PORTSIDE DUTIES

Two related topics arise for consideration. Firstly, who is responsible for loading, discharge and delivery, the charterer or the ship owner? Secondly, the division of financial responsibility for the time involved in loading and discharging a vessel under voyage charter parties embraced by the notions of lay days and demurrage.

The ship owner's cargo handling duties.

The preliminary voyage.

It is the duty of the ship owner to send the ship to the port of loading, that is to say the preliminary voyage. Clearly, if the charterer has to perform certain duties such as the nomination of a port of loading, such duties must first be fulfilled before the ship owner's duty arises. If the charterer prevents the ship owner from fulfilling his duty by failing to make a nomination then the charterer is in breach of a condition of the charter party. The principal provisions governing the preliminary voyage are the express seaworthiness clauses which provide that a vessel should be *'tight, staunch and strong* etc' and liquidated damages clauses or cancellation clauses for late delivery.

If the vessel is not delivered in time, can the charterer cancel or avoid the contract? What happens if it is clear that the ship will not be able to arrive in time but the appropriate time has not yet arrived and the parties anticipate that a breach is likely to occur? These issues are canvassed in cases such as **The Mihalis Angelos** [1] on anticipatory and by **Hong Kong Fir**[2] which discusses the well rehearsed issue of conditions, warranties, innominate terms. These questions have obvious implications for cargo in that loading cannot commence until a vessel is delivered and therefore the reader should cross reference this topic with the detailed commentary on these cases in Chapter Five.

Notice of readiness to load.

The ship owner is under a duty to give notice of readiness to the charterer that the vessel is ready to load. If the ship owner fails to advise the carrier of the fact that the vessel is ready to load this will result in delay. The question therefore is at what time should the ship owner advise the charterer of the ship's arrival or imminent arrival and should the carrier keep a look out for the vessel ?

These issues were canvassed in **Stanton v Austin**.[3] Clearly if a ship owner fails to give notice of arrival this will cause delay. The court held that it is not for the charterer to look out for the ship's arrival. Consequently the charterer is not liable for delay resulting from a failure of the ship owner to give notice of arrive and so the ship owner must bear the cost of such delay. A ship must be ready to receive cargo, at the place in which cargoes of the agreed kind are usually loaded.

The charterer must be informed that the ship is ready for cargo. Where the charterer has received no notice and has no means of knowing that the ship is ready, the charterer is not responsible for delay in commencing the loading. The charterer without notice is not liable for delay caused in not loading. However, written notice is not necessary. Notice may be delivered orally unless written notice is specified in the contract.

The duty to load and stow.

The general rule is that the ship owner has the duty to load and stow the goods in proper order. In the absence of trade usage or express consent of the charterer[1] deck stowage is not permitted as established by **Gould v Oliver**.[4] Application of the general rule is strict and so, clear words varying the rules are required in order to shift the obligation onto the charterer. However, where by the terms of the charter party, the charterers are to stow the ship[1] they and not the owners will, in the absence of further provisions, be responsible for the stowage. Nonetheless, clear words are needed to shift the onus. What then are clear words ? Wright J stated in **Canadian Transport Co Ltd v Court Line Ltd.**[5] that the duty to load is strict and is placed firmly on the ship owner as regards the safety of the vessel. In this case the charter party stipulated

1 **The Mihalis Angelos : Maredelanto Compania Naviera S.A. v Bergbau-Handel GMBH** [1971]
2 **Hong Kong Fir v Kawasaki Kisen Kaisha** [1962]
3 **Stanton v Austin** [1872] L.R. 7 C.P. 651.
4 **Gould v Oliver** (1840) 2 Man & G 208.
5 **Canadian Transport Co Ltd v Court Line Ltd** [1940] 3 All E.R. 112.

'loading to be under the supervision of the captain'. Is that enough to shift liability away from the ship owner onto the shoulders of the charterer? The court held that the ship owner retained some responsibility but that some responsibility was also transferred to the charterer.

Under the time charter party, the charterers were required to load, stow and trim cargo at their expense under supervision of the captain. The court held that it was the captains duty to see that the stowage did not endanger the safety of the ship. However, unless the damage to cargo was the consequence of the charterers following the express instructions of the master on the manner of stowing by the captain, and, unless the charterers could show their own method would have been safe both to the ship and the cargo, then the ship owner would not be held liable for damage caused by the careless stowage of goods by the charterer. In the event it was held that the owner could claim on an indemnity from the charterers for damage caused to badly stowed cargo for which the owner had already paid compensation to a consignee. The charterer had placed timber on top of a cargo of grain, thereby contaminating the grain. The ship owner paid a consignee £101 damages and successfully reclaimed this sum from the charterer. The primary duty of cargo care during loading remained under the charter party with the charterer despite the fact that the master was required to supervise the operation.

Again regarding the clarity of the wording purporting to shift the duty from the owner to the charterer or shipper **Mannix Ltd v Paterson** [6] involved a charter party which provided that *the 'Charterers allowed full use of the ship's gear on board'.* The shipper loaded a mechanical digger on board the vessel and had it lashed to the deck. The lashings were not strong enough and the digger broke free and was lost over board during the voyage. Did the phrase shift responsibility to the charterer by implying that the charterer was responsible for loading the cargo? In the event the court held that the clause was not clear enough to shift the onus. The court observed that *'Apart from special provisions or circumstances it is part of the ship's duty to stow the goods properly ... In modern times, the work of stowage is generally deputed to stevedores, but that does not generally relieve the ship owners of their duty, even though the stevedores are, under the charter party to be appointed by the charterers unless there are special provisions, which either expressly or inferentially have that effect.'*

Why is it the ship owner's responsibility? Because stowage affects the safety of the ship! Therefore it is normally the Ship Owner's responsibility, though the duty can be moved if both parties desire to do so. **Hangfung v Mullion** [7] involved a free in and out charter party which provided that the cargo was to be loaded, stowed, trimmed and discharged free of expense to the vessel. Loading was delayed whilst the vessel's gear was tested and repaired to comply with Australian Factories and Navigation Safety Legislation. The question arose as to who should pay for the testing and repairs, the ship owner or the charterer? McNair J held that the ship owner was nonetheless obliged to supply cargo gear in working order, for the charterers use, for which the charterer would pay, despite the fact that the charterer had to pay for the actual loading and discharge. Thus, even if it is the charterers responsibility to load, it is still the ship owner's responsibility to see that the loading gear is in good working order.

The Charterer's cargo handling duties

The charterer has the duty to procure the cargo and bring it alongside.

