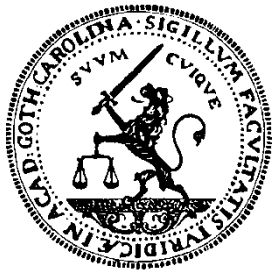

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Charterer's Liability for Unsafe Ports
- A Comparison of English and Scandinavian Law

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Contents

Summary

With often large amounts involved, the issue of unsafe ports is of great interest for both the shipowner and the charterer in order to establish what kind of risk they would bear under a voyage.

This thesis deals with the relationship between the shipowner and the charterer when the shipowner has suffered a loss due to an unsafe port. The question is to what extent it is possible to hold the charterer liable for such loss. The thesis deal with both English and Scandinavian law, and it will be possible to make comparisons of the both legal systems.

The starting point is the contract between the two parties, also known as the charterparty, where it could be regulated which party should stand the risk for damages due to unsafe port. It is however very seldom straight forward and will depend on the type of charterparty and whether it would be interpreted under English or Scandinavian law. The regulations in regards to different kinds of warranties is also dealt with, in connection with the charterparties.

There is further a thorough review of the aspects of the port itself, i.e. what elements would be needed to consider a port unsafe. Under English law, there are many different examples of various dangers, both physical but also political, where it under Scandinavian law is a more general view that is held.

In addition, exceptions such as unexpected and abnormal occurrences as well as the master's obligation to avoid certain dangers is analysed. Under the Scandinavian law, the concept of negligence is reviewed, as this is the useable principle in the Scandinavian countries.

Finally, also the scope of the liability, i.e. what costs that successfully can be claimed against the charterer if he is deemed responsible is being dealt with.

Sammanfattning

Med ofta stora summor involverade i ärenden relaterade till osäkra hamnar är det av stort intresse för både redaren och befraktaren att etablera deras respektive risk de har under en resa.

Den här uppsatsen behandlar relationen mellan redaren och befraktaren då redaren har åsamkats skada på grund av en osäker hamn. Frågan är till vilken grad det är möjligt att hålla befraktaren ansvarig för en sådan skada. Uppsatsen kommer behandla både engelsk och skandinavisk rätt, och det kommer vara möjligt att jämföra de båda rättssystemen.

Utgångspunkten är kontraktet mellan de två parterna, även kallat certepartiet, där det kan vara reglerat vilken part som skall hållas ansvarig för skador på grund av en osäker hamn. Det är dock väldigt sällan som det är rättframt, och det beror på vilken typ av certeparti samt om densamma blir tolkad under engelsk eller skandinavisk rätt. Bestämmelserna gällande olika typer av garantier avhandlas i samband med certepartierna.

Vidare kommer de olika egenskaperna av själva hamnen noggrant att gås igenom, det vill säga, vilka element som är nödvändiga för att en hamn skall anses vara osäker. Under engelsk rätt finns det många olika exempel av olika faror, både fysiska och politiska, medan det i skandinavisk rätt är mer generellt reglerat.

Även undantag, så som oväntade och onormala händelser, liksom kaptenens skyldighet att undvika vissa faror, analyseras. Under skandinavisk rätt utreds konceptet oaktsamhet då detta är den användbara principen i skandinaviska länder.

Avslutningsvis utreds även omfattningen av ansvaret, det vill säga vilka kostnader som är möjliga att kräva mot befraktaren om han anses skyldig.

Preface

I dedicate this essay to all my friends I have met in Lund and specially those at *Göteborgs Nation*. Without you, I would probably have much better grades, and a much more boring life. Thank you.

Abbreviations

cf.	confer, meaning “compare”
e.g.	exempli gratia, meaning “for example”
etc.	et cetera, meaning “and other things”
ibid	ibidem, meaning “in the same place”, used in the footnotes to indicate that the source is the same as the previous footnote.
i.e.	id est, meaning “that is” or “in other words”
ND	Nordiska Domar i Sjöfartsfrågor
NM	Nautical Mile, equal to 1852 meter
UAE	United Arab Emirates

1 Introduction

1.1 Background

There has always been an issue of unsafety involved in shipping, both due to the exposure the vessel is faced in regards to weather and winds, but also in regards to political unsafety, for example, during the world wars in Europe or in other politically unsafe areas in the world. This unsafety factor often unfolds in the ports where the vessel will be exposed to narrower navigation and shallower water.

There are different types of ports, some manmade and some natural. The manmade ports can vary in size and be everything from a big multiberth port with plenty of protection against the sea and wind, to a simpler jetty. In some areas in the world, for example, parts of Africa and the west coast of South America, some vessels are not even able to berth at the jetty, but have to transfer the goods to other, smaller vessels.[1]

When talking about damage due to unsafe ports, it is not the damage caused to the vessel due to the charterer's handling of the vessel, such as loading and unloading, but the damage related to the orders of the charterer.[2] The case law in regards to unsafe ports and the dispute between the shipowner and the charterer stretches all the way back to the middle of the 19th century.[3]

Nowadays, the issue of unsafe ports is more relevant and important than ever, as over 90% of the global trade is carried by sea[4] and as per December 2010, there were 104 304 merchant vessels with no less than 100 gross tonnes registered, most of them calling port regularly.[5] In addition, the vessels are getting larger[6] with increased drafts; this, in turn, impose more requirements on the ports.

In the world of shipping, there are many interests on different levels, from cargo owners, stevedores and charterers, to shipowners, investors and insurers. One of all relationships is the one between the shipowner and the charterer, reflected in the contract between them, also known as a charterparty. Depending on the type of the charterparty, whether it is a

[1] Hans Peter Michelet, *Håndbok i Tidsbefraktning*, Oslo, Sjörettsfondet, 1997, p. 74.
[2] Jan Ramberg, *Unsafe ports and berths*, Oslo, Universitetsförlaget, 1967, p. 17.
[3] Ogden v. Graham, 1861, 1 B & S 773.
[4] International Maritime Organisation, *International Shipping Facts and Figures: Information Resources on Trade, Safety, Security, Environment* (Updated March 2012), p. 7.
[5] *Ibid*, p. 9.
[6] Today, for example, the largest container vessels can hold up to 18 000 containers and are about 400 meters long and 60 meters wide.

voyage- or time charterparty, the charterer has an express or implied obligation to nominate a safe port.

Should the vessel suffer damage while entering the port or berth, staying there or leaving it due to the various reasons there is a question on who take the risk for the damage - the charterer who has decided that the vessel should go there, or the shipowner who is generally responsible for his vessel and crew.

1.2 Purpose and scope

It is of great interest for both the shipowner and the charterer including their respective insurers to know where the responsibility line is drawn between the two parties as substantial amounts could be involved. Therefore, the main purpose of this thesis is to analyse the charterer's liability in respect to damage incurred to the shipowner's vessel due to an unsafe port. Among other relevant issues, dealt with in this thesis, the types of dangers that could render a port unsafe are described. Also, the charterparty contract pertaining to safe port obligations will be analysed by examining the most common standard charterparty forms. Finally, the type of liability incurred on the charterer under both English and Scandinavian law and types of damages that are recoverable will be considered. As noted, the core of this thesis is the charterer's liability for unsafe ports under a charterparty contract. Thus, the liability of the shipowner is beyond the scope of this thesis. The discussion on safe port obligations hinges mainly on the time charterparty as the charterer has more freedom to nominate ports while using the vessel for a longer period of time unlike in the voyage charterparty which regulates carriage of goods between two ports. The bareboat charterparty will only be briefly mentioned in section 2.2.1.3, however not further analysed.

In this thesis, both English and Scandinavian law will be examined along with the contractual arrangements between the parties as reflected in standard charterparties.

It must be observed that the choice of English law is important as it is highly influencing on the international maritime law in general. Moreover, a number of leading decisions regarding the carriage of goods by sea are stemming from the English courts, in particular, the Court of Appeal of England and Wales and the Supreme Court of the United Kingdom, previously known as the House of Lords. Those judgments have a considerable impact in common law jurisdictions but also provide guidance for courts in civil law countries. Finally, it is not least to say that the charterparties are very often referring to English law and English jurisdiction that will govern a dispute.

As noted above, the Scandinavian law will be represented by Swedish and Norwegian law, hence the Danish law will be excluded in this thesis.

1.3 Method and material

In chapters two and three a traditional legal dogmatic method will be used, meaning that the different legal sources are analysed and applied in order to examine the legal question posed in the thesis, i.e. to evaluate the difficulties in assessing liability between the shipowner and the charterer. In these chapters the English and Scandinavian law in relation to safe port obligations are described in order to provide the basis for Chapter 4. It must be noted that in the second chapter, where English law is discussed, common law will be predominant, meaning that case law will be the main source. However, the scholarly writings will be used to supplement the analysis of the applicable court cases.

In the third chapter where Scandinavian law is discussed the main source will be statute law and associated preparatory works, however, the scholarly writings will also be used.

In chapter four, a comparative analysis between the English law system and the Scandinavian law system is conducted. This intends to reveal similarities and differences as well as the advantages and disadvantages of both systems.

In addition to the above-mentioned legal sources, also some standard charterparty forms, i.e. the contracts between charterers and shipowners, will be analysed in order to evaluate the different wordings relating to the concept of unsafe port.

1.4 Disposition

Following this introduction chapter, Chapter 2 deals with the concept of unsafe ports under the English law system. It mainly draws on the English law of contracts and torts. The case law of the English courts is extensively discussed and analysed.

Chapter 3 focuses on the Scandinavian law system, specifically Norwegian and Swedish law. Notably, maritime law is unified in Norway, Sweden and Denmark through the Scandinavian Maritime Codes common for all countries with some minor variations. The chapter includes the statute law and the related preparatory works as well as some case law.

Chapter 4 conducts a comparative analysis of two legal systems and reveals differences and similarities with respect to safe port obligations and liability of the charterer.

In the final Chapter 5 the author summarises and concludes the different findings made in the previous chapters and provides some further proposals and solution of the problem.

2 English System

2.1 Introduction

The test for whether or not a port is considered safe has been left to the common law. Even though the law seems well established in regards to the safe port, there are still many exceptions, and the question, whether a port is actually safe or not will be about a matter of fact.

If the vessel suffers damage as a result of the conditions at the port, including grounding, weather, ice, seized or damaged due to warlike activities etc, the owner of the vessel can seek damages from the charterer alleging a breach of charterparty.[7]

This chapter examines different issues, which need to be answered in order to find out whether the shipowner has a right to claim damages against charterers for unsafe port under the English law. Firstly, the charterparty will be reviewed in order to set the framework of the contract. Then, the next question is whether the port is unsafe or not. Thirdly, the chapter investigates whether the charterers could be held liable if the port is considered unsafe, and finally, what types of costs are recoverable.

2.2 Warranties

The starting point when determining whether the charterers could be held liable for damages caused by an unsafe port is to analyse the contract, or the charterparty, between the shipowner and the charterer. The question is whether the charterer has warranted the characteristics of the port in the way of safety, and thus could be held liable for that.

