixed ports and usually on a fixed time schedule. The liner operator acts as a common carrier, accepting all general cargo shipped between the ports under the coverage of his service.^②

① John F. Wilson, *Carriage of Goods by Sea*, 7th ed. Longman, 2010, p. 5.

② Lars Gorton, etc. *Shipbroking and Chartering Practice*, 7th ed., Informa London, 2009, p. 102.

In tramp shipping, on the other hand, the owner performs the transportation between different ports depending on where he finds suitable cargoes. This is at least how traditional tramp shipping is often described. Therefore, the ports or routes under tramp shipping are usually rather varied in different situation.^①

Firstly, the contracts are different.

Generally, under tramp shipping, one contractual agreement is concluded between one shipowner and one charterer. That agreement is usually called a charter party under which the charterer may hire the vessel for only one voyage or maybe a period of time. And it differs from a contract of affreightment or a contract of carriage of goods by sea. Contract of carriage of goods by sea is performed usually by container ship now. In liner shipping the contract is evidenced by the B/L or any other similar document of title or transport documents. So generally before the cargoes are carried on board, no formal written contract is made between the carrier and the shipper. Therefore, only after the cargoes have been loaded on board or have been taken over by the carrier or its agent at the loading port, an ocean B/L is issued by the carrier or its agent or the master on the request of the shipper. The B/L is considered as evidence of the contract of carriage of goods by sea. And also that kind of B/L plays the role of cargo receipt. After the cargoes have been transported or carried to the unloading port, the carrier should deliver all of the cargoes to the consignee on presentation of original B/L. That is the normal formula for the conclusion of the contract under liner shipping.

The charter party and all the terms and conditions under tramp shipping are negotiated individually, but they are often based on a previous charter party or on some forms agreed between the shipowner and the charterer.

Secondly, the agreed ports are different.

Under tramping shipping, a charter party shall be made between the shipowner and the charterer. Also, the vessel used is for the carriage of full cargoes or less frequently of part cargoes. Under tramp shipping, the vessel simply loads and delivers the cargo at the port or place which has been indicated by the charterer or nominated by the charterer as agreed on the provisions in one charter party, as an individual contract between the shipowner and the charterer only. However, under liner shipping, the carriage shall be performed and the ship calls at the port regularly according to the schedule which has been advertised or published usually by one liner shipping company or its shipping agents.

Thirdly, the calculation of the freight or hire differs profoundly.

In liner shipping, the freight is fixed in tariffs and often loyal customers are granted quantity rebates. In some countries rebates, unless applied equally, are regarded as unlawful or frowned upon by the authorities. Also the tariffs often contain currency adjustment factors (CAF) and bunker adjustment factors (BAF), whereby the freight will be adjusted according to certain event.

In the tramp shipping, freight (or hire) is negotiated in the individual case, and mostly is calculated on the basis of the carrying capacity of the vessel, or part thereof in the case of part cargoes, based on the weight or volume of the goods at the shipment or the discharging. If the goods do not reach the number of the capacity as agreed in charter party, the charterer shall pay deadfreight or any other compensation as per the terms in charter party.

Fourthly, the allocation of costs and risks differ substantially as a consequence of the varying control of the shipper/charterer over the employment of ship.

^① Lars Gorton, etc. *Shipbroking and Chartering Practice*, 7th ed., Informa London, 2009, p. 103.

In the liner shipping, the carrier must have full control of loading and unloading operations in order to ensure that the ship operates on schedule and therefore normally pays for that, the cost of which is included in the freight, and the carrier takes upon himself the risk of delays during loading/discharging, delivery and redelivery of the cargo taking place ashore, normally in the warehouses of the port. Conversely, the carrier does not wait for the goods at the loading port and if the goods are not placed at his disposal on time, the vessel will sail without them, however, the shipper still pay the freight.

In the tramp shipping, the charterer has a varying degree or control over the operation of the vessel and consequently a part of the related risks and expenses are allocated to him. This allocation varies according to the types of charter parties and terms of one charter party.

1.2 Characteristics of tramp shipping

Under tramp shipping, there is no fixed schedule, no fixed route and the carriage shall be arranged or performed as agreed according to the clauses or agreements between the shipowner and charterer.

Tramp shipping is used for some specific goods—bulk cargoes, not general cargoes which are generally transported under liner shipping.