The charterer's duty is to procure a cargo and be in readiness for loading. This is a strict duty and therefore it is difficult to avoid. Thus, in **Grant & Co v Coverdale. Todd** [8] a charterer was held liable for delay when frost prevented him from getting a cargo of iron to the quay side. The frost would not have interfered with the loading process if the cargo had been made available. Nonetheless, there are exceptions to this duty rendering it strict but not absolute.

Illegality.

The charterer's duty is not enforceable if performance of the contract is illegal since the courts camnnot countenance illegality. This is a basic principle of English Law.

6 **Mannix Ltd v Paterson & Sons Ltd** [1966] 1 Lloyds Rep 139.

7 **Hangfung v Mullion** [1966] 1 Lloyds Rep 511.

8 **Grant & Co v Coverdale. Todd & Co** (1884) 9 App.Cas 470

Breach of contract.
The charterer's duty may be discharged by a breach of an undertaking of the ship owner. This was demonstrated in **Staunton v Richardson** whereby the charterer did not have to load cargo aboard an uncargoworthy vessel. In the circumstances the pumps required to pump water from bulk moist sugar did not work so the vessel could not safely carry the cargo.

Exclusion clauses
The charterer may be excused where there is an express term in the charter party which relieves him of the duty, as in **Gordon SS Co v Moxey Savon.**[9] The charterer was required to procure a cargo of coal. A term of the contract stated that the contract would be void if there was a strike. There was a lock out of coal workers. The charterer was unable to procure any coal. The court held that the charterer could rely on the exception clause. The charterer contracted to load coal at Penarth for carriage to Buenos Aires. The UK was gripped by the National Strike. The clause in the charter party stated " any time lost through riots, strikes, lockouts ... not to be computed as part of the loading time unless any cargo be actually loaded during such time. In the event of any stoppage or stoppages arising from any of the causes continuing for 6 running days from the time of the vessel being ready to load, this charter shall become null and void provided however that no cargo shall have been shipped on board the steamer previous to such stoppage or stoppages". The strike ended within 6 days but the result was that it took the colliery several days to clean up and get back to work. No delivery of coal made to the port. The court held that the charterer was entitled to cancel. The exclusion covered time lost by the strike and was not limited to the actual duration of the strike alone.

The contra preferentem rule however applies to such exclusion clauses. In **Bunge Y Born v Brightman** there were exceptions clause regarding liability for bringing cargo alongside the vessel in respect of strikes and obstructions or stoppages beyond the control of the charterers on the railways or in the docks or other loading places. The provision of the cargo delayed by a cacanny strike on an up country railway. The House of Lords held that the charterers were not excused for not having cargo ready. *"The railways"* in the exception clause was referable only to the railways of the port. This appears to be a somewhat hard decision.

Frustration.
The charter party can be brought to an end by Frustration. Both the ship owner and the charterer are relieved from further performance of such contracts. This would apply for instance to vessels trapped in war zones or where vessels are trapped in port because of government embargoes or quarantine orders. In exceptional situations the charterer may be relieved of his duty to procure a cargo where there is an act of the ship owner, which renders procuring a cargo difficult or impossible. This could cover situations where the ship owner is involved in trade or labour disputes with workers or port authorities or where the duty to procure a cargo is placed on the ship owner and it is the shipowner who fails to procure the cargo.

Charterer's duty to load a full and complete cargo

The remuneration received by a ship owner in a voyage charter party is based on the amount of cargo delivered by the vessel. If the charterer arranges for less than full capacity the ship owner stands to lose money or 'freight'. The freight payable may vary for different cargoes and therefore the required quantities of various cargoes are often expressed in the charter party. The danger of the charterer failing to load a complete cargo or of loading an excess of low freight cargo as against higher freight cargo is often guarded against by a clause requiring the charterer to make up the financial short fall. Sometimes the quantity to be loaded is expressed in gross tonnage. Other times, it is expressed as cubic capacity.

There are a variety of ways in which the ship owner may receive the freight for the use of the vessel. Sometimes the charterer pays a lump sum especially where his own cargo is carried and irrespective of the quantity of goods carried. Payment by third party shippers or consignees can be on delivery to the owner, master, agents or the charterer. Frequently, freight is payable in advance and is often stated not to be returnable in the event of non-delivery.

Where a vessel loads manufactured and packaged goods other problems arise. The person responsible for loading must not leave spaces or gaps in the hold, what is normally known as ***'Broken Stowage'.*** Thus in

[9] **Gordon SS Co v Moxey Savon Co**. [1913] 18 Com Cas 170.

Hunter v Fry [10] a vessel was stated in the charter party to have a burden of 261 tons or thereabouts. The charterer loaded 336 tons. The vessel could have carried up to 400 tons. The charterer had to pay damages to the shipowner for the difference to cover lost freight resulting from the dead weight. Similarly in **Windle v Barker**[11] a vessel was described as having a capacity of 180 - 200 tons, though it was admitted neither the owner nor his agent actually knew the capacity of the vessel. When the vessel was measured pre-loading its capacity was found to be 260 tons. The charterer refused to load. The jury found as a fact that the ship fitted the contract description and consequently the charterer not entitled to refuse to load.

There are a number of exceptions to the general rule that a full and complete cargo must be loaded which would relieve the charterer of this duty.

Custom of the port.

Thus it was held in **Cuthbert v Cumming** [12] that the rule to load a full and complete cargo may be varied by the custom of the port. In certain circumstances cargo cannot be loaded, so as to completely fill the ship's holds. If the charterer is to load a full cargo, and has the option of loading what he pleases, he cannot choose to load goods which leave broken stowage, and no others. He must fill the spaces subject to trade usage. There was a contract to load a full and complete cargo of sugar and molasses and or other lawful produce. It was a custom of Trinidad that a full and complete cargo of sugar and molasses packed in hogsheads and puncheons constituted a full and complete cargo of sugar and molasses. As a result however there is broken stowage. The court held that the custom was reasonable. As a result the charterer was protected from liability for breach of the duty to load a full cargo.

The De Minimis Rule

This rule prevents parties going to court over small sums of money and trivial disputes. The application of the rule was discussed regarding freight in **The Vrontados.**[13] De minimis is essentially a question of fact. The rule 'De minimis non curat lex' means that the court does not measure the quantity of goods to be delivered or loaded under a commercial contract by reference to readings on a microscope, to determine whether the obligation has been performed, bearing in mind all the relevant circumstances within that margin of error which in those circumstances it is not commercially practicable to avoid.

The master had declared that he considered 12,600 tons to be a full and complete cargo before loading. The cargo loaded was in fact 12 tons short. The court held that it was commercially possible to get much closer to the contract quantity and thus the de minimis rule did not apply.