There are a number of standard charterparties, some of them will be reviewed in the below subsections; however, as some charterparties have different wordings the relevant charterparty has to be reviewed in order to determine the charterer's liability. Many charterparties, and specially time charters[8] have provisions requiring nomination of safe ports; however, in most charterparties there are only a few words in regards to this, hence the courts have developed several rules regarding the obligation imposed upon charterers.[9]

When the charterparty names a port or a berth and at the same time uses the word "safe" or alike to describe the port or berth, then this is generally

[7] Johan Schelin, *Modern law of Charterparties*, 9 ed, Hässelby, Colloquium, 2001, p.46.
[8] For example NYPE 1946 where it states: "Between safe port and or ports in...".
[9] Presentation by Mr Smith, *Mills and Co. Solicitors.*

interpreted as an expressed warranty. In The "Archimidis",[10] the charterparty stated "one safe port Ventspils" and this was considered a warranty by the charterer as to the safety of the named port. In a similar case, The "Livanita"[11], the wording "one time charter trip via St Petersburg…" combined with "trading to be worldwide between safe ports, safe berths and anchorages and places…" did contain an express warranty as to the safety of St Petersburg.

It will also be considered a warranty when the charterparty states that the charterer is to nominate a "safe" berth or port, even if no port is listed.[12] In this situation, i.e. when it is stated that the vessel should load or discharge at a port "to be nominated", once the port has been effectively nominated the status will be as it had been written down in the charterparty from the beginning.[13] Some examples[14] of expressed warranties are found in Baltime 01, NYPE 46 and NYPE 93, where it in the latter is stated that the vessel shall be employed between "safe ports and safe places."[15]

In the court case, The "Ternauzen"[16] the vessel was damaged due to grounding during loading operations. The charterparty stated that the vessel should be directed to a port "where she can lie safely afloat or safe aground where steamers of similar size and draft are accustomed to lie aground in safety". The provision was considered a warranty, and despite the fact it said that the vessel could lie aground the judge held that the berth in question was not one which the vessel could lie safely while loading the designated cargo.

In some charterparties, there will be no written provision that the port should be safe. Instead, in some cases the court will hold that there is an implied term that the port must be safe. Such an implied term will depend on the charterparty's overall wording. For example, in cases with political unsafety due to war etc. the presence of a comprehensive war risk clause can cause the court to hold that the charterers were not obliged to nominate a port safe from war risks.[17]

If the charterparty, on the other hand, names the port or berth, or refer to one or more ports out of a list with named ports, and still does not include the word "safety" or alike, then the charterer will probably not be under any obligation as no warranty is implied from the provision. However, the charterer must probably not nominate an "impossible" port, which will

[10] AIC Ltd v. Marine Pilot Ltd (The "Archimidis"), 2008, 1 Lloyds Rep 597.
[11] STX Pan Ocean Co Limited v. Ugland Bulk Transport AS (The "Livanita"), 2008, Vol 1.
[12] G.W. Grace & Co. Ltd. v. General Steam Navigation Company. Ltd. (The "Sussex Oak"), 1950, 83 Lloyds Rep 297.
[13] Boyd et al., *Scrutton on Charterparties*, 21 ed, London, Sweet & Maxwell, 2008, p. 117.
[14] See further in subsection 2.2.1 regarding the different charterparties.
[15] NYPE 93, clause 5.
[16] Lensen Shipping Ltd. v. Anglo-Soviet Shipping Co. Ltd (The "Terneuzen"), 1935, 52 Lloyds Rep 141.
[17] Aegean Sea Traders Corporation v. Repsol Petroleo S.A. and another (The "Aegean Sea"), 1998, 2 Lloyds Rep 39.

depend on the terms of the charterparty in full and the nature of the impossibility.[18]

In the court case The "Reborn",[19] the vessel was on a voyage charter and there was no express warranty as to the safety of the port nominated by charterers. Neither did the court find an implied warranty as to the safety of the berth since the port was named in the charterparty. The common assumption in such a case is that the shipowner has satisfied himself that the particular ports nominated for loading and discharge are safe and suitable for the particular vessel before agreeing to the charterparty.[20] Hence, more often safe port obligation will be contained in a time charterparty rather than in a voyage charterparty. The position can be different where there is a wide range of ports that the vessel may be required to go to by the charterer.[21] This is because the owners are not expected to know all ports, and also it is the charterer taking the benefit of being able to exploit the vessel commercially to a larger extent.

If the parties agree on a more comprehensive clause relating to nomination of ports then this prevails. For example, it is common in many tanker charters[22] to have a more extensive clause regarding unsafe ports. These charterparties provide that the charterers are obliged to exercise due diligence; however, there is no express warranty regarding the safety of the port which leads to more responsibility for the shipowners. Some standard clauses exist in order to further govern the position between owners and charterers in unsafe port situations, for example, standard ice clauses, which are described further in section 2.3.5.

In some charterparties, it could be stated that the vessel should trade between safe berths rather than safe ports. Briefly, it can be explained that where the safety of the berth is warranted but not the port, then the berth must be able to be reached safely within the port[23]. This is further examined in section 2.3.

[18] Reardon Smith Line Ltd. v. Australian Wheat Board (The "Houston City"), 1956, 1 Lloyds Rep 1.
[19] Mediterranean Salvage & Towage Ltd. v. Seamar Trading & Commerce inc. (The "Reborn"), 2009, 2 Lloyds Rep 639.
[20] Atkins International H.A. v. Islamic Republic of Iran Shipping Lines (The "APJ Priti"), 1987, 2 Lloyds Rep 37.
[21] Vardinoyannis v. The Egyptian General Petroleum Corp. (The "Evaggelos"), 1971, 2 Lloyds Rep 200.
[22] For example Shelltime 4 and Intertankvoy 76.
[23] Atkins International H.A. v. Islamic Republic of Iran Shipping Lines (The "APJ Priti"), 1987, 2 Lloyds Rep 37, p. 40.

2.2.1 Charterparties

The charterparty is the contract between the shipowner and the charterer, i.e. the hirer, or the party that is entitled to use the vessel.[24]

There are three main categories of charters, namely time-, voyage- and bareboat charters.[25] Each of the categories has their own type of contracts and their own characteristics, which will be briefly explained below.

2.2.1.1 Time charter

A time charterparty can be described as per Mr. Justice Donaldson in the case The "Berge Tasta"[26]:

> Under a time charter-party…the shipowner undertakes to make the vessel available to the charterer for the purposes of undertaking ballast and loaded voyages as required by the charterer within a specified area over a stated period. The shipowner's remuneration known as "time chartered freight" or "hire" is at a fixed rate for a unit of time regardless of how the vessel is used by the charterer. Risk of delay thus falls on the charterer. The shipowner meets the cost of maintaining the vessel and paying the crew's wages, but the cost of fuel and port charges fall on the charterer.

The charterer has, hence, quite extensive options in regards to where he may send the vessel and what to transport, even though sometimes the charterparty can stipulate a restriction of area.[27] Below follows some examples of standard time charterparty wordings in regards to safe port.

2.2.1.1.1 Gentime[28]

In clause 2 of the charterparty the trading limits indicate an express warranty, namely "The vessel shall be employed in lawful trades…between safe ports or safe places where she can safely enter, lie always afloat, and depart."

2.2.1.1.2 Boxtime[29]

The Boxtime is quite similar to the Gentime in the wording, "The vessel shall be employed in lawful trades…between safe ports or places where she can safely lie always afloat."

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[24]Boyd et al., *Scrutton on Charterparties,* 21 ed, London, Sweet & Maxwell, 2008, p. 3.
[25] Hans Jacob Bull & Thor Falkanger, *Innföring I Sjörett*, 6 ed, Oslo, Sjörettsfondet, 2004, pp. 221-222.
[26] Skibsaktieselskapet Snefonn, Skibsaksjeselskapet Bergesend & Co. V. Kawasaki Kisen Kaisha Ltd (The "Berge Tasta"), 1975, 1 Lloyds Rep 422, p. 424.
[27] Coghlin et al, *Time charters,* 6 ed, London, Informa, 2008, p. 133.
[28] The Bimco General Time Charterparty, Issued 1999 (Gentime).
[29] The Bimco Uniform Time Charterparty for container vessels (Boxtime).

2.2.1.1.3 Baltime[30]

Also, in the Baltime charterparty, the wording is quite similar, "The vessel to be employed in lawful trades…only between good and safe ports or places where she can safely lie afloat."

However, it is possible for the parties to agree to changes in the standard clauses. For example, in the court case The "Dagmar,"[31] the charterparty was based on a Baltime wording with the following amendments:

> The vessel to be employed in lawful trades for the carriage of lawful merchandise only between good and safe ports or places where she can safely lie always afloat or safe aground where vessels of similar size and draft are accustomed to lie in safety.

Hence, the wording still indicates an express warranty; however, it has been extended to also include "lying safely aground", hence, the vessel must not always be afloat.

2.2.1.1.4 NYPE 93[32]

In clause 5, the wording is indicating an express warranty as the trading is to be "between safe ports and safe places". Further, clause 12 stipulates that also the berths should be safe:

> The vessel shall be loaded and discharged in any safe dock or at any safe berth or safe place that Charterers or their agents may direct, provided the Vessel can safely enter, lie and depart always afloat at any time of tide.

2.2.1.1.5 Shelltime 4[33]

As mentioned above in section 2.2, it is common in many time charters for tankers to agree on a more extensive clause in relation to safe ports. It usually provides that charterers are obliged only to exercise due diligence to ensure that the vessel is employed between safe ports.[34] An example is the wording regarding safe ports in the Shelltime 4:

> Charterers shall use due diligence to ensure that the vessel is only employed between and at safe places (which expression when used in this charter shall include ports, berths, wharves, docks, anchorages, submarine lines, alongside vessels or lighters, and other locations including locations at sea) where she can safely lie always afloat. Notwithstanding anything contained in this or any other clause of this charter, Charterers do not warrant the safety of any place to which they order the vessel and shall be under no liability in respect thereof except for loss or damage caused by their failure to exercise due diligence as aforesaid.

[30] The Bimco Uniform Time Charterparty Box Layout 1974 (Baltime).
[31] Tage Bergland v. Montoro Shipping Corporation Ltd (The "Dagmar"), 1968, 2 Lloyds Rep 563.
[32] New York Produce Exchange Form 1913, amended 1993, (NYPE 93).
[33] Shelltime 4, Issued December 1984 amended December 2003.
[34] Presentation by Mr. Smith, *Mills and Co. Solicitors.*

2.2.1.2 Voyage charter

Under a voyage charter, the shipowner and the charterer agree that the vessel shall carry a specified cargo on an agreed voyage in exchange for freight.[35] Hence, the owners have more control of the vessel in comparison with time charters.

Two examples of standard voyage charterparties follow in the two subsections.

2.2.1.2.1 Gasvoy[36]

In clause 2 of the charterparty it is stated that the loading and discharging place may vary depending on the agreement; however, it should always be a safe place which indicates an express warranty:

> Vessel shall proceed…to a safe berth, dock, anchorage, submarine line, alongside a vessel or vessels or lighter or lighters or any other place whatsoever as ordered by Charterers within the limits specified in Box 19 or so near thereto as she may safely get, lie and depart from, always afloat...