Under liner shipping, if the shipper just pays the freight according to tariff, almost all the costs concerned with the carriage shall be included in the calculation of freight which means the risks during the loading, discharging, delivery or redelivery shall be borne by the carrier. Those additional fees may be charged temporarily. However, under tramp shipping, who shall bear the costs or the risks depends on the different clauses and different kinds of charter parties.

In tramp shipping, before the performance of the carriage, one agreement or contract shall be concluded between the shipowner and the charterer. The agreement may be named with a contract of affreightment—that is COA or one charter party. In the process of entering into the contract, tramp shipping differs from liner shipping.

1.3 Kinds of tramp shipping

Basically include the following:

voyage charter: the shipowner or the charterer comes to the conclusion to arrange one voyage or several voyages to transport the goods.

time charter: the shipowner will provide a ship for a period of time and during that period the charterer may use, or arrange the operation of the vessel. For the consideration, the charterer shall pay hire for the using of the ship.

bare boat charter: shipowner provides a bareboat with no crew member on board. There is no crew member, no master, and no officer in that case, therefore the charterer himself shall man the ship through the employment agreement with crew member, and of course the charterer shall possess and fully control the vessel. In that situation, the charterer is considered as one disponent who shall pay for hire as consideration.

New type :

TCT (time charter on trip basis or trip time charter): which is the combination of voyage

charter and time charter. In most cases, TCT is considered as one kind of time charter, sometimes, it seems as voyage charter based on the specific terms and conditions of charter party.

bareboat charter by purchase: This is the combination of bareboat charter and sale of ships, which is considered as one kind of important approaches for financing.

Types of charters

Charters are customarily divided into three general categories: demise (or bareboat) charters, time charters and voyage charters, and the slot charter which is recently developed and grew increasingly common^①.

Demise charters are those by which, in return for payment of hire, possession of the chartered ship is given to the charterers, who provide crew and all supplies, pay all running costs and undertake the responsibility of shipowner for those whose goods are carried on the vessel.

Time charters, whether for a period or for a trip, are those under which, in return for the payment of hire, the vessel's employment is under the orders of the charterers, while possession remains with the owners who provide the crew and pay the ordinary running costs, characteristically excluding specific voyage costs such as fuel and cargo handling and port charges which are paid by the charterers.

Voyage charters are those by which the owner agrees to perform one or more designated voyages in return for the payment of freight and (when appropriate) demurrage; the costs and the responsibility for cargo handling are left according to the terms of the specific agreement.

Slot charters involve the chartering of a guaranteed number of container spaces either on a period or a voyage basis.

Depending on the terms and the governing law, bills of lading issued under a time, voyage or a slot charter, either the shipowner or the charterer, or both, may be the "carrier" of the goods shipped hereunder, and liable as such to the owner of the goods shipped during the period of the charter.

However, whilst it is not uncommon for a time charterer to assume the role of carrier under bills of lading it is rare for a voyage charter to do so at any rate where English law applies. It is usual for a slot charter to issue his own bill of lading under which he is the "carrier".^②

Exercise

1. What are the differences between tramp shipping and liner shipping?
2. What are the characteristics of tramp shipping?
3. How many kinds of tramp shipping are there in practice?

Examination

What are the differences between tramp shipping and liner shipping?



① See *The Tychy* [1999] 2 Lloyd's Rep. 11 and *The Tychy* (No.2) [2001] Lloyd's Rep. 10, reversed [2001] 2 Lloyd's Rep. 403.

② Julian Cooke, Timothy Young QC, John Kimball, LeRoy Lambert, Andrew Taylor, *Voyage Charters*, 3rd ed., 2007, p. 1.

Section 2 General Introduction of Tramp Shipping (II)

Target

To have a general understanding of tramp shipping and charter party. To introduce standard forms used in the chartering practice. To introduce some applicable laws and international shipping practices concerned with charter parties as well as bill of lading issued under charter parties.

Guidance

● 2.1 What is chartering?	
	2.2.1 Voyage charter
	2.2.2 Time charter
● 2.2 Different kinds of chartering	2.2.3 TCT
	2.2.4 Bareboat charter
	2.2.5 Bareboat charter by hire purchase
● 2.3 Differences between time charter and voyage charter	

Main Content

2.1 What is chartering?

Chartering means that the shipowner or the disponent owner in one way or another promises to put a vessel or a certain transportation capacity at the disposal of the charterer. The charterer, in his turn, promises to pay the agreed freight or hire.^①

Key words and terms

Shipowner (出租人): means the person who shall provide the whole ship or some space of ship for one voyage or voyages, or a period of time according to the contractual agreement. He may be the real owner of the ship and maybe like a operator or a charterer who has the right to control the ship.