The Charterer had loaded 12,588 tons of maize on the 29th December. Ironically, it was the ship owner who claimed that the vessel was fully loaded at that stage and that the charterer should therefore have presented bills of lading for signature to enable the vessel to set sail. The charterer however had spare lay time owing him and so waited till the 2nd of January to complete loading the additional 12 tons even though it only took 40 minutes. The advantage for the charterer was that he avoided any expenses involved in carrying out commercial activities over the new year holiday period. The ship owner sued for deliberately detaining the ship after it was fully laden. The court held that the vessel not completely loaded till 2nd of January and that the charterer was not obliged to load any quicker than the allotted lay day time and therefore the charterer not in breach of the charterparty.

Broken stowage.

If the vessel is carrying general cargo and the charterer is responsible for loading a mixed cargo then it is his duty to avoid broken stowage as demonstrated by **Cuthbert v Cumming**. In **Cole v Meek** [14] it was held that a charterer will be liable for damages for broken stowage if he does not fill up the spaces left between the items of cargo which he has loaded. The charter party provided for a full and complete cargo of sugar and other lawful produce. The vessel loaded mahogany logs, the staple produce of port of loading, but this left spaces between the logs. Erle C.J. held that the charterer must fill the spaces. The charterer had an option

10 **Hunter v Fry** [1819] 2 B.Ald 421.
11 **Windle v Barker** [1856] 25 L.J.Q.B. 349.
12 **Cuthbert v Cumming** [1855] 11 Exch 405.
13 **The Vrontados : Margaronis v Peabody** [1964] 2 Lloyds Rep 153.
14 **Cole v Meek** [1864] C.B. (N.S.) 796.

regarding the choice of cargo to load, but if his chosen cargo produced broken spaces he had to fill them. Erle C.J. also discusses **Moorson v Page** where a charterer had an option to load cargoes of copper, tallow, hides and other goods. He loaded a full cargo of tallow and in consequence the vessel required ballasting for stability. There was however no broken stowage and thus no claim lay by the ship owner against the charterer for not choosing a mix of cargo that would have been more profitable for the ship owner.

Alternative and optional cargo.

The relevant issue here is whether the option is compulsory or not. This depends on the wording of the charter party. In **Brightman v Bunge Y Born**.[15] the charterer was to load alternatively wheat and or maize and or rye. The court stated that where the charterer is under an obligation to load an alternative cargo and his original choice becomes impossible to effect, he is entitled to a reasonable time in which to make other arrangements. After the loading of wheat had commenced the Argentine government prohibited the export of wheat. In these circumstances the charterers should be allowed a reasonable time for making provision to ship an alternative cargo.

In **Reardon Smith v Ministry of Agriculture** [16] the charter party provided for the loading of wheat in bulk and or barley in bulk and flour in sacks and also stated that the charterer had the option to load up to a third of each. The court held that there was a primary obligation was to load wheat. Furthermore the minimum wheat to be loaded was a third of the total carrying capacity. There was no obligation to load any of the others but the charterer could load them if he so wished. If he did not avail himself of that option then he had both the right and the duty to load a complete cargo of wheat. The attraction for the ship owner was twofold. Firstly a higher rate of freight applied to the alternative cargoes. The second advantage arose in the circumstances because a strike by flour workers prevented the immediate completion of loading of wheat. The charterer decided to wait till the strike was over. The barley workers were not on strike so he could have completed loading such a cargo quicker. A clause in the charter party provided that lay days did not count whilst the strike continued so waiting was not a problem for the charterer. The ship owner wanted to establish that the charterer had no right no delay and that if the flour was not available the charterer had to load barley instead. The court held that since this was an option not an obligation for the charterer, the charterer had done nothing wrong and the charterer was not liable for lost freight or demurrage.

Cargo Delivery Duties

The ship owner has the duty to deliver the cargo to the port of discharge. Apart from any exclusion clauses permitted by the contract of carriage, the Hague, Hague Visby or Hamburg Rules, the failure to deliver up a full cargo in good condition gives rise to an action against the carrier for non-delivery, short delivery or damage to cargo. The cost of discharge falls on the party allocated that duty by the charter party. Thus, a charter party with a free in and out clause places the costs firmly on the charterer. In **The Azuero** [17] the charter party provided for stevedores to be employed at the discharge port free of expense to the vessel. In the event, the charterer had to pay the costs for opening and closing the vessel's hatches.

Naming the Port of Discharge.

The port of discharge may or may not be named in the Charter party. If it is not named then it is implied that the charterer must nominate a safe port. Also, if the port is not named then the port must be named by the charterer in a reasonable time to enable the vessel to prepare for and to reach that port. If it is not named in a reasonable time then the charterer is liable for damages for delay. If the charter party specified a fixed time within which to name the port of discharge, eg within 24 hours of arrival at the port of loading then, under **Procter Garrett v Oakwin** [18] if the port of discharge is not named within 24 hours the ship owner must give the charterer another 24 hours since this will still be within a reasonable time. This it must be remarked was a very generous judgement. What the courts would do if a longer time was granted is unclear. Essentially it would in any case be a finding of fact depending on the circumstances of each particular case.

15 **Brightman v Bunge Y Born** [1924] 2 K.B. 916.
16 **Reardon Smith v Ministry of Agriculture** [1963] 1 All E.R. 545.
17 **The Azuero : Embricos v Tradax** [1967] 1 Lloyd's Rep 464
18 **Procter Garrett v Oakwin** [1926] 1 K.B. 244

What constitutes delivery of goods?

What is the actual delivery point within the port in respect of cargo ? The general rule is that delivery is complete once the goods pass over the ship's rail. However as exemplified in **Petersen v Freebody**.[19] The goods must be within the consignee's reach so that he can effectively take control of them. The ship delivered some poles over the ship's side and dropped them into a lighter (a barge for loading and unloading ships). The poles smashed the lighter to pieces and sank it. The court held that the logs should have been lowered down to a point where they were within the charterer's reach. Therefore discharge was not complete.

Who should one deliver cargo to?

Delivery should be made to the holders of bills of lading or the designated persons in other shipping document such as seaway bills. The goods cannot simply be discharged onto the quay and abandoned. In **Bourne v Gatliff** [20] the shipowners were held liable for stolen cargo left uncollected on the quayside. The consignee was unaware that the vessel had arrived and therefore had not gone to collect the cargo.

Glynn Mills v East & West India Dock[21] discusses the problem that may arise when a master is confronted by two bills of lading. Remember that usually, three copies of each bill of lading are issued by the master on loading. The rule is that he is allowed to deliver to the first person that presents him with a bill of lading and to procure a letter of delivery from him. If two persons arrive simultaneously then he should get the two presentees to interplead.