2.2.1.2.2 Intertankvoy 76[37]

In line with the Shelltime 4 on the time charterparty side, also the Intertankvoy 76 has a due diligence wording which disclaims the charterers' liability as long as he acts with due diligence:

> Charterers shall exercise due diligence to ascertain that any places to which they order the vessel are safe for the vessel and that she will lie there always afloat. Charterers shall, however, not be deemed to warrant the safety of any place and shall be under no liability in respect thereof except for loss or damage caused by their failure to exercise due diligence as aforesaid.

2.2.1.3 Bareboat charter

As already mentioned in the purpose and scope in section 1.2, the bareboat charter is not under the same conditions as for the time- or voyage charters and will not be closer analysed. However, it is worth mentioning that the bareboat charterer is, in comparison with the voyage- and time charterer, taking more control of the vessel as he equips, crews and trades the vessel for his own account.[38] In other words, he therefore takes over the functions

[35] Coghlin et al, *Time charters*, 6 ed, London, Informa, 2008, p. 2.
[36] The Bimco Gas Voyage Charterparty, Issued 1972 (Gasvoy).
[37] The Bimco Tanker Voyage Charteroarty (Intertankvoy 76).
[38] Hans Jacob Bull & Thor Falkanger, *Innföring I Sjörett*, 6 ed, Oslo, Sjörettsfondet, 2004, p. 222.

of the owner and the common border between shipowner and charterer is set aside.

2.3 What makes a port unsafe?

The main rule to decide whether a port is unsafe or not derives from a leading English court case of 1958 named The "Eastern City" [39] where the following statement was expressed by Lord Justice Per Sellers:

> …port will not be safe unless, in the relevant period of time, a particular ship can reach it, use it and return from it without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship.

Hence, it is apparent that there are several requisites for the port to be considered safe. This chapter will focus mainly on the part relating to "reach it, use it and return from it without…being exposed to danger". Accordingly, the remaining requisites will be handled in the following chapters.

Courts have held that whether a port or berth is unsafe or not is a matter of fact and degree.[40] The port's characteristics, both temporary and permanent, must be safe for the vessel.[41] However, a temporary danger does not automatically render a port unsafe. For example, a danger relating to an ordinary neap tide would probably not make the port unsafe[42] while, on the other hand, a temporarily broken navigational light could render the port unsafe if connected with the system of the port.[43]

The vessel should also, beside from using the port, be able to get to the port and depart safely[44]. This will be further discussed in the subsections 2.3.1 and 2.3.3. However, the port does not have to be safe for continues use, as long as there are adequate warning systems in place to enable the ship to leave safely if a danger occurs. Hence, a port can be considered safe, despite unsafe characteristics, if the charterers have provided the owners with sufficient warning to enable the vessel to avoid them. There will be several references to relevant case law in the following subsections.[45] It is also worth noting that it is the system that has to be adequate, a mistake by a

[39] Leeds Shipping Company Ltd. v. Societe Francaise Bunge (The "Eastern City"), 1958, 2 lloyd's Rep 127, p. 131.
[40] Boyd et al., *Scrutton on Charterparties*, 21 ed, London, Sweet & Maxwell, 2008, p. 121.
[41] Boyd et al., *Scrutton on Charterparties*, 21 ed, London, Sweet & Maxwell, 2008, p. 120.
[42] See further about the necessary length of a delay in section 2.3.7.
[43] See further in section 2.3.1.
[44] Limerick Steamship Company LTD v. W.H. Stott & Co (The "Inishboffin"), 1920, 5 Lloyds Rep 190.
[45] See further The "Evia" in section 2.3.1, as well as The "Dagmar" and The "Eastern City" in section 2.3.3.

competent individual in an otherwise functioning system does not render a port unsafe.[46]

A safe port obligation also means that the berth, dock or wharf which the vessel is directed to shall be safe; however, it does not mean that every spot in the port must be safe.[47] In the court case The "Terneuzen" from 1935, the judge stated the following[48]: "…the word "port" or "place" [is] to be deemed to include that part of the port or place which is a berth."

Hence, if the charterers order a vessel to a port, they have also a duty to direct the vessel to a safe place within the port.[49]

As mentioned above, there are different dangers that can render a port unsafe. Some examples of dangers will briefly be described in the following subsections.[50]

2.3.1 Defective berthing facilities and navigational aids

One of the most common ways to describe an unsafe port would perhaps be a physical defect of the berth itself. However, there are plenty of other attributes to render a port unsafe, which will be reviewed in the following sections.

A physical defect, which could render the port unsafe, would, for example, be the lack of proper fenders and hauling-off buys as in The "Houston City"[51], which will be more carefully examined in section 2.3.3. It could also be insufficient fendering while heavy winds are pushing the vessel against the quay as in The "Khian Sea"[52], which will also be reviewed further in section 2.3.3.

In the old court case from 1920, The "Innisboffin"[53], the vessel was ordered to Manchester where she was to discharge her cargo. On the way to and from the port, she had to pass under a couple of bridges. During the voyage to the port, she was laden and it was no problem to pass under the bridges; however, when she was returning in ballast condition the draught of the

[46] Presentation by Ms Joanna Steele, *Bentleys, Stokes and Lowless.*
[47] Boyd et al., *Scrutton on Charterparties,* 21 ed, London, Sweet & Maxwell, 2008, p. 120.
[48] Lensen Shipping Ltd. v. Anglo-Soviet Shipping Co. Ltd (The "Terneuzen"), 1935, 52 Lloyds Rep 141, p. 149.
[49] Jan Ramberg, *Unsafe ports and berths,* Oslo, Universitetsförlaget, 1967, p. 23.
[50] Johan Schelin, *Modern law of Charterparties,* 9 ed, Hässelby, Colloquium, 2001.
[51] Reardon Smith Line Ltd. V. Australian Wheat Board (The "Houston City"), 1953, 1 Lloyds Rep 131.
[52] Islander Shipping Enterprises S.A. v. Empresa Maritima Del Estado S.A. (The "Khian Sea"), 1979, 1 Lloyds Rep 545.
[53] Limerick Steamship Company LTD v. W.H. Stott & Co (The "Inishboffin"), 1920, 5 Lloyds Rep 190.

vessel made it impossible to pass the bridges due to the vessel's height. The vessel accordingly had to cut off the mast in order to safely continue the voyage. The judge held that the port was to be considered unsafe to the particular vessel[54].

Another attribute apart from a physical defect at the berth could be defective, or absence of, navigational aids such as lights and buoys etc.[55] In the court case The "Count"[56], the judge held that misalignments of navigational buoys did render the port unsafe.

Just because a physical danger exists does not necessarily make the port unsafe. If, for example, a sandbank is properly marked by navigational buoys and lights then the sandbank should not be considered to render the port unsafe. On the other hand, temporary dangers, such as, for example, broken navigation lights or alike, could render the port unsafe.[57]

The key is whether there is a working system at the port. Hence, should, for example, a light be broken and then repaired within a reasonable time the system is most likely to be considered adequate and it should not be a reason for an unsafe port argument. If the system is considered adequate but breaks down due to a human error, which is a one-time occurrence, then it still would probably not be considered unsafe.[58] In The "Evia" the judge stated[59]:

> To elaborate a little, every port in its natural state has hazards for the ships going there. It may be shallows, shoals, mudbanks, or rocks. It may be storms or ice or appalling weather. In order to be a "safe port", there must be reasonable precautions taken to overcome these hazards, or to give sufficient warning of them to enable them to be avoided. There must be buoys to mark the channel, lights to point the way, pilots available to steer, a system to forecast the weather, good places to drop anchor, sufficient room to manoeuvre, sound berths, and so forth. In so far as any of these precautions are necessary - and the set-up of the port is deficient in them - then it is not a "safe port".

In The "Marinicki"[60], the vessel suffered damage when she hit an object in the dredged channel on the way to the port. The judge held that because there was no proper system in place to check or monitor the safety of the channel to the port, or to warn traffic using the channel, the port was to be considered unsafe.

[54] See more about prospectively safe in section 2.4.
[55] Presentation by Ms Joanna Steele, *Bentleys, Stokes and Lowless.*
[56] See further in section 2.3.7 for more details.
[57] Presentation by Mr Smith, *Mills and Co. Solicitors.*
[58] Boyd et al., *Scrutton on Charterparties,* 21 ed, London, Sweet & Maxwell, 2008, p. 122.
[59] Kodros Shipping Corp of Monrovia v. Empresa Cubana de Fletes (The "Evia"), 1982, 1 A.C. 334.
[60] Maintop Shipping Company Limited v. Bulkindo Lines Pte Limited (The "Marinicki"), 2003, 2 Lloyds Rep 655.

2.3.2 Inadequate channels

A port could be deemed unsafe even if the danger itself is not within the actual port limits. Dangers that are likely to occur on the way to and from the port may also affect the safety.[61] In the case The "Hermine"[62] the vessel was delayed in the port of Destrehan, located 140 NM upstream the Mississippi River, due to the fact that there was not sufficient water depth in the river for the laden vessel, and later that another vessel had grounded further down the river making it impossible for The "Hermine" to pass. It was held that even though the obstacle was almost 100 NM downstream from the port, the grounded vessel and the lack of water was still a danger connected to the port. It is though essential that the danger is linked with the use of the nominated port.

Evidently, the danger could be situated a long distance away from the port, but in The "Hermine", the judges were not entirely unanimous as to how far away a danger still could be connected to the port. However, it should not matter about distance if it is the only way of getting to the port.

In the court case G.W. Grace & Co. Ltd. v. General Steam Navigation Company Limited, also called The "Sussex Oak", from 1950[63], which is further mentioned below in section 2.3.5, the vessel was damaged by ice in the river Elbe on route to Hamburg and the judge held that:

> It is immaterial in point of law where the danger is located, though it is obvious in point of fact that the more remote it is from the port the less likely it is to interfere with the safety of the voyage. The charterer does not guarantee that the most direct route or any particular route to the port is safe, but the voyage he orders must be one which an ordinarily prudent and skilful master can find a way of making in safety.

In this particular case, the only route to Hamburg was by the river Elbe, and hence the court found it applicable to test the unsafe port criteria for the location.

This view was also held and further clarified in The "Mary Lou"[64] where the judge stated that:

> Certainly it is not easy to accept at first sight the idea that hazards existing nearly one hundred miles away can be treated as features of the port. But logically the distance should make no difference, although the further away the obstacle, the less likely it will be that there is no alternative route which will enable the ship to reach the port in safety.

[61] Boyd et al., *Scrutton on Charterparties*, 21 ed, London, Sweet & Maxwell, 2008, p. 123.
[62] Unitramp v. Garnac Grain Co. Inc. (The "Hermine"), 1978, 1 Lloyds Rep 212.
[63] G.W. Grace & Co. Ltd. v. General Steam Navigation Company. Ltd. (The "Sussex Oak"), 1950, 83 Lloyds Rep 297.
[64] Transoceanic Petroleum Carriers v. Cook Industries Inc (The "Mary Lou"), 1981, 2 Lloyds Rep 272, p. 280.