Charterer (承租人): means the person who has the right to use the vessel for voyage or voyages or maybe a period of time according to the agreement under the charter party. For the consideration the charterer shall pay for freight or hire for the usage or occupation of the vessel.

Preliminary voyage (预备航次): means the voyage starting from the place before the loading port to the loading port. It is generally common under voyage charter party. The shipowner and the charterer may agree on the voyage from the loading port to the discharging port, which is the carriage voyage. However before the carriage voyage has been performed, the ship is often in the place other than the loading port.

^① Lars Gorton, etc. *Shipbroking and Chartering Practice*, 7th ed., Informa London, 2009, p.101.

Demurrage (滯期費): means an agreed amount payed to the shipowner in respect of delay which is beyond the laytime, and for which the owner is not responsible. It occurs generally under voyage charter.

Dispatch money (速遣費): means an agreed amount payed by the shipowner if the vessel completes loading or discharging before the laytime has expired. It occurs generally under voyage charter.

Laytime (裝卸時間): means the period of time agreed between the contractual parties during which the shipowner will make and keep the vessel available for loading or discharging without paying additional to the freight.

2.2 Different kinds of chartering

2.2.1 Voyage charter

2.2.1.1 Concept

Under this type of charter a vessel is employed for a single voyage. The person who charters the ship is known as a voyage charterer, the payment is called freight and the contract is a voyage charter party.

Voyage charter is such a kind of tramp shipping mode under which the shipowner provides part of or whole ship to the charterer for one agreed single voyage or several voyages. In that agreement, the specific cargo which has been agreed between the shipowner and the charterer shall be carried from agreed loading port(s) to agreed discharging port(s).

Under voyage charter, the shipowner promises to provide a vessel for the charterer to carry designated cargo from agreed loading port to discharging port.

2.2.1.2 The voyage may be divided into 4 stages

(1) preliminary voyage stage: the vessel sails from another place to the port of loading, during which all costs and risks are borne by the owner. Why shall the preliminary voyage stage be performed? Because there is a carriage voyage which has been concluded between the shipowner and the charterer. It is difficult for the ship to stay exactly at the port of loading when the shipowner and the charterer have concluded one voyage charter party.

(2) loading stage: after the performance of preliminary voyage, the vessel is at the port of loading, waiting for berth, completing berthing and loading as well. During this stage, there is a cooperation between the shipowner and the charterer. All of the costs shall be allocated or arranged by the shipowner and the charterer according to clauses in the voyage charter party.

(3) carrying voyage stage: after the completion of loading operation, the vessel starts the voyage. It shall transport from the designated loading port to the agreed discharging port. During which, all risks and costs are borne by the shipowner, who has exclusive control over the performance of the voyage, such as navigation, ship management etc.

(4) unloading stage: the vessel is at the port of discharging, during which the vessel just waits for berth, completing berthing and discharging as well. Also there are some cooperations between the shipowner and the charterer. Like the loading stage, some costs and risks shall be allocated as per clauses in the voyage charter party during the unloading stage.

2.2.1.3 Characteristics

(1) Under voyage charter, it is the shipowner who provides master, officers and other crew

members. The shipowner shall pay the wages, bonus and any other related fees for all crew members.

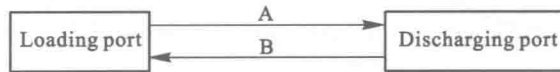
(2) Under voyage charter, it is the shipowner who is responsible for operation and management of ship. Because the loading port or the discharging port has been nominated or agreed between both contractual parties, it means that which route shall be taken or how the voyage shall be performed depends on the decision of the shipowner. Generally the charterer has no right to interfere with the performance of the voyage.

(3) Under voyage charter, freight shall be calculated on the basis of quantity of cargo. The freight rate shall be negotiated with regard to the current shipping market during the process of negotiation and fixed in the voyage charter party.