If as in **The Stettin** [22] the master is presented with the choice of delivering to someone with a bill of lading or another person in possession of a delivery order the obligation is to deliver to the bill of lading holder. The master delivered to the holder of a mate's receipt and the ship owner was held liable to bill of lading holder's losses. Frequently, the consignee will use agents or other authorised persons to take delivery of the cargo. If such persons do not then take good care of the cargo the ship owner is not responsible as demonstrated by **Chartered Bank of India**[23] when designated landing agents fraudulently disposed of cargo. The contract of carriage stated that the ship owner's liability ceased when the goods were free of the ship's tackle.

Laytime and Demurrage

Since the consideration payable by a charterer to a ship owner under a voyage charter party is established by reference to the quantity of cargo loaded not by reference to the amount of time involved in the venture, the industry has developed terms of the charter party which limit the amount of time available to the charterer for loading and unloading cargo on board the vessel. The time taken for the voyage is entirely under the control of the ship owner. However, loading and discharge time require the co-operation of the charterer and the ship owner. From the ship owner's perspective the quicker these operations are carried out the sooner the vessel is released from its contractual obligations and made available for subsequent hire. The contract therefore specifies the time allotted for loading and discharge and the charterer is obliged to load the cargo within that stipulated time. If a specific time is mentioned this must be complied with. If none is stipulated in the charter party then he must load within a reasonable time.

Lay days are those days specified in a voyage charter party during which the charterer is to load the cargo and were traditionally described in terms of for example, *'eight running days'* which would encompass weekends or *'eight working days'* which would exclude weekends and holidays, though today it is quite common to specify a number of hours such as 24 or 48 hours. The loading period commences once the ship becomes an arrived ship, that is to say, from the time when the ship arrives at the port, dock or berth and valid notice is given to the charterer by the ship owner. Regarding notice on discharge and the commencement of time for lay days this depends on whether the charter party requires the ship owner to give the charter notice or the common law applies, in which case the question is simply whether the vessel has arrived and is at the disposal of the charterer for discharge purposes.

19 **Petersen v Freebody** [1899] 2 Q.B. 294.
20 **Bourne v Gatliff** (1844) M&G 850
21 **Glynn Mills v East & West India Dock** (1897) A.C. 591.
22 **The Stettin** [1889] 14 P.D. 142
23 **Chartered Bank of India. Australia and China v British India Steam Navigation Co** [1909] AC 369

Demurrage is the agreed number of days at a determined rate for which payment is due if loading time exceeds the set lay day loading time. In essence it is a liquidated damages clause and should as such represent a reasonable attempt at assessing the damages that a ship owner would incur as a result of the charterer exceeding his given loading or discharge time. The demurrage rate must not amount to a penalty clause.

Thus the charter party may allot for example 10 lay days for loading and discharge and may allow a further 10 days at for example £5,000 a day demurrage during which time the charterer may continue to load or unload. If the vessel takes more than 20 days loading and unloading then the charterer has to pay unliquidated damages for detention of the vessel, that is to say, for days over and beyond lay days and demurrage time. The court assesses unliquidated damages, not the parties, applying the standard rules on assessment of damages for breach of contract established in the cases of **Hadley v Baxendale** and **Victoria Laundries**. Such damages will normally be higher than the demurrage rate.

Notice of Readiness to Discharge

Must the ship owner give notice of readiness to discharge ? There is a common law rule that the ship owner is not bound to inform the charterer that the ship is about to arrive. It is the duty of the charterer to inquire of the Port Authorities.[24] If on the other hand the charter party contains an express duty the charterer must be notified. This requirement overrides the common law. Such express requirements are common. However, in **Clemens Horst v Norfolk** goods were shipped from San Francisco to Philadelphia by rail and then by sea to London. The through bill of lading required notice of arrival the sea bill of lading did not. The notification was delayed in the post and the ship owners exercised a purported lien on the cargo to cover costs of late delivery. The court held that there was no contradiction between the bills. The second did not negate the duty to furnish notice, it simply took away the right of the consignee to claim damages if notice was not given. The ship owner however had no contractual right to a lien over the goods either.

Sometimes a charter party may contain a clause stating that lay days will not start to run even if notice of readiness to discharge is given if there is a strike on in the port. Thus in **The New Horizon** [25] French stevedores refused to work shifts the court held that this was the equivalent of 8 hours work followed by a 16 hour strike in which time lay days did not run.

Sometimes a charte rparty may contain a clause which allows the ship owner to get as near as possible to the nominated port and to give the notice of readiness to the charterer leaving him with the problem of getting the goods to that new position and loading it. In **The Varing** [26] Scrutton L.J. discussed this problem and stated that the ship owner must wait a reasonable length of time and try to get to the nominated port first, before having recourse to the clause. If he does so he must give notice of the change of discharge point to the charterer before lay days start to run.

The courts will treat such clauses with caution applying the contra preferentem rule. In **The Northern Progress No2** [27] a buyer bought a consignment of Soya Bean meal pellets C&F for delivery to a Yugoslavian port. The seller was to nominate the vessel and the buyer was to nominate the port, at the latest3 as the vessel passed Gibraltar. The charterparty contract of carriage made by the seller contained a clause permitting the carrier to change the port of destination if the port became unsafe, or alternatively if a war premium was declared on voyages to such ports by Lloyds of London. This information was referred to in the bill of lading. Lloyds declared a war premium and the ship owner advised the shipper that the cargo would be discharged at Hamburg and the shipper accepted that notice, but the buyer was not duly informed of this before endorsement of the bill of lading. The buyer sued the seller for breach of contract in that he had failed to furnish a bill of lading usual in the trade which would result in the delivery of the cargo to the contract port. The seller claimed the buyer had notice of the breach and had waived the breach. The court held that the buyer had no knowledge of the agreement to discharge at Hamburg and so there was no implied waiver. The seller was liable to the buyer, for breach of contract for non-delivery of goods.

24 See **Clemens Horst v Norfolk** [1906] 11 Com Cas 141.

25 **The New Horizon. Tramp SS. v Greenwich** [1974] 2 Lloyds Rep 210

26 **The Varing : Fornyade v Blake** [1931] Probate 79,

27 **The Northern Progress No2** [1996] 2 Lloyd's Rep 319.

The court did not have to consider whether or not such a clause in the bill of lading was valid and whether or not it protected the carrier since the buyer's action was against the seller not the carrier. The court held that the shipper had not provided a contract of carriage that was usual in the trade. The liberty to discharge at any port was too wide so presumably if it had been limited to a port as near to the chosen port as possible if may have been permitted as opposed to any port. Hamburg, the actual port of discharge was a very long way from Yugoslavia. Furthermore, the reason for changing the port was deemed unacceptable, namely that the carrier would make less profit if he had to pay additional insurance. The safe port variation would have been allowed, but in the circumstances the court held that the port had not at that time become and unsafe port. Clearly Yugoslavian ports did later became politically unsafe ports once the civil war started.