2.3.3 Lack of shelter, and room to manoeuvre, in bad weathers

If a port can not offer adequate protection against sea and swell, or the wind, the vessel may suffer damage as a result of, for example, the vessel being pushed against the berth or drift aground. It could also lead to damage to the berth which the berth owners may claim against the vessel's owners. When a port is considered unsafe due to this particular attribute, it is due to the condition of a certain place in the port and not the port itself.[65] However, as more thoroughly discussed in section 2.3, the charterers have nonetheless an obligation to direct the vessel within the port.

Adequate protection against sea, swell and wind does not mean that the berth must necessarily be sheltered by breakwaters or alike. In the case The "Houston City"[66] the vessel was ordered to a port in Australia where, at the specific berth, a hauling-off buoy and about fifty feet of the upper walling-piece was missing. When the vessel berthed, the weather was calm and the forecast did not indicate any deterioration, however, soon the wind was increasing to a gale and the vessel and berth suffered damage by the vessel bumping against the berth. The judge held that although the berth was considered generally safe, the absence of the hauling-off buoy and waling-piece made it unsafe in the prevailing weather, which was normally to be expected during the winter months. Hence, in this matter the absence of a buoy and proper fender system made the port unsafe rather than the berth actually being exposed by wind and swell.

Further, even if there are no physical deficiencies as in The "Houston City", the mere fact that the vessel is not warned about forthcoming heavy winds, which upon arrival makes it impossible for the vessel to depart safely, could mean that a port is considered unsafe.[67]

The berth does not necessarily have to be considered unsafe if the vessel has to leave due to bad weather.[68] In the first instance of the court case The "Eastern City"[69] the judge stated that:

> I think theoretically it is possible for a port to be safe even though ships have to leave it in certain states of the weather, provided that all the operations of entering it, going out of it, re-entering it, loading and going out again, can be safely performed, and provided also that there is no appreciable danger of a ship being trapped by the sudden onset of bad weather.

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[65] Jan Ramberg, *Unsafe ports and berths*, Oslo, Universitetsförlaget, 1967, p. 22.
[66] Reardon Smith Line Ltd. V. Australian Wheat Board (The "Houston City"), 1953, 1 Lloyds Rep 131.
[67] Tage Bergland v. Montoro Shipping Corporation Ltd (The "Dagmar"), 1968, 2 Lloyds Rep 563.
[68] Boyd et al., *Scrutton on Charterparties*, 21 ed, London, Sweet & Maxwell, 2008, p. 122.
[69] Leeds Shipping Company Ltd. v. Societe Francaise Bunge (The "Eastern City"), 1957, 2 Lloyds Rep 153, p. 172.

The statement was further elaborated in the court case Islander Shipping Enterprises S.A. v. Empresa Maritima Del Estrado S.A. (The "Khian Sea") from 1979, where the vessel was berthed in Valparaiso, Chile, when the weather was deteriorating and the vessel became exposed to heavy swell. The vessel was properly warned about the approaching weather in way of a red light, which was displayed at the port, and did therefore call for tugs and pilots in order to leave the berth and avoid damage to the vessel. However, when the pilot had boarded and the tugs were alongside, it turned out that two other vessels had anchored sufficiently close to the berth making it impossible for The "Khian Sea" to leave until the both vessels had been moved. While waiting for the two vessels to move the vessel suffered damage by striking the pier structure.

As already mentioned in section 2.3, the port must have an adequate warning system to enable vessels to leave the port should it suffer bad weather. In The "Khian Sea" the judge stated that there are four requirements that have to be satisfied when a vessel has to leave its berth. In addition to an adequate warning system, there must also be adequate availability of pilots and tugs[70], adequate sea room to manoeuvre, and finally, an adequate system for ensuring that the sea room and room for manoeuvre is always available.[71] In The "Khian Sea" the judge held that the first two criteria were satisfied; however not the third and fourth. Firstly, there was not enough room to manoeuvre at the crucial time, and secondly, not an adequate system to allow the vessel to navigate freely in bad weather. Hence, the port was deemed unsafe.

2.3.4 Absence or incompetence of tugs or pilots

It does not have to be a physical danger that renders a port unsafe; also organisational shortcoming could be a danger of the port.[72] Organisational dangers are associated with the organisation and systems adopted at the port; however, it must not necessarily be connected with the port authorities.

For example, should a vessel ground due to a pilot error it could be held that it was an occasional mistake by the pilot and that it would fall under the shipowners' responsibility as the pilot generally is acting as a servant or employee of the owners. Should it, on the other hand, turn out to be a recurring error by the pilot or the pilots then it could be held that the

[70] See further section 2.3.4.
[71] Islander Shipping Enterprises S.A. v. Empresa Maritima Del Estado S.A. (The "Khian Sea"), 1979, 1 Lloyds Rep 545, p. 547.
[72] Presentation by Mr. Smith, *Mills and Co. Solicitors.*

incompetence of the pilots is a characteristic of the port and that it constitutes an unsafety of the port.[73]

Also, absence of tugs could be considered as an organisational shortcoming. In the court case The "Universal Monarch"[74] the port was deemed unsafe due to the fact that not enough tugs were available during berthing. In the noted case, the pilots demanded that six tugs were to be used to berth a vessel of The "Universal Monarch's" size while only three were available at the port. Hence, three extra tugs had to be ordered from a nearby port for which the owners were charged with the extra costs. The port was deemed unsafe to the specific vessel due to the absence of tugs and the owners recovered the extra costs from charterers.

The same conclusion was reached in the case The "Sagoland"[75], where the vessel was ordered to Londonderry, and where the river bends made it unsafe for Sagoland due to her length to go in and out under her own steam. There were no available tugs in Londonderry or in the vicinity, and hence the judge held that the port was deemed unsafe for the vessel.

In The "Mary Lou"[76] an issue was a system under which compulsory river pilots determine drafts necessary to permit safe passage of ships. The court analysed whether a failure of that system could render a berth to be unsafe, considering a number of prior cases, including The "Dagmar"[77] and The "Khian Sea"[78]:

> Each of these cases depended on the concept that a port could be conditionally safe. Such a port may have geographical, climatic or other characteristics which entail that it will be safe if, but only if, a particular system for securing its safety remains effectively in operation: for example, a system for obtaining and publishing adequate weather forecasts, or for supplying tugs, or for ensuring adequate sea room for manoeuvring. Such a port will be safe if the system works properly, and unsafe if it does not.

In other words, a system, including supply of adequate tugs, may in certain circumstances render a port unsafe if such system fails.

2.3.5 Ice

Ice could be dangerous to the vessel in several ways. For example, ice could affect the seaworthiness as it can form on vessel's structure, and hence

[73] Michael Wilford, *Time Charters*, 4 ed, London, Lloyds of London, 1995, p. 193.
[74] Palm Shipping inc v. Vitol S.A. (The "Universal Monarch"), 1988, 2 Lloyds Rep 483.
[75] Brostrom & Sons v. Dreyfus & Co (The "Sagoland"), 1932, 44 Lloyds Rep 136.
[76] Transoceanic Petroleum Carriers v. Cook Industries Inc (The "Mary Lou"), 1981, 2 Lloyds Rep 272, p. 277.
[77] Tage Bergland v. Montoro Shipping Corporation Ltd (The "Dagmar"), 1968, 2 Lloyds Rep 563.
[78] Islander Shipping Enterprises S.A. v. Empresa Maritima Del Estado S.A. (The "Khian Sea"), 1979, 1 Lloyds Rep 545.

cause instability. There is further a risk that ballast water freezes and the cargo lifting capacity will decrease. However, the most common danger to the vessel relating to ice is probably hull, propeller and rudder damage due to striking of ice while navigating. Depending on the vessel, some are more resistant to ice than others and there is also a specific ice class which states how thick ice the vessel is designed to force. Also, it differs if the vessel is in ballast or laden in way of efficiency going through ice.

In The "Sussex Oak"[79], the judge held that the port of Hamburg was considered to be unsafe due to the presence of ice in the river Elbe. The judge established that the master had not acted negligently as not much ice was encountered when entering the river, and that when the vessel was finally held up by the ice there was no alternative for the master other than to continue the voyage. As the judge further established:

> The place where the vessel was held up was a narrow part of the river. The master could not have turned round and gone back because the propeller or rudder would probably have been damaged by the ice in so doing, or might even have been lost. He could not go astern for more than a short distance for the same reasons, and he could not anchor in that place. If he had tried to remain where he was, he would have been carried towards Pagan Sand, and there would have been serious risk of the vessel stranding.

It does not always have to be the presence of ice that makes a port unsafe. In the court case The "Livanita"[80] it was rather the ice blocks caused by an icebreaker that caused the unsafety and damage to the vessel.

As stated above in section 2.3 a port could be deemed unsafe even if the danger is only of a temporary nature. In regards to ice, the courts have held that if a delay due to ice is frustrating the commercial purpose of the charterparty it will not be considered temporary, and hence the berth will be considered unsafe. For example, should a vessel fixed on a voyage charter where the stay at a berth would normally take two weeks, and upon arrival of the port the same is iced up for the winter, it would be considered a frustration of the charter's commercial purpose.[81]

There are standard ice clauses that can be used in charterparties, which state that the master is not forced to proceed when, for example, navigational marks have been removed for the winter, if the port is icebound or there is a risk that the vessel cannot safely enter or leave the port on accounts of ice.[82] In some voyage charterparties, the owners have the right to cancel the charterparty should there be an obstruction of ice.[83]

[79] G.W. Grace & Co. Ltd. v. General Steam Navigation Company. Ltd. (The "Sussex Oak"), 1950, 83 Lloyds Rep 297.
[80] STX Pan Ocean Co Limited v. Ugland Bulk Transport AS (The "Livanita"), 2008, Vol 1.
[81] Presentation by Mr. Smith, *Mills and Co. Solicitors*.
[82] Gentime, paragraph 2(c).
[83] Norgrain, paragraph 31.

Finally, it is worth mentioning that a port that would naturally be icebound for a certain period during the year is not necessarily icebound within the meaning of an ice clause, and is hence not automatically considered unsafe, if the port is kept open by icebreakers.[84]

2.3.6 Warlike activities and political dangers

Another non-physical possible danger is political unsafety, for example seizure by governments due to embargo, warlike activities, capturing by pirates or enemies as well as threats of the same.

