

***Common Charterparty Mistakes:***  
**How Cargo Interests Unintentionally Frustrate the**  
**Chosen Dispute Resolution Mode and Law in Cargo Claims**

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*Disclaimer<sup>i</sup>*

A cargo interest, who may be an importer, exporter, a reseller, enters into a voyage charterparty with a vessel interest, who may be an owner or a bareboat charterer, a time charterer or even a voyage charterer.

A typical voyage charterparty will include law and dispute resolution clauses. The dispute resolution clause will frequently be for an arbitration that the cargo interest and the vessel interest are comfortable with. Similarly, a choice of law that they are comfortable with.

One-contract scenario: assume a scenario where the vessel interest is the owner or bareboat charterer of the vessel, and the cargo interest is the importer of the cargo. The owner/bareboat charterer and the importer enter into a voyage charterparty. Upon shipment, the master, on behalf of the vessel interest, will issue a bill of lading to the importer ([Hague-Visby Rules, Art III r 3](#)). The terms of the contract between the vessel interest and the importer are governed by the charterparty rather than the bill of lading, because the bill of lading is in the hands of the charterer (*Rodocanachi, Sons & Co v Milburn Bros* (1886) 18 QBD 67). Effectively, there is only one contract between the parties, that is, the charterparty. If the cargo is delivered in damaged condition or is short delivered, or a cargo claim arises otherwise, the cargo interest will pursue the vessel interest pursuant to the law and dispute resolution clause in the charterparty. The bill of lading is immaterial in this context.

Two-contracts scenario: assume another scenario where the vessel interest is a time or voyage charterer of the vessel, and the cargo interest is the importer of the cargo. The time/voyage charterer and the importer enter into a voyage charterparty. Upon shipment, the master, on behalf of the owner (or bareboat charterer) of the vessel, will issue a bill of lading that will reach the hands of the importer. The charterparty is the contract between the time/voyage charterer and the importer. The bill of lading is, by operation of the law, the contract between the owner/bareboat charterer of the vessel and the importer as the lawful holder of the bill of lading ([Carriage of Goods by Sea Act 1992, s 2\(1\)](#)). There are two separate contracts here, that is, the charterparty and the bill of lading. Typically, the charterparty will have a law and dispute resolution clause that the time/voyage charterer and the importer are comfortable with. But the bill of lading may not have any law and dispute resolution clause, or have a clause that is different from the charterparty. The importer may pursue its cargo claim against the time/voyage charterer pursuant to the charterparty. But against the owner/bareboat charterer, the importer may only pursue pursuant to the bill of lading terms.

Often, the bill of lading may have an incorporation clause, that will incorporate the terms of the charterparty into the bill of lading. It may be a general incorporation clause like “*all terms and conditions, liberties and exceptions of the charterparty*” of the charterparty are incorporated. Or it may be a type of a specific incorporation clause like “*all terms and conditions, liberties and exceptions of the charterparty including the law and arbitration clause are incorporated*”. The former – a general incorporation clause – incorporates only the terms relevant to (i) shipment, (ii) carriage and delivery of the cargo, and (iii) the payment of freight, but not the law and dispute resolution clause (*The Polar* [2024] UKSC 2). Only the latter – a specific incorporation clause of the type stated above – would incorporate the law and dispute resolution clauses.

An importer would ordinarily want to have the right to pursue the owner/bareboat charterer under the chosen law and dispute resolution mode, and even arrest the subject vessel (or her sister ship) to obtain security and pursue the substantive claim under the chosen law and dispute resolution mode. The importer might often not know from the charterparty whether the other party is the registered/beneficial owner/bareboat charterer, as the latter would typically be broadly referred to as the “owner” irrespective of whether they are the owner/bareboat charterer or merely a time/voyage charterer.

Hence, the importer must ideally include a clause in the charterparty requiring the other party to pass on a bill of lading that has a specific incorporation clause of the type stated above, with an addition along the lines of “*notwithstanding anything to the contrary in the bill of lading*”. Some standard form voyage charterparties like BIMCO GENCON versions have a standard clause requiring a bill of lading in a version of BIMCO CONGENBIL, which has such a specific incorporation clause.

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