Where there are several discharge points lay time does not run for the intermediate sailing stages, but the charterer must pay the ship owner extra money for any effort expended by him in making the vessel safe for those intermediate voyages. **Carras v President of India.**[28] The vessel was to discharge at Port A at Berth X and then go to Berth Y. Does lay time continue during transfer from X to Y? The court held that that it did not. Moving time from X to Y does not count as lay time but the cost of trimming the vessel must be borne by the charterer.

Option to discharge at a number of ports.

This can occur for instance where **a** vessel is ordered to the East and West coast of India. In **The Hadjitsakos**[29] the court held that the ship owner must sail in geographical order if nothing is specified in the charter party but otherwise the specified order much be followed.

What is an arrived ship?

Lay time does not commence to run until the vessel becomes an arrived ship, so determining this issue is very important. Arrival of the ship and the commencement of lay time depends on the giving of notice of readiness at the appropriate time which in turn depends on the terms of the charter party and whether or not it is the charterer who is bound to load and discharge the vessel. There are three important features regarding arrived ships namely, when the ship is arrived, when the ship is ready to load or discharge and finally when notice of readiness can and is given by the ship owner to the charterer.

In **Leonis SS v Rank**[30] the court stated that for lay days to commence the vessel must have arrived at the destination. Only once the vessel becomes an arrived ship can the ship owner give a valid notice of readiness and she must be in actual fact ready to load. This is a question of fact. Kennedy J laid down three tests relating respectively to Port Charter parties, Dock Charter parties and Berth Charter parties (or wharf or pier etc). The charter party provided for the vessel to proceed to a safe port in the river Pararna and for loading to commence 12 hours after written notice of readiness. The vessel was ordered to Bahia Bianco and arrived off the pier and anchored a few lengths off the pier within the port. Discharge was delayed for several days because the berth was occupied. The court held that lay time commenced 12 hours after arrival and notice. The charterer was liable for demurrage.

Whether a ship is arrived depends on whether the destination is the port, the dock or the berth. As far as dock and berth are concerned there is no problem. They are specific and precise. The problem lies with the Port Charter party as where the charterparty specifies the Port of London or the Port of Liverpool. The problem relates to the fact that these are large areas and so one needs to know what the port comprises of, in order to determine whether or not the vessel has arrived at the port. A charter party will not normally be headlined as Port, Dock or Berth. Rather, terms of the contract will specify the loading position as being berth or dock, so that lay time commences when the vessel berths. If the clause states that lay days commence whether or not the vessel is in the dock or at the berth then it is a port charter party.

In **Leonis v Rank** the C.A. held that a ship is an arrived ship not when reaching the port, but as soon as the ship enters the commercial area of the port. Kennedy J distinguished between the geographical area which is large and the commercial area which is something less. The vessel must arrive at that area where the master can effectively place his ship at the disposal of the charterer. The vessel should be as near as circumstances

28 **Carras v President of India** [1970] 1 Lloyds Rep 282..

29 **The Hadjitsakos. Pilgrim v India** [1974] 1 Lloyds Rep 564.

30 **Leonis SS v Rank** [1908] 1 K.B. 57.

permit to the actual loading spot, such as a quay, a mooring, a pier etc, in a place where ships waiting for that spot usually lie. The port means not the whole port but a part of the port where ships could be discharged but not necessarily the actual spot.

The discharge point in the port was examined in **The Johanna Oldendorff.**[31] Lord Reid established the following test "Before a ship can become an arrived ship under a port charter party she must (if she cannot proceed immediately to a berth) have reached a position within the port where she is at the immediate disposition of the charterer. The vessel will be at the immediate disposal of the charterer if she is at the place where waiting ships usually lie".

Before **The Johanna Oldendorff** the geographical limits of the port were not considered to be important. The Oldendorff was carrying grain under a port grain charter party and anchored at Birkenhead, 17 miles away from Liverpool, the nominated port of discharge. The vessel was ordered there by the port authorities along with other grain ships waiting their turn to enter the port to unload. The court held that distance is not the test and that The Oldendorff was an arrived ship. There has been much confusing use of terms in earlier cases as to what constitutes the port such as the administrative or legal area of the port. Dilhorne J described it as 'That area understood by shippers, charterers and ship owners as constituting the port'. The problem lies in applying such a test.

A vessel must enter and remain in a port in order to considered an arrived ship. In **The Maratha Envoy** [32] the vessel was lying 25 miles from the mouth of the port at an anchorage outside the legal, fiscal, administrative limits of the port, in an unusual place, where no control exercised by the administration of the port. Shippers, charterers and ship owners in general did not consider it as part of the port. The C.A. held that the vessel was an arrived ship. However, the House of Lords allowed an appeal saying *'No, it was not an arrived ship'*. To be an arrived ship one must be an arrived ship and remain an arrived ship. The voyage must have ended. The vessel should not be hovering around outside the port. Even if the vessel has entered into the commercial area of the port the vessel is not an arrived ship unless it has stopped there. The Maratha Envoy couldn't get any closer. She tried to enter the port twice but all the berths were full. This did not constitute arrival because the place where she waited was not a commercial part of the port by any definition.

Liability for delay in unloading caused by events beyond the control of the charterer may be excluded in that charter party. In **The Laura Prima** [33] the court held that the clause referred to delay other than that caused by the charterer failing to nominate a free available berth, such as a blockage in the harbour preventing access to the berth. Contrast **The Prometheus**[34] where clause 30 of the charter party stated that if the cargo could not be loaded by reason of obstructions, beyond the control of the charterers, in the docks, the time of loading shall not count during the continuance of such causes. On the 28th May at 17:15 The Prometheus arrived at Buenos Aries anchorage. On May 29th at 11:52 the Charterer ordered her to berth No1. The Berth was congested. On May 31st at 05:10 vessel left the anchorage for Nol Berth. When did she become an arrived ship ? The court held that to be an arrived ship the vessel had to be within the legal limits of the port, at a place vessels customarily wait their turn, at the disposal of the charterers and as close as the ship owners could take her. Therefore she was an arrived ship. The clause was wide enough to cover occupied berths and so time did not run.