In the old case from 1861, Ogden v Graham[85], the vessel The "Respigadera" was chartered to proceed from England to a safe port in Chile, which was to be decided upon calling Valparaiso. On the arrival at Valparaiso the charterers directed her to Carrisal Bajo for discharging. However, at the time of the order the port in Carrisal Bajo was closed under the order from the Chilean Government, and the ship could not call there without being confiscated. The ship was therefore detained for a while in Valparaiso pending the re-opening of the port in Carrisal Bajo. The judge held that the port was not safe, as the vessel could not enter it without being confiscated by the government of the place. The judge held:

> I think that, on the construction of this charterparty, the charterers are bound to name a port which, at the time they name it, is in such a condition that the master can safely take his ship into it; but, if a certain port be in such a state that, although the ship can readily enough so far as natural causes are concerned, sail into it, yet, by reason of political or other causes, she cannot enter it without being confiscated by the Government of the place, that is not a safe port within the meaning of the charterparty.

Accordingly, a port can be deemed unsafe if the unloading of the cargo is prohibited by law, or if the port cannot be reached without the vessel running the risk of a hostile capture.

In the more recent case The "Greek Fighter"[86], from 2006, the vessel was at anchor off Khorfakkan, UAE, where she loaded and discharged oil from smaller tankers. The UAE coastguard then arrested the vessel on the basis that Iraqi oil was loaded onboard, which at the time was illegal. The vessel was subsequently confiscated and sold at the public auction. The charterparty was based on Shelltime 4 and stated that "No voyage shall be undertaken, nor any goods or cargoes loaded, that would expose the vessel to capture or seizure by rulers or governments"[87]. Accordingly, the court

[84] Limerick Steamship Company LTD v. W.H. Stott & Co (The "Inishboffin"), 1920, 5 Lloyds Rep 190.
[85] Ogden v. Graham, 1861, 1 B & S 773.
[86] Ullises Shipping Corporation v. Fal Shipping Co Ltd (The "Greek Fighter"), 2006, 1 Lloyds Rep 99.
[87] Shelltime 4, clause 28.

held that the port of Khorfakkan was unsafe as the cargo loaded onboard was considered as contraband due to its origin.

The unsafety can also be connected to war and warlike activities, as, for example, in the early case the Palace Shipping Co v. Gans Steamship Line[88] from World War One. In 1915, the German Government had declared the waters around Great Britain as a military area where all hostile merchant vessels were to be attacked and destroyed by German war vessels. The vessel, which sailed under the British flag, was ordered from Le Havre to Newcastle; however, the owners refused on the grounds that the port of Newcastle was not safe. It later turned out that the Germans fell short of their promise and as the judge stated when commenting on the result of the German threat: "it is impossible to regard the results achieved as other than insignificant".

The judge held that, although dangers encountered on the way to the port could render the port unsafe, and that one reason could be enemy attacks, the German threat was not carried into effect by the German Government and Newcastle was in fact a safe port.

In The "Saga Cob",[89] the Commercial Court held that the port of Massawa was prospectively unsafe, at the time the order to proceed to the port was given, due to the fact that the vessel's approach to the port could be subject to seaborne attacks. The Court of Appeal, however, held that although a seaborne attack was foreseeable, there had been no other attacks for about three months, and that the former attack was considered to be an isolated event. The judges therefore meant that it was not correct that an attack, or even the risk of an attack, was a normal characteristic of the port. Hence, just because a risk is foreseeable does not mean that it should be considered as a characteristic of the port.[90] The Court of Appeal raised that the question should be whether a reasonable shipowner, knowing the facts with regards to the safety of the port, would decide to take his vessel there. As one of the judges stated[91]:

> …one is considering whether a port should be regarded as unsafe by owners, charterers or masters of vessels. It is accepted that this does not mean that it is unsafe unless shown to be absolutely safe. It will not, in circumstances such as the present, be regarded as unsafe unless the political risk is sufficient for a reasonable shipowner or master to decline to send or sail his vessel there.

Hence, the above statement infers that a reasonable shipowner must accept some degree of political risk, and that the port is not unsafe if only that degree of risk is present. The port would only be considered unsafe if the

[88] Palace Shipping Company Limited v Gans Steamship Line, 1916, 1 K.B. 138.
[89] K/S Penta Shipping A/S v. Ethiopian Shipping Lines Corporation (The "Saga Cob"), 1992, 2 Lloyds Rep 545.
[90] Presentation by Ms. Joanna Steele, *Bentleys, Stokes and Lowless*.
[91] K/S Penta Shipping A/S v. Ethiopian Shipping Lines Corporation (The "Saga Cob"), 1992, 2 Lloyds Rep 545, p. 551.

risk is such that a reasonable master or shipowner would decline to send or sail his vessel there.[92]

In a court case one year after The "Saga Cob", named The "Chemical Venture"[93], the judge held, in contrast to the above case, that the port Mina Al Ahmadi, Kuwait, was deemed unsafe due to the vessel being hit by a missile from an Iranian jet fighter. The premise was however slightly different in this case as three tankers had been attacked by Iranians jets during eleven days before The "Chemical Venture" was attacked. Hence, the judge held that an attack was not an isolated, abnormal or unexpected event, but a characteristic of the port at that time.

Two other matters referring to the Iran-Iraq War is The "Evia"[94] and The "Lucille"[95]. The two vessels got trapped in the port of Basrah as the only route out of the port was blocked for traffic due to the outbreak of the war. In the former case, the judge held that the port was safe while in the latter the judge held that the port was deemed unsafe. The different outcome in the two decisions lies in the meaning of "prospectively safe" which will be handled further in section 2.4.

Another issue relevant to the issue of unsafety is corruption. At some ports, officials may cause difficulties for the vessel unless they are bribed. In recent years, more legislation has been introduced in order to prohibit such practices. One example is the United Kingdom's Bribery Act from 2010 which makes bribery of a foreign official a specific offence. Accordingly, if arbitrators or courts previously have held that confiscation or delay of a vessel that could be avoided by payment of a "reasonable" bribe did not make the port unsafe it is now a high probability that the same situation would be considered as an unsafe element.[96]

2.3.7 Delays

The risk that a vessel is seriously delayed can in some situations constitute unsafety. In the above-mentioned[97] The "Lucille" where the vessel was trapped due to the outbreak of war, the judge held that the delay rendered the port unsafe. As stated above[98], the presence of ice making it impossible for the vessel to leave or to get to the port could also render unsafety.

[92] Boyd et al., *Scrutton on Charterparties,* 21 ed, London, Sweet & Maxwell, 2008, p. 122.
[93] Pearl Carriers Inc. v. Japan Line Ltd. (The "Chemical Venture"), 1993, 1 Lloyds Rep 508, p. 518.
[94] Kodros Shipping Corp of Monrovia v. Empresa Cubana de Fletes (The "Evia"), 1982, 1 A.C. 334.
[95] Uni-Ocean Lines Pte. Ltd. V. C-Trade S.A. (The "Lucille"), 1984, 1 Lloyds Rep 244.
[96] Presentation by Mr. Smith, *Mills and Co. Solicitors.*
[97] See section 2.3.6.
[98] See section 2.3.5.

In the court case The "Count"[99] the vessel was voyage chartered to the port of Beira, Mozambique, when she upon arrival was delayed by two other vessels that grounded at the same location which caused a blockage in the channel making it impossible to pass. The first vessel grounded the same day The "Count" tendered her notice of readiness which led to a six-day delay before The "Count" was able to make it to a discharge berth. The second vessel then grounded during the discharging operation, however was not refloated until four days after completion of discharging, making the total delay of ten days for The "Count". The loss that owners had suffered as a result of delay was claimed against charterers as they argued that the port was unsafe due to the blockage. The cause of the two groundings was due to misalignment of navigational buoys in the access channel to the port. The judge held that the misalignment resulted from the absence of an adequate system to monitor changes in the channel. The judge further held that the delay was of such significance that he held the port unsafe.

It is important to find the line between an accepted delay and a delay making the port unsafe. The delay must be of such duration as it frustrates the charterparty or involves inordinate delay.[100] Hence, for example, neap tides, which is a common occurrence in many ports, that may cause a delay is not enough to breach the commercial deal as it only lasts for a limited period of time. In The "Hermine"[101] from 1979 the judge stated:

> …the governing test determining whether the delay is sufficient to justify the result for which the shipowners concerned contended must be such delay as will frustrate the commercial adventure.

Accordingly, how to interpret the length of a delay in order to render the port unsafe depends on what type of a charterparty that the vessel is engaged in. For example, a time charterparty for a longer period would be less sensitive than a time charterparty for a shorter period. Likewise, a temporary obstacle, which will merely involve the ship in a non-frustrating delay, will not render the port unsafe.[102]

The stance held in The "Hermine" was later confirmed in The "Count" from 2008 where the judge stated[103]:

> A port will not lack the characteristics of a safe port merely because some delay, insufficient to frustrate the adventure, may be caused to the vessel in her attempt to reach, use and leave the port, by some temporary evident obstruction or hazard…That is different from the situation where the characteristics of the port at the time of the nomination are such as to create a continuous risk of danger.

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[99] Independent Petroleum Group Ltd v. Seacarriers Count Pte Ltd (The "Count"), 2008, 1 Lloyds Rep 72.
[100] Boyd et al., *Scrutton on Charterparties,* 21 ed, London, Sweet & Maxwell, 2008, p. 122.
[101] Unitramp v. Garnac Grain Co. Inc. (The "Hermine"), 1978, 1 Lloyds Rep 212, p. 219.
[102] Kodros Shipping Corporation v. Empresa Cubana de Fletes (The "Evia"), 1982, Vol 1 A.C. 334, p. 348.
[103] Independent Petroleum Group Ltd v. Seacarriers Count Pte Ltd (The "Count"), 2008, 1 Lloyds Rep 72, p. 76.

2.4 Prospectively safe

In The "Evia", the judge held that the port must be "prospectively safe"[104]. The reason behind the wording is to establish the charterer's responsibility as to when and to what degree he must seek information about the port to which he directs the vessel.

The obligation for the charterer to nominate a safe port is primarily related to the moment when the order is given, i.e. at the nomination. However, the port must not be safe at the time of the order, but at the time the vessel actually approaches or enters the port.[105] Instead of the word "prospectively" one could use "anticipated", i.e. when the charterer gives the order to go to a specific port it is the anticipated status of the port that is relevant.[106]

If charterers have complied with their initial obligation to nominate a port which is prospectively safe, and that port becomes unsafe whilst the vessel is on its way there, or even whilst the vessel is at the port but is able to avoid the danger by leaving, the charterers are under a second obligation to cancel the original orders and to issue new orders directing the vessel to a prospectively safe port.[107] In the court case The "Evia"[108], the judge held that the nature of charterers' obligation to direct the vessel to a new port when the vessel has already entered the first port and it subsequently became unsafe, depends on whether it forthwith would protect the vessel from danger. If it is not, then the charterer would not be under the secondary obligation.