(4) Under voyage charter, the costs related to loading and/or discharging operation shall be ascertained in the contract before the performance of loading or discharging. Who shall bear the risks and costs during loading or discharging operation depends on different terms or clauses (such as FIOST terms).

(5) Under voyage charter, there are several specific provisions on demurrage, dispatch money and laytime.

2.2.1.4 Categories



2-1

(1) single trip charter: A

(2) return trip charter: A+B

(3) consecutive single voyage charter: A+A+A+A+A...

(4) continuous return voyage charter: A+B+A+B+A+B...

Voyage charters of more than one voyage may fall into a number of different categories. They may be “consecutive voyage charters” where each voyage follows directly from the previous one.^① They may be “intermittent voyage charters” .^② Or they may be so-called “contracts of affreightment” or “tonnage contracts” for a series of periodic voyages in a vessel or vessels to be nominated thereafter.^③ Since all contracts of carriage by sea may accurately be called “contracts of affreightment”, contracts of this last kind are often referred to merely as “COAs”^④ in order to highlight their particular characteristics. It is common for single voyage charter forms to be adapted to cover multiple voyage contracts, which can lead to particular difficulties concerning, for example, cancellation, liens and Hague Rules effect when incorporated.”^⑤

2.2.2 Time charter

2.2.2.1 Key words and terms

Hire(租金): means the amount of money that the charter shall pay to the shipowner for the usage of the vessel.

① E.g. *Ambatielos v. Grace Bros.* (1922) 13 Ll. L. Rep.227; *Suisse Atlantique v. Rotterdamsche Kolen Centrale* [1967]1 A.C. 361.

② E.g. *The Oakworth* [1975] 1 Lloyd's Rep. 581.

③ E.g. *The Kriti Rex* [1996]2 Lloyd's Rep. 171.

④ *Ibid.* p. 174.

⑤ Julian Cooke, Timothy Young QC, John Kimball, LeRoy Lambert, Andrew Taylor, *Voyage Charters*, 3rd ed., 2007, p. 1.

Delivery of ship (交船): upon the delivery of ship, the period of time for hire that agreed between the shipowner and the charterer of using the vessel shall start.

Redeliver of vessel (还船): at the end of the period of time for hire as agreed between the shipowner and the charterer, then the charterer shall redeliver the vessel back to the shipowner .

Withdrawal of vessel (撤船): during the period of time for hire, if some events occur as is agreed in the time charter party, for example, if the charterer fails to pay the hire regularly and punctually, the shipowner can withdraw the vessel to protect himself, and the time charter comes to the end.

Off-hire (停租): the charterer is allowed to stop paying the hire for the period of time that the charterer can't use the vessel as usual, during which the agreed events regulated in the clauses occur or happen according to the charter party.

2.2.2.2 Concept

During the period of hire, the charterer has the right to employ the vessel within the contractual trading limits in the way he likes and can directly order the master to perform the voyage or voyages as he decides.

Under a time charter the crew is employed by the shipowner, who is also responsible for the nautical operation and maintenance of the vessel and the supervision of the cargo—at least from a seaworthiness point of view. Within the framework of the contract, the charterer decides when the voyages to be made and what cargoes to be carried. It is often that the charterer is responsible for the commercial operation, whereas the owner in charge of the nautical operation. This distribution of functions between the owner and the charterer puts the master of the vessel in some kind of “in between position” between the owner—his employer and main principal—the time charterer, and he must take both into consideration.

The employment of the vessel is under the control of the charterer as consequence, there is no question of dividing the voyage into stages, and all risks of delay due to bad weather, congestion or other causes are borne by charterer. The owner only bears the risks connected with vessel itself. If the vessel is prevented from working owing to breakdown of machinery or others, payment of hire is suspended until the vessel is placed again at the full disposal of the charterer.

2.2.2.3 Characteristics

(1) The shipowner provides the vessel and pays the wages, bonus and other fees for all crew members.

(2) The charterer is responsible for all the operations and managements of ship, mostly concerned with the carriage of goods.

(3) Hire shall be calculated on the basis of the hire rate agreed in the contract. The hire rate depends on the size of vessel and the length of period of hire in current shipping market.

(4) The costs concerned with the operation of the vessel shall be allocated and arranged as per provisions under time charter party.

(5) The typical clauses under time charter are those concerned with delivery and redelivery of the vessel.

2.2.3 TCT

It is a combination of voyage and time charter. From the view of risks and costs allocation, it