The value to a charterer of having a berth charter party is demonstrated by **Stag Line v B.O.T.**[35] The charter party stated that the vessel becomes an arrived ship when she reaches the actual berth designated by the charterer. The charter party required a vessel to proceed to one or two safe ports East Canada or Newfoundland, place or places as ordered by the charterer and or shippers. She was ordered to the port of Miramichi and on arrival there was told that she would be required to load at Millbank, a place within the port. As there was not then a berth for her, she had to wait for 6 days for which the ship owner claimed demurrage. The C.A. held that the charter party gave the charterers an express right to nominate a berth

31 **The Johanna Oldendorff** [1973] 2 Lloyds Rep 285 H.L.
32 **The Maratha Envoy** [1977] 2 Lloyds Rep 301 H.L.
33 **The Laura Prima** [1982] 1 Lloyds Rep 1 H.L.
34 **The Prometheus** [1974] 1 Lloyds Rep 358**.**
35 **Stag Line v B.O.T.** [1950] 2 K.B. 194.

within the port. Therefore the vessel did not become an arrived ship until she arrived at the berth. Demurrage was not payable. Per Devlin J : If the berth at which the vessel ultimately has to load or discharge is named in the charter party, she is not an arrived ship until she arrives at the berth. If, on the other hand, no berth is named in the charter party and no power of nomination is expressly given, and she proceeds to the berth ordered by the charterers merely by virtue of the implied right which the charterers have to select the loading berth, then she becomes an arrived ship when she arrives at the port or place named in the charter party.

The Atlantic Sunbeam [36] the court held that a charterer must act with reasonable dispatch, in accordance with the ordinary practice of the port to enable a vessel to become an arrived ship. The burden of proving a breach of such a term lies on the ship owner. A 'jetty challan' document had to be obtained from the dock authority at Calcutta. The charterer took 4 days to obtain it. The court held that the charterer was responsible for the delay in preventing the ship from becoming an arrived ship. Once a valid notice of arrival is given it is final. Nomination of the berth by the charterer also becomes final. In **Batis v Petroleos** [37] the court held that once a port is nominated by a charterer and the vessel arrives in port it is an arrived ship. An alternative nomination to load elsewhere breaches the contract.

What is the meaning of lay days ?

The meaning and distinction of and between 'days' and 'running days' is important. Running days means consecutive days including Sundays and holidays.

Where a vessel has to be lightened before proceeding to the place of discharge even running days halts for the transfer period post lightening till actual discharge commences. In **Nielsen v Waite** [38] 8 running days were provided for discharge. The vessel was ordered to berth G at Sharpness and then to berth S at Gloucester, two places within the same port, though 17 miles apart and separated by a canal. Part discharge took place at the first stage followed by some time spent to cross the port. Was that time part of the laydays? The court held that there was a double discharge. Discharge could be broken into two stages. The interim moving period was covered by the custom of the port and did not count as lay days. This still leaves unresolved what would happen if it was not a custom of the port.

The word days refers to calendar days and not a period of 24 hours. The day of arrival included irrespective of the time the ship arrives. However, according to **The Kathy** [39] if only part of a day remains on arrival the charterer is entitled to wait to load on a fresh day but if one starts to load on part of a day that day counts as a whole day. There is no obligation to accept to load on a broken day. In **Reardon Smith v Ministry of Agriculture.**[40] Devlin J stated that days are 'natural conventional days' not artificial days unless 24 hour days are specified in the charter party. A working day is a day where work is normally done in the port. It therefore excludes public holidays. Saturday morning may or may not count. This depends on the custom of the port. Devlin compared working days with days of play or rest.

Weather working days were defined in **Compania Naviera Azuero v British Cake Mills Ltd.**[41] A number of weather working days were allowed for loading and discharge in the charter party. There was very heavy rain. However, no unloading was prevented because the charterer had not planned to unload in these periods even if the weather was fine. The court held that a weather working day is to be determined solely by the state of the weather on that day and not by the intentions of the charterer.

The charterer is entitled to use up all his laytime and is under no obligation to load or discharge as quickly as possible . In **Novorossisk SS v Neoptro** [42] the court held that a charterer can use lay time any way he likes and even if he does not need the time he does not incur demurrage or breach his contract by not loading any quicker than he could have done. If delay in loading meant that lay time was exceeded then demurrage

36 **The Atlantic Sunbeam : Sunbeam SS v President of India** [1973] 2 Lloyds Rep 482.
37 **Batis v Petroleos** : Times 28.11.89.
38 **Nielsen v Waite** [1885] 16 Q.B.D. 67.
39 **The Kathy** [1895] Probate 56 C.A.
40 **Reardon Smith v Ministry of Agriculture** [1963] A.C. 691.
41 **Compania Naviera Azuero v British Cake Mills Ltd** [1957] 2 Q.B. 293 : 2 All E.R. 241.
42 **Novorossisk SS v Neoptro** Times 22.11.89

would be payable at the agreed rate. There would only be a breach of contract if the demurrage period is exceeded. The charterer delayed orders to load even after notice of readiness given because he could make money in a falling market by waiting a few days and buying the cargo at a lower rate which meant paying the demurrage penalty was an economically viable option for him.

Laytime may be linked to discharge rates. In **The General Capinpin** [43] lay days were to be determined by a rate of discharge formula in charter party based on 1) 1000 tonnes I day but 2) were to be reduced if less than 5 workable hatches were available. The charterer claimed as holds became empty workable hatches decreased thus increasing the number of lay days under the formula because some holds contained more cargo than others and the vessel had 5 hatches but only 4 unloading cranes. The court held that the calculation of lay time takes place at the commencement of unloading. 5 hatches were available allowing the 1,000 tonnes rate to be achieved so no reduction as holds empty was permitted. Nothing in the contract allowed a variation in respect of availability of cranes.

Liability for delay

What happens if there is delay? Who is responsible? The law is clear. There are only three exceptions. Otherwise the charterer has an absolute obligation to work within the stipulated time whatever the circumstances. The exceptions are if the delay is due to the ship owner's fault, exception clauses in favour of the charterer within the charter party, or illegality.

Invalid notice.

An invalid notice prevents laytime commencing. In **Christensen v Hindustan Steel** [44] Master gave notice of readiness on the 28th that the vessel would be ready on the 29th. The court held that such a notice is not valid. It was a mere notice of anticipated readiness. The court pointed out that even though the ship may in fact have been ready on the 28th that kind of notice is not valid since it is too uncertain. The charterer was entitled to assume that the vessel was not yet ready. In the circumstances this suited the charterer since the next day was the start of a holiday. Lay time therefore commenced after the holiday and the charterer was not liable for demurrage. If the owner had given actual notice on the 28th then the result would have been different.