The port should be safe during the entire time when the vessel uses the port, including getting to and from the port. In the court case The "Mary Lou" the judge was referring to two previous cases, namely The "Dagmar" and The "Khian Sea". He held that the port should remain safe during the stay and not only during the nomination:[109]

> A situation may well exist in which the system is in effective operation at the time of the nomination, but breaks down whilst the ship is actually within the port. The decision of Mr. Justice Mocatta in the former case, and the judgment of Lord Denning, M.R. in the latter are both to the effect that the charterer is liable for any resulting damage if the system breaks down while

[104] Kodros Shipping Corporation v. Empresa Cubana de Fletes (The "Evia"), 1982, Vol 1 A.C. 334.
[105] Boyd et al., *Scrutton on Charterparties,* 21 ed, London, Sweet & Maxwell, 2008, p. 120.
[106] Presentation by Mr. Smith, *Mills and Co. Solicitors.*
[107] Jan Ramberg, *Unsafe ports and berths*, Oslo, Universitetsförlaget, 1967, p. 62.
[108] Kodros Shipping Corp of Monrovia v. Empresa Cubana de Fletes (The "Evia"), 1982, 1 Lloyds Rep 307, p. 320.
[109] Transoceanic Petroleum Carriers v. Cook Industries Inc (The "Mary Lou"), 1981, 2 Lloyds Rep 272, p. 277.

> the ship is in port, notwithstanding that the port was safe at the moment of nomination.

On the contrary, should the port become unsafe after the use of the vessel, then the port would not be deemed as unsafe in the meaning of the charterparty.[110]

Beside from the time relevance, the port must also be safe for the particular ship, which is also stated in the main rule in The "Eastern City"[111]. Hence, the fact that the port would be safe for ships of different sizes or characteristics is not relevant.[112] It could, for example, be the vessel's draught, length or height[113] that makes it difficult or impossible to use the port safely. Also, ice could be a danger of various degrees depending on the vessel's characteristics. Whereas some vessels withstand large quantity of ice, others need only encounter a little ice before being damaged.

It is notable that the stance held by the judge in The "Eastern City" in regard to the need to look at the specific ship in question was already adopted in 1932 where the judge stated the following in the court case The "Sagoland"[114]:

> Let not the findings of the umpire be misunderstood, it was not a finding that the Port of Londonderry was not an entirely safe port for 99 out of 100 or an even larger proportion of the ships that may seek to resort thereto, but merely that it was not a safe port for the ship in question, the "Sagoland"…

This has also been confirmed in later decisions, such as The "Universal Monarch"[115] where the port was held unsafe due to the insufficient number of tugs for berthing a vessel of her size.

The assessment whether a port is safe or not is an objective one, hence it does not matter whether the charterer actually knew about the factors.[116] However, as mentioned in section 2.2, some charterparties might set out different rules. For example, in the charterparty Shelltime 4[117] it is stated that the charterers will not be liable for any damages at all in respect of unsafe port unless failing to exercise due diligence. Hence, in these cases the extent of the charterers' knowledge of the prospective safety of the port does become relevant.

[110] Presentation by Mr. Smith, *Mills and Co. Solicitors.*
[111] See section 2.3.
[112] Presentation by Ms. Joanna Steele, *Bentleys, Stokes and Lowless.*
[113] See section 2.3.1 regarding the court case The "Innisboffin".
[114] Brostrom & Sons v. Dreyfus & Co (The "Sagoland"), 1932, 44 Lloyds Rep 136, p. 137.
[115] Palm Shipping inc v. Vitol S.A. (The "Universal Monarch"), 1988, 2 Lloyds Rep 483.
[116] Presentation by Mr. Smith, *Mills and Co. Solicitors.*
[117] Paragraph 4c.

2.4.1 Owners' rights and obligations

Owners are in principle bound by the contract, i.e. the charterparty, and have to obey charterers' nomination. There are, however, situations where the owners have the right, and sometimes even an obligation, to refuse the charterers' orders.

If the charterers direct the vessel to an unsafe port, then the vessel, i.e. owners, may refuse to comply with the order.[118] If the owners elect to proceed to the port despite that they know about the facts that give them the rights to reject orders, then they waive their further rights to later reject the charterers' order. They do not however forfeit their rights to have their losses covered. [119] Hence, the owners can obey with the charterers' order and later claim compensation for the damages incurred due to the unsafe port. If, however, the port that is nominated is obviously unsafe, then owners would be obliged to refuse the orders and failing of doing so would probably adventure the possibility to a recourse action.[120] It is also worth mentioning that the owners may still have an obligation to go to a port even if the port is not *yet* safe, as the port still may be prospectively safe.

When owners, by their words or action, represent that they will not enforce their rights to refuse to obey the order to go to an unsafe port they waive this right. Owners can also waive to claim for damages, however compared to waiving the right to refuse the order, it will usually take an unequivocal statement to waive a claim for damages. It is therefore much more difficult to waive the right for claiming damages than to refuse to continue to a port.[121] For example, in the court case The "Evaggelos"[122], the judge held that the agreement of extra war risk cover was not a waiver of a safe port obligation.

2.5 Unexpected and abnormal occurences

The main rule established in The "Eastern City"[123] must be reiterated. As previously noted, in this case the judge stated that the port will not be safe unless the vessel can use it without, "in the absence of some abnormal occurrence, being exposed to danger...".

[118] West Ltd. v. Wrights Colchester Ltd. (The "Olive May"), 1935, 51 Lloyds Rep 105, p. 108.
[119] Motor Oil Hellas refineries S.A. v. Shipping Corporation of India (The "Kanchenjunga"), 1990, 1 Lloyds Rep 391.
[120] Presentation by Mr. Smith, *Mills and Co. Solicitors.*
[121] Presentation by Ms. Joanna Steele, *Bentleys, Stokes and Lowless.*
[122] Vardinoyannis v. The Egyptian General Petroleum Corp. (The "Evaggelos"), 1971, 2 Lloyds Rep 200.
[123] Leeds Shipping Company Ltd. v. Societe Francaise Bunge (The "Eastern City"), 1958, 2 lloyd's Rep 127, p. 131.

An abnormal occurrence is an exceptional event that is not happening every year and is not a characteristic of the port.[124] An example can be exceptional weather conditions not common for the port or a collision caused by negligent navigation of another vessel, unless the said collision is caused due to a feature of the port allowing negligent navigation. Also, unanticipated violent acts by combatants or saboteurs could be considered as an abnormal event.[125] Such damage does not arise from the attributes of the port itself, and a further example is found in the court case The "Evia":[126]

> …if the set-up of the port is good but nevertheless the vessel suffers damage owing to some isolated, abnormal or extraneous occurrence - unconnected with the set-up - then the charterer is not in breach of his warranty. Such as when a competent berthing master makes for once a mistake, or when the vessel is run into by another vessel, or a fire spreads across to her, or when a hurricane strikes unawares. The charterer is not liable for damage so caused.

The question whether an occurrence is abnormal or unexpected should be an objective assessment. It should be unexpected by a reasonable person in his position, hence it does not have to be unexpected by the charterer himself.[127] What constitutes abnormality is a question of fact.[128]

In the court case The "Khian Sea"[129], the vessel was unable to leave the port due to two other vessels obstructing the port when bad weather occurred. The judge held that the port lacked a proper warning system.[130] Charterers argued that the presence of two vessels was an abnormal occurrence and that the port should not be considered unsafe. The judge rejected the charterers' argument and held that, in the absence of a system to ensure that vessels using the berth would have adequate searoom if they had to leave in a hurry, the berth would be plainly unsafe.[131]

Conclusively, abnormal occurrences will not make a port unsafe; a port will be unsafe only if the danger derives from its own qualities or attributes.

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[124] Presentation by Ms. Joanna Steele, *Bentleys, Stokes and Lowless.*
[125] Presentation by Mr. Smith, *Mills and Co. Solicitors.*
[126] Kodros Shipping Corp of Monrovia v. Empresa Cubana de Fletes (The "Evia"), 1982, 2 Lloyds Rep 334, p. 338.
[127] Boyd et al., *Scrutton on Charterparties,* 21 ed, London, Sweet & Maxwell, 2008, p. 120.
[128] Unitramp v. Garnac Grain Co. Inc. (The "Hermine"), 1978, 1 Lloyds Rep 212, p. 219.
[129] Islander Shipping Enterprises S.A. v. Empresa Maritima Del Estado S.A. (The "Khian Sea"), 1977, 2 Lloyds Rep 439.
[130] See Further in s 2.3.
[131] Islander Shipping Enterprises S.A. v. Empresa Maritima Del Estado S.A. (The "Khian Sea"), 1977, 2 Lloyds Rep 439, p. 443.

2.6 Dangers avoidable by good navigation and seamanship

There are dangers of some sort at almost all ports; however, dangers, which are avoidable by ordinary good navigation and seamanship, will not render the port unsafe. That is the starting point adopted by the judge in The "Eastern City"[132]. If the master acts negligently, then the charterers are released from liability if that act is sufficiently serious to break the connection between charterers' order and the damage.[133] The question is hence whether there is an element of negligence in the master's behaviour, which caused a break in the chain of causation. This can, for example, be the case when the master should have seen the danger himself, for instance a missing fender on a jetty, and should have refused to enter the berth. In the court case The "Houston City"[134] the judge held that:

> To deny the defendants' proposition does not mean that a master can enter ports that are obviously unsafe and then charge the charterers with damage done. … There is also the rule that an aggrieved party must act reasonably and try to minimize his damage. A master who entered a berth which he knew to be unsafe (and which perhaps the charterer had nominated in ignorance of its condition) rather than ask for another nomination and seek compensation for any time lost by damages for detention, might find himself in trouble.

This applies also when the master fails to exercise reasonable skill in leaving an unsafe port, and thus breaks the chain of causation.[135] The legal test is whether the master acted reasonably while being on the "horns of dilemma"[136], i.e. having to take a quick decision when confronted with a hazard. In the court case The "Polyglory"[137] the judge held that if a vessel cannot navigate without exercising of more than ordinary care and skill then the port will not be safe:

> This means that when considering the question whether an order to proceed to a port is a breach of the safe port clause one relevant consideration is "could an ordinarily prudent and skilful master get there in safety?" If the answer is yes then at any rate as regards its approaches the port will be safe. Thus an assumption has to be made that ordinary care and skill will be used when the question of safety is being determined.

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[132] Leeds Shipping Company Ltd. v. Societe Francaise Bunge (The "Eastern City"), 1958, 2 lloyd's Rep 127, p. 131.
[133] Boyd et al., *Scrutton on Charterparties,* 21 ed, London, Sweet & Maxwell, 2008, p. 123.
[134] Reardon Smith Line Ltd. v. Australian Wheat Board (The "Houston City"), 1953, 1 Lloyds Rep 131.
[135] Tage Bergland v. Montoro Shipping Corporation Ltd (The "Dagmar"), 1968, 2 Lloyds Rep 563.
[136] Compania Naviera Maropan S/A v. Bowater's Lloyd pulp and paper mills Ltd (The "Stork"), 1955, 1 Lloyds Rep 349, p. 363.
[137] Kristiansands Tankrederi A/S and others v. Standard Tankers (Bahamas) Ltd. (The "Ploryglory"), 1977, 2 Lloyds Rep 353.

Even if the master acts negligently there is not automatically a ground to hold the charterers free from liability, the negligent act must also be causative. The judge Mr. Justice Mustill stated the following in the court case The ”Mary Lou”[138]:

> …the charterer does not, by showing that the ship was not handled with reasonable skill and care, necessarily dispose of the allegation that the port was unsafe. For the characteristics of the port may be such as to create a risk of danger even to a properly handled ship, and this may prove to have been the cause of the damage even if the ship could and should have been better navigated on the occasion in question…
>
> Aside from its relevance to the issue whether the port was unsafe, the conduct of the master may be material in two further respects:
>
> First, it is possible that his conduct may amount to the deliberate ignoring of a known or recognizable risk. As I have already suggested, an obvious danger does not make the port unsafe in the ordinary sense, although the loss caused by waiting until it has dissipated is recoverable as· a breach of the warranty; and if it cannot be circumvented, the vessel can properly refuse to visit the port. If the master nevertheless chooses to go ahead, in face of the known danger, his action may (but will not necessarily) have the effect of cutting the causal link between the order to the port and the loss.
>
> Second, if the ship is navigated without proper care, so that the ship succumbs to a danger which with better navigation might have been avoided, this again may have the effect of breaking the causal connection. But whether it does so is a question of fact, depending upon the magnitude of the risk created by the unsafe features of the port and the degree to which the actual navigation falls short of the desired standard...

It is not only the negligence of the master that can break the link of causation. Also, the pilot's actions can be applied to the master's and owners' responsibility. The general rule is that the owners are liable for the pilots as they are regarded as the servants of the owners. Accordingly, any negligence on the part of the pilot may therefore constitute a break in the chain of causation between the charterers' order and the damage suffered.[139]

There are, however, examples where the pilot's negligence is not considered as an act of the owners' servant, but is regarded as a characteristic of the port. In such a case, the pilot's negligence will not break the chain of causation but will instead be one of the elements making the port unsafe. In the court case The "Stork"[140] the local pilot reassured the master and recommended the master that the ship should remain at anchorage despite that the master expressed misgivings. The vessel suffered damage and it was found out that the pilot's advice was wrong. It was held that the master had acted reasonably when he followed the pilot's advice, and that no blame should be put on the master.

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[138] Transoceanic Petroleum Carriers v. Cook Industries Inc (The "Mary Lou"), 1981, 2 Lloyds Rep 272, pp. 279 – 280.
[139] Michael Wilford, *Time charters*, 4 ed, London, Lloyds of London, 1995, p. 193.
[140] Compania Naviera Maropan S/A v. Bowater's Lloyd pulp and paper mills Ltd (The "Stork"), 1955, 1 Lloyds Rep 349.

Thus, should it be found that there is a pilot error or negligence only, without any error or negligence found on the part of the master, there would be a reasonable argument that such an error or negligence should not be attributed to the shipowner, and hence should not break the chain of causation.

As a comparison, it could be interesting to note that while the English courts would decide that the master's or pilot's action either will hold the owners responsible or not, under United States law the liability would be apportioned between the owners and charterers as to their respective degree of responsibility for the damage.[141]

2.7 What is recoverable?

The claims made normally in an unsafe port matter concern damage to the ship, such as cost of repair for physical damage. In addition, there could be a breach of contract due to loss of time or loss of use or alike, and economic loss is normally recoverable if it is foreseeable[142]. Also, third party liability, such as damage to berths, pipelines, cables etc. are recoverable should it be a result of the unsafe port.[143] As an example in the court case The "Polyglory"[144]the judge held that the charterers were liable to reimburse owners the costs for a damaged underwater pipe, which the owners had settled with the pipe owners.

The main rule is set out in The "Houston City" where the judge held:[145]

> The damages for any breach of warranty are always limited to the natural and probable consequences. The point then becomes one of remoteness of damage ; or if it is thought better to put it in Latin, the expressions novus actus interveniens and volenti non fit injuria are ready to hand. There is also the rule that an aggrieved party must act reasonably and try to minimize his damage.

Owners could also suffer a loss in order to avoid further costs or avoid dangers. Also such costs could be recoverable from charterers if it is held that the costs were incurred due to an unsafe port. For example, in the court case The "Innisboffin"[146] the vessel was unable to leave the port of Manchester after discharging due to her decreased draft and the canal

[141] Boyd et al., *Scrutton on Charterparties*, 21 ed, London, Sweet & Maxwell, 2008.
[142] See Hadley v. Baxendale, 1854, 9 Ex. 341; 156 ER. 145 and Junior Books Ltd. v. Veitchi Co Ltd, 1982, 3 W.L.R. 477.
[143] Presentation by Ms. Joanna Steele, *Bentleys, Stokes and Lowless.*
[144] Kristiansands Tankrederi A/S and others v. Standard Tankers (Bahamas) Ltd. (The "Polyglory"), 1977, 2 Lloyds Rep 353.
[145] Reardon Smith Line Ltd. v. Australian Wheat Board (The "Houston City"), 1956, 1 Lloyds Rep 1, p. 10.
[146] Limerick Steamship Company LTD v. W.H. Stott & Co (The "Inishboffin"), 1920, 5 Lloyds Rep 190.

bridges. In order to continue she had to cut her mast off while transiting under the bridges and subsequently reattach the mast again. The judge held that the costs were recoverable by charterers.

Another example is the court case The "Peerless"[147] where the vessel was ordered by charterers to discharge a cargo of maize, however the draft was too great to allow her to berth at any tide with her full cargo. Instead, the cargo had to be lightered before the vessel finally could berth and owners were entitled to recover all lightering costs from charterers.

In The "Sagoland"[148] the vessel was ordered to discharge at Londonderry; however, due to the narrow winding approach to the port the vessel required tugs to enter. As there were no tugs available at Londonderry, the vessel had to call for tugs from the port of Clyde. It was held by the judge that the cost of the tugs were recoverable under an unsafe port claim. Almost the same situation was in The "Unviversal Monarch"[149] where the vessel was too large to enter with the existing tugs and extra tugs had to be called from a port nearby. Also in this case the judge held the tug costs are to be recoverable.

The conclusion from the above discussion is that the owners are entitled to also recover costs and expenses incurred in avoiding obvious dangers.

[147] Hall Bros Steamship Co, Ltd v. R and W Paul, Ltd (The "Peerless"), 1914, 19 Com Cas 384.
[148] Brostrom & Sons v. Dreyfus & Co (The "Sagoland"), 1932, 44 Lloyds Rep 136.
[149] Palm Shipping inc v. Vitol S.A. (The "Universal Monarch"), 1988, 2 Lloyds Rep 483.

3 Scandinavian System

3.1 Introduction

A starting point when facing a legal problem will be to look at the statutory law together with its associated preparatory works. As mentioned in the purpose and scope, this thesis will only include Swedish and Norwegian law. The respective countries' Maritime Codes[150] are based on a joint preparation,[151] and hence very similar to each other. Beside from the statutory law and preparatory works also doctrine and case law is used.

It must be observed that the amount of cases related to unsafe ports are less frequent in Scandinavian law compared to English law[152], and since most of the charterparties are based on the same wording[153] regardless of the country, it is natural to also consider the English case law. The conclusion reached by a judge would, however, not always be the same in Scandinavian law as in English law.[154]

As mentioned in section 2.2.1 there are many different clauses in different types of charterparties which govern the legal position between the owners and charterers. The Scandinavian Maritime Codes reflect the principles originating out of the developments of these charterparties, and provide guidance on how to interpret the different clauses.[155]

The main rule in Scandinavian law is to look at which party should bear the risk for the damage.[156]

3.2 Warranties

The Scandinavian countries have put less responsibility on the charterer in comparison to England where the courts consider that the charterer has warranted the safety in the nominated port unless something else is stated in the charterparty.[157] A "safe port" description in the charterparty, i.e. when the port or ports which the vessel shall call is described as safe, will not automatically be interpreted as an express warranty under Scandinavian law. The description will instead be read as a delimitation of where the charterer

[150] For Sweden: "Sjölagen 1994:1009" and for Norway: "Lov om sjøfarten 1994-06-24-39.
[151] Proposition 1993/94:195, *Om ny sjölag*, p. 2.
[152] Jan Ramberg, *Unsafe ports and berths*, Oslo, Universitetsförlaget, 1967, p. 83.
[153] See section 2.2.
[154] Hans Peter Michelet, *Håndbok i Tidsbefraktning*, Oslo, Sjörettsfondet, 1997, p. 83.
[155] Proposition 1993/94:195, *Om ny sjölag, p.* 272.
[156] Hans Peter Michelet, *Håndbok i Tidsbefraktning*, Oslo, Sjörettsfondet, 1997, p. 83.
[157] Hans Jacob Bull & Thor Falkanger, *Innföring I Sjörett*, 6 ed, Oslo, Sjörettsfondet, 2004, p. 336.

is allowed to nominate the vessel, in line with other provisions in the charterparty on the allowed trading area.[158]

In the court case ND 1959.242 Hilde Storm, the judges, on the other side, held that the wording "safely always afloat" was considered as an express warranty; however, there are several other cases[159] where such similar wordings have been rejected and currently the Hilde Storm case is probably considered as an exception.[160]

As mentioned in section 3.1, the Scandinavian Maritime Codes provide guidance to the interpretation of commonly used clauses in the charterparties[161]. For example, in Baltime 1939 the clause 7 states that "The vessel to be re-delivered on the expiration of the charter in the same good order as when delivered to the charterers (fair wear and tear excepted)"

This wording has not been interpreted as an expressed warranty from the charterer's side.[162] As mentioned above, also the clauses where it is stated that the vessel should lie "safely afloat" will be construed restrictively to the benefit of the charterer.

In some charterparties[163] it is expressly stated that the charterer's liability should not be under an expressed warranty but under a due diligence responsibility. Hence, it is possible to agree on other rules, and the courts have held that it is also possible to interpret that the charterer has warranted the safety in a more specified way. [164] In the arbitration award ND 1989.296 Uglen, the arbitrators held that the wording "afloat with no risks for damage to the craft and its propellers" was to be considered as a clear warranty as for the safety of the port.

3.3 Negligence

The Scandinavian Maritime Codes have separated the rules relating to time charters and rules relating to voyage charters. However, in both the Norwegian and Swedish Maritime Codes the relevant paragraphs concerning voyage charters[165] have in the preparatory works[166] been

[158] Hans Peter Michelet, *Håndbok i Tidsbefraktning,* Oslo, Sjörettsfondet, 1997, p. 83.
[159] E.g. ND 1926.257, ND 1962.143, ND 1962.224, ND 1969.232 and 1988.308.
[160] Hans Jacob Bull & Thor Falkanger, *Innföring I Sjörett*, 6 ed, Oslo, Sjörettsfondet, 2004, p. 336.
[161] SOU 1990:13, *Godsbefodran till sjöss,* p. 212.
[162] *Ibid*.
[163] E.g. Shelltime 4, Issued December 1984 amended December 2003. clause 4 c. See further in section 3.2.1.1.4.
[164] ND 1945.567 and ND 1988.308.
[165] Swedish "Sjölagen 1994:1009" §14:8, and Norwigian: "Lov om sjøfarten 1994-06-24-39, §328.
[166] See Proposition 1993/94:195, *Om ny sjölag* , p. 212 and NOU 1993:36, *Godsbefordring til sjøs,* pp.62-63.

referred to the rules under the time charter paragraphs[167]. Hence, all commentaries should be applicable to both types of charters. In accordance with the relevant law, in Scandinavia the principle of negligence is used. The advantage of using that principle is that the courts get a flexible formula to apply on each case; however, at the same time there is a risk for insufficient guidance.[168]

According to the Maritime Codes, the charterer has the right to choose loading- and discharging port only if the port is suitable in regards to availability and safety. There is also a clarifying rule[169] stating that if damage to the vessel has occurred, and the damage is caused by an unsafe port, then the charterer is liable for the damage unless he can show that he, or any of his servants, have not acted faulty or negligently.