What if an invalid notice is accepted? Then the charterer is estopped from later rejecting the invalid notice unless there was some element of fraud on the ship owners behalf involved. which prevented the charterer from knowing that the notice was invalid. Notice of readiness may be oral unless it is stipulated in the charter party that it is to be in writing. This poses a problem. If written notice is required but the charterer starts to load without written notice since he has been averted to the readiness of the vessel by an oral notice. Does lay time-start ? Is there an implied acceptance or the vessel's readiness? It is not clear. The footnote cases in Scrutton and Carver provide no satisfactory answer. Arguably however a charterer could be deemed to have waived the breach.

If a notice is invalid time does not start to run. In **The Tres Flores** [45] notice of readiness was given but the holds of the vessel were infested and required to be fumigated. The court held that the notice was invalid. The vessel was not yet ready to load.

Under the common law, and in the absence of provisions in the charter party to the contrary[1] it is the duty of the ship owner to load the vessel. The charterer's duty is to ensure that the goods are ready and waiting at the port side for the ship owner to load. Clauses in the contract of carriage with other shippers normally ensure that if the delay is caused by a shipper /cargo owner / endorsee then additional freight charges or demurrage are payable to the carrier / charterer.

Fault of the shipowner stops time running.

Liability for the payment of demurrage at the port of loading where the ship owner has the duty to load the vessel depends on who causes the time loss. If it is the shipowner' s fault, he cannot claim. Essentially, what happens is that time ceases to run in respect of lay days for delays in loading if the delay is caused by the

[43] **The General Capinpin** [1991] 1 Lloyds Rep 1,

[44] **Christensen v Hindustan Steel Ltd** [1971] 1 Lloyds Rep 395 Com Ct.

[45] **The Tres Flores. Compania de Naviera Nedelka v Tradax** [1973] 2 Lloyds Rep 247 C.A.

fault of the ship owner. If it is the charterer who is at fault, time continues to run and the ship owner can claim for any demurrage time that ensues. The nub of the problem lies in answering the question regarding demurrage and lays days as to whom the benefit of the concept is for.

The same principle applies to demurrage at the port of discharge. The only difference is 'that discharge duties normally vest with the charterer. In **The Delian Spirit** [46] the court held that a notice of readiness was valid even though the ship had to apply for "free practique" since it was readily available at any time and therefore discharge was not inhibited in any way. The vessel had spent five days waiting in the roads after notice was given waiting for an available berth. As soon as a berth became available and the vessel berthed the ship owner had obtained "free practique." The charterer was liable for demurrage.

In **The Amiral Fahri Engin** [47] the charter party required a berth to be nominated that was reachable on arrival. A sub-charter party stated that the master was to obtain "free practique" from port; health and sanitary authorities in writing and that lay time not to run till all three obtained in writing. "Free practique" was issued, over the radio, by the Port Medical Officer. In the event the vessel lost 8 days waiting to berth. Official confirmation of "free practique" was not obtained till the vessel berthed. If lay time ran from notice of readiness then demurrage was payable but if it ran from berthing no demurrage was due. The court held that the radio confirmation of "free practique" by the Port Medical Officer is the normal official version of "free practique" in that port and so lay days ran from notice.

In **White v Winchester** [48] the vessel was placed in quarantine on arrival, resulting in delay. The court held that the charterer was not responsible. Lay days had not begun since the vessel was not at the loading point and was not ready to load.

What degree of readiness is required?

In **Armament Adolphe Deppe v Robinson** [49] the vessel was ordered to proceed to Avonmouth. However, no berth was available. The hatch covers were not removed and the owner's stevedores had not brought discharging gear on board. However, none of this was relevant. The ship was ready to discharge in the business sense. Compare this however with **Government of Ceylon v Societe Franco Tunissiene** [50] where part of a cargo was over stowed with other cargo which would have to be shifted in order to unload the cargo. The court held that lay time could not run till the cargo was accessible.

In **The Antclizo** [51] lay time was stated to run from 24 hours of notice of readiness, berth or no berth1 vessel having entered Custom House and in free practique. The court held that entry at Customs House means administrative entry onto the register3 not physical entry of the vessel into the port.

The Meaning of Fault of the Shipowner

This will depend on whether the ship owner's actions were reasonable in all the circumstances of the case. For instance in **The Fontevivo** [52] a vessel arrived at a Syrian port to be heralded by an hour's gunfire. The crew pressured the master to leave and he did so and returned later when the gunfire ended. Did the period of absence count as lay days ? Was it reasonable ? On the evidence it was held that it was not justified and therefore the ship owner was not entitled to demurrage.

In **Houlden v Weir** [53] whilst unloading the vessel had to take on ballast. Is ballasting a default of the ship owner? The court held that it is not. It is necessary for the safety of the ship and so lay days continue to run. **Cantiere Navale Trestiis v Russian Agency** [54] involved an Italian ship. There was a dispute between the Italian and the Russian governments. The ship was ordered out of Russian waters. The C.A. held that lay time continued to run. It was beyond the ship owner's control and so the charterer was liable for demurrage.

46 **The Delian Spirit** [1971] 1 Lloyds Rep 506 C.A.
47 **The Amiral Fahri Engin** [1993] 1 Lloyds Rep 75
48 **White v Winchester SS**. [1886] 23 Sc. L.R. 342
49 **Armament Adolphe Deppe v Robinson** [1917] 2 K.B. 204.
50 **Government of Ceylon v Societe Franco Tunissiene** [1962] 2 Q.B. 416
51 **The Antclizo** [1992] 1 LR 560
52 **The Fontevivo** [1975] 1 Lloyds Rep 339 Q.B.D.
53 **Houlden v Weir** [1905] 2 K.B. 267.
54 **Cantiere Navale Trestiis v Russian Agency** [1925] 2 K.B. 172.

In **Campania Crystal v Herman** [55] a vessel about to dock in Calcutta was ordered by harbour master to move to another berth in order to protect the ship from anticipated bad weather. The court held that there was no fault on the ship owner's behalf since it was for safety reasons.

Hansen v Donaldsen [56] provides examples of situations where the ship owner will be at fault.

1). Where use of the vessel is solely for the ship owner's own purposes and convenience such as bunkering for the next voyage.
2). Where the ship owner has refused to employ enough persons to do the work.
3). Delay / neglect in getting customs house clearance.

The Charterer's Liability

Carver provides examples such as the shortage of labourers, bad weather etc. In **Theiss v Byers** [57] it was a customary practice of the port that cargoes of timber be off loaded into rafts. Due to bad weather it was not possible to unload. Nonetheless, the charterers were still liable for the delay even though the charterer's tugs were waiting alongside ready to unload as soon as the weather permitted. The charterer would have needed a clause suspending lay time during bad weather, in the absence of which he was liable for lost time.

What happens if there is a strike of dock workers? In **Budgett v Birmington** [58] a cargo was to be discharged at Bristol but there was a Dock labour strike. Some of the stevedores were employed by the ship owner, some by the consignees but both on strike. The court held that the charterer was liable for demurrage consequent on the delay caused by the strike. It was not the ship owner's fault. The decision was subject to criticism by Carver. Should the ship owner be freed from liability since the ship owner employed some of the men? But, is fault of the ship owner merely dependant on whether he selects *'a reasonable choice of stevedores?'* If they are reasonable stevedores and those stevedores go on strike is it the ship owner's fault?

Exemption Clauses

These are to protect the charterer. The General Rule is that lay days run unless there is an exception clause. **Lock Dee Induna S.S. v British Phosphate** [59] contained an exception clause which stated that *'Demurrage was not to accrue in the event of delay by reason of inter alia intervention of constituted authorities or from any cause whatsoever beyond the control of the charterers'*. When the charter party was entered into, under New Zealand law it was illegal to work between 9p.m. and 8 a.m. Therefore the vessel couldn't discharge. This also brings in the issue of illegality. The court held that the ship owner's claim for demurrage failed.

The terms of a charter party in the **Amstel Molen** [60] contained an exemption clause stating that the charterer was *'Not liable for a delay caused by an obstruction.'* All the nominated berths were full. In the event the court held that the clause protected the charterer.

Strikes and demurrage

Clearly a very desirable clause for charterers is one which stops lay time in the event of a strike by dock workers or persons delivering cargo to the port. Secondary industrial action can have the same effect as a strike and is therefore treated the same as a strike by the courts. In **The Laga** [61] the charter party provided that 'any time lost through strikes not to count for the purpose of lay days'. When the vessel was unloading a cargo of coal in a French Port the stevedores refused to unload coal as part of secondary strike action in support of striking miners. The court held that there was a strike and so the charterer not liable.

The Hew Horizon [62] provides a definition of a "strike". Workers of cranes and suction pumps refused to work at night. The court held that the refusal was a strike even though the workers were not in breach of their contracts of employment . Devlin J held that a strike is distinct from a stoppage brought about by an external event such as a bomb scare or apprehension of danger.

55 **Campania Crystal v Herman** [1958] 2 Q.B. 196
56 **Hansen v Donaldsen** [1874] 1 Sess Cas 4th Series 1066.
57 **Theiss v Byers** [1876] 1 Q.B.D. 244.
58 **Budgett v Birmington** (C.A.) 25 Q.B.D. 320.
59 **Lock Dee Induna S.S. v British Phosphate Commrs** [1949] 2 Q.B. 430.
60 **Amstel Molen** [1961] 2 Lloyds Rep 1 C.A.
61 **The Laga** [1966] 1 Lloyds Rep 582.
62 **The Hew Horizon**.. [1975] 2 Lloyds Rep 314, CA

Once Demurrage Always Demurrage

This means that demurrage time runs continuously. It was held in **Spalmatori** [63] that exception clauses do not apply once the vessel is on demurrage - unless there are clear words are used to the contrary. Thus, an exception clause can prevent demurrage from starting to run, but once it has started the occurrence of an event which could prevent demurrage starting will not stop the clock running.

This can be seen in the diagram below which illustrates the sequence of events in **The Spalmatori**.

7 Laydays	7 days Demurrage	Unmitigated damages
m,t,w,t,f,s,s,	m,t,w,t,f,s,s. Strike.	m,t,w,t,f,s,s, etc
Exceptions apply	Exceptions not applicable	Exceptions not applicable

Per Lord Reid : It is the breach of contract which detains the ship. If the ship had been loaded in time the vessel would not have been caught by the strike in any case.

The Dias.[64] The exception clauses which avail to the charterer to stop lay time running do not apply to demurrage time. The duty of the ship owner to seek certificates, fumigate the vessel etc will stop lay time running but will not stop demurrage running. The time when this is most vital is where the ship owner has such a duty placed upon him but the charterer has used up all his lay days during the loading process.

The Delian Leo.[65] A clause stated that *'Lightening, if any, at discharging ports to be at owner's risk and expense and time used not to count as lay time'.* This was for the benefit of charterer. However the charterer had already used up all his lay days before the ship owner started to lighten the vessel and so the charterer had to pay demurrage.

In **The Forum Craftsman** [66] the vessel arrived and notice of readiness given on 11th June. The vessel berthed 2nd August and moved to anchorage 6th August. After 79 days lapsed till 22nd October and the vessel finished discharge 11 November. The court held that 7 of the 79 days delay were due to negligence of ship owner in getting cargo of sugar wet and government interference so demurrage due reduced to 72 days. A strike and other force majeure clause stops lay time running but does not stop demurrage unless demurrage is clearly included in the charter party.

Shipper / consignee liability for laytime

The **Rio Apa** [67] concerned a sale of soya fob San Martin July shipment3 subject to GAFTA terms which provided inter alia that *"should the buyer not load within delivery period the buyer to pay carrying charges; if goods not loaded within 60 days of last day of delivery buyer automatically in default and shall pay default damages and carrying charges; should buyer not tender notice of readiness within delivery period Buyer in default unless extension claimed."* On 18 July the buyer tendered notice of readiness when the vessel arrived at the Common Zone and notice was accepted by the seller / shipper. Lay time commenced to run. The vessel berthed 31st July and loaded between 2-4 August but no notice of extension claimed. The seller / shipper claimed failure to load in delivery period and demanded carrying charges. The court held that there was no duty on the buyer to load in shipping period, merely to give notice of readiness.

Compare where the shipper is under a duty to load within a defined shipment period. A failure to do so amounts to a breach of contract since the provision is for the buyer's benefit. Also consider situations where the fob shipper pays freight under an fob contract with additional duties. In **The Rio Apa** the buyer had a duty to load for himself so there was no breach. The **World Navigator** [68] concerned a sale of 12,000 tons maize fob Rosano. The seller / shipper guaranteed to load at 500 tons per day and in fact the shipper loaded quicker than that but the vessel was delayed for 17 days before reaching berth due to the seller's failure to produce documentation. The court held that the shipper was obliged to load within the 24 days lay time provision and despite the 17 days delay he loaded in time so no liability for damages. There is no duty to use up as little lay time as possible.

63 **Spalmatori : Compania Aeolus v Union of India** [1964] A.C. 864.3 All E.R. 670 HL.
64 **The Dias** [19781 1 Lloyds Rep 325. H.L..
65 **The Delian Leo** [1983] 2 Lloyds Rep.
66 **The Forum Craftsman** [1991] 1 Lloyds Rep 81.
67 **Rio Apa** [1992] 2 LR 586
68 The **World Navigator** [1991] 2 LR 23