The starting point according to Scandinavian law is that the shipowner is to bear the risk of damage to his own vessel. If nothing else has been agreed in the charterparty, the charterer is free from liability even if he has ordered the vessel to an unsafe port, unless he has acted faulty or negligently and the damage is a result thereof.[170] This view is held as the shipowner is considered to be responsible for navigational risk, and that he employs the crew and insures the vessel. The fact that it is the charterer who nominates the port has not been considered to justify an exception from the principal rule of risk allocation.[171] In the arbitration award ND 1962.143 the arbitrators held that the grounding of the vessel was not due to negligence of the charterer as it was held that the master or possibly the pilot, who was considered to be a part of the shipowner's responsibility, made a wrongful calculation of the vessel's draft.

When evaluating whether the charterers, or any of their servants, have acted negligently it should be taken into consideration to what extent the shipowner should have been able to investigate and procure the relevant knowledge about the different ports the charterer have been given the option to choose between. The less number of ports the charterer can choose from, the more probable it is that the owner has been able to investigate the port or ports. [172] Therefore, the charterer's liability is to some extent based upon his possibility to use the vessel, and that basis would disappear if he has no option to choose ports but is bound to named ports in the charterparty. [173] It could be, however, that the charterer has a better possibility than the shipowner to investigate the characteristics of a port, for example, a small, distanced port where he can use his local agents to assist him, and in that

[167] Swedish "Sjölagen 1994:1009" §14:65, and Norwigian: "Lov om sjøfarten 1994-06-24-39, §385.
[168] Jan Ramberg, *Unsafe ports and berths*, Oslo, Universitetsförlaget, 1967, pp. 74-75.
[169] "Sjölagen 1994:1009" §14:65, 2nd paragraph.
[170] Hans Jacob Bull & Thor Falkanger, *Innföring I Sjörett*, 6 ed, Oslo, Sjörettsfondet, 2004, p. 336.
[171] SOU 1990:13, *Godsbefodran till sjöss*, p. 211-212.
[172] NOU 1993:36, *Godsbefordring til sjøs*, p.62.
[173] Jan Ramberg, *Unsafe ports and berths*, Oslo, Universitetsförlaget, 1967, p. 94.

case more responsibility is incurred on the charterer.[174] It is not clear where the line goes, but the charterer would to a much greater extent be held responsible to procure knowledge if he owns the port himself.[175]

The evaluation can also be affected if, for example, the master of the vessel disregards his duty to monitor the work onboard and by that contributes to the damage.[176]

If the port becomes unsafe after the nomination the charterer will still be held liable if he has acted negligently, hence the obligation under the charterparty and under the Scandinavian law also includes upcoming or future dangers.[177] If the unforeseeable danger has occurred after the nomination, but there is still time and possibility to issue new orders to avoid the danger, the charterers are obliged to do so if they know about it. Failing to do so would probably be considered negligent and made him liable for the damage. The former presumes that the shipowner was unaware of the danger, and some dangers would be easier for the master, and therefore the shipowner should be aware of, for example, wrecks or underwater stones, etc.[178]

The shipowner has the right to decline going to an unsafe port[179]; however, as the result of not going to the port can be costly for the charterer, the risk is not to be imaginary.[180] In the court case ND 1928.214 the charterparty stated that the vessel was to call three safe ports in the area Gothenburg – Århus. When the port of Ystad was nominated the master declined as he considered Ystad to be unsafe due to the size of the vessel, and the judges held that he had the right to do so. The master may not, however, refuse the order if the shipowner, when he agreed to the charterparty, reasonably should have considered that such a danger was likely to arise due to the specific voyage.[181]

The master is further obliged to refuse to take the ship to a port, which is unsafe, otherwise the owners will lose their rights to claim for damages.[182] In the court case ND 1945.337 the entrance to the port was of a difficult nature, and since the master did inspect the place together with the pilot in advance he was considered to have accepted the risk.

[174] *Ibid*, p. 90.
[175] ND 1962.143.
[176] SOU 1990:13, *Godsbefodran till sjöss*, pp. 211-212.
[177] Jan Ramberg, *Unsafe ports and berths*, Oslo, Universitetsförlaget, 1967, p. 90.
[178] Hans Peter Michelet, *Håndbok i Tidsbefraktning*, Oslo, Sjörettsfondet, 1997, p. 83.
[179] Proposition 1993/94:195, *Om ny sjölag*, p.272.
[180] Jan Ramberg, *Unsafe ports and berths*, Oslo, Universitetsförlaget, 1967, p. 87.
[181] SOU sid 206.
[182] Jan Ramberg, *Unsafe ports and berths*, Oslo, Universitetsförlaget, 1967, p. 86.

3.3.1 Burden of proof

It might be presumed that the law states that the shipowner has been given a larger responsibility in regards to damage resulting from an unsafe port. In order to compensate for the shipowner's increased liability, the law states that there is a reversed burden of proof, i.e. the charterer has been imposed to prove that he has not been negligent, and therefore not liable.[183] The legislator has also motivated the reversed burden of proof by pointing out that the charterer has the disposition of the vessel and is the one planning the voyage by the assistance of his contacts with the local agents at the nominated ports.[184] Hence, it is easier for a charterer to prove that he, or anyone else acting on his behalf, has not acted negligently.

It is, nevertheless, for the shipowner to prove that the damage occurred due to an unsafe port and that there is causal link between the damage and the characteristics of the port. One example of case law is found in the court case ND 1972:183 Vale, where the vessel had just recently been drydocked with no visible damage when she entered the port of Gävle, Sweden. There she, according to the crew's perception, touched ground during berthing manoeuvres. The master alerted the Port Authority about the incident; however, no underwater inspection was carried out until a month later when a diving inspection and subsequently drydocking was carried out. The drydock revealed damages to the hull and the machinery corresponding to consequences of a grounding. No other incidents apart from the one in Gävle had been reported or noted in the deck log book, which could indicate grounding; however, according to the Port Authorities they had dredged the port, and had proof thereof, to a depth that made it impossible for the Vale to ground. The court held that it is for the shipowner to prove that the grounding occurred, and since it could not be excluded that the damage happened in between the vessel leaving Gävle and was drydocked the second time, the shipowner's claim was dismissed.

3.4 Safe ports

It must be observed that the definition of a "safe port" under Scandinavian law is not as specified as in the English law.[185] In the preparatory works[186], the definition of a "safe port" is often described as being wide and not only connected with navigational risks, but also ports with risks for the crew in relation to epidemics and political unsafety. The legislator further states that the meaning under the law is, however, restricted to the characteristics of a

[183] Swedish "Sjölagen 1994:1009" §14:8 + §14:65, and Norwigian: "Lov om sjøfarten 1994-06-24-39, §328 + §385.
[184] SOU 1990:13, *Godsbefodran till sjöss*, p. 212.
[185] Cf. the definition in The "Easter City", see further in section 3.3.
[186] SOU 1990:13, *Godsbefodran till sjöss*, pp. 212-213.

port that can cause damage to vessels. In the doctrine[187] it could be found that the definition of a "safe port" is expended to "a port that at least protects the ship against such natural dangers which a good port normally should protect a ship against". It is also stated the port should be prospectively safe.[188]

In the court case ND 1928.108 it was held that an unmarked underwater concrete foundation in the port basin was considered a danger and made the port unsafe. Also, in the court case ND 1935:436 the judges did find that an unmarked underwater stone, which damaged the vessel's propellers during entrance of the port, was considered a danger, which made the port unsafe.

The fact that the ship may be exposed to danger on its way to or from the port does not necessarily make the port itself unsafe. Hence, the effectiveness of the principal rule seems to decrease outside the port itself, and it is harder to prove fault or neglect on the charterer's side when the ship is approaching the port.[189]

3.5 What is recoverable?

Apart from costs for repairing the vessel following a physical damage, further costs can also be claimed from the charterers should they be held liable for an unsafe port. The case law provides a couple of examples of different allowed costs. In the ND1926.145 the charterers had directed the vessel to a port where the vessel's draft made them load less then agreed in order for the vessel to safely depart. The judge held that the owners were entitled to dead freight for the part, which they could not load. Also, additional costs for tug boats where there are none available[190] and loss of hire due to lack of ice breakers[191] have been considered allowable.

[187] Hans Peter Michelet, *Håndbok i Tidsbefraktning,* Oslo, Sjörettsfondet, 1997, p. 75.
[188] See further in section 2.4.
[189] Hans Peter Michelet, *Håndbok i Tidsbefraktning,* Oslo, Sjörettsfondet, 1997, p. 84.
[190] ND 1948.42.
[191] ND 1933.17.

4 Comparative Analysis

In the proceeding chapters, the legal issues pertaining to unsafe ports and charterers' liability has been described under the English and Scandinavian law. This chapter provides a comparative analysis between the two systems.

It needs to be recalled that the criteria which have to be applied in determining whether a port is deemed to be safe or not are a matter of law; however, determination of safety is a matter of fact. The judge in the court case The "Stork"[192] stated that "it is a question of fact, having regard to the circumstances of each particular case."

As follows from the above chapters, it is evident that determining the fact in a case will include detailed expert evidence in relation to navigation, seamanship, the port area, weather and several other factors. Hence, answering the question whether a port is safe or not is often far from straightforward.

A starting point under both the English law and the Scandinavian law when evaluating whether the charterer can be held liable for an unsafe port, must be to analyse the charterparty in order to assess whether the parties have agreed on any special terms, either expressed warranties or, as under English law, if any warranties can be implied. While the English system seems to have a more devised and categorical way to determine the charterer's liability, the Scandinavian law assumes the principle of negligence.

Starting with the English system, once the charterparty has been reviewed and it has been established that there is an implied or expressed warranty from the charterer's side that the called port shall be safe[193], then the next step would be to find out if the port, or the nearby areas are safe or not.[194] The unsafety can appear as a physical danger, for example, as defective berthing facilities or lack of shelter, but also dangers arising out of political unsafety and delays can be considered connected to the charterer's liability. The danger can be inside the port itself or on the way to port. Depending on the different entrance possibilities for the vessel and the distance from the port the charterer's liability differs. Hence, if there are alternative routes which are safe then it is doubtful if the port is considered unsafe. The danger should be linked to the use of the port and the distance is not directly an issue; however, the further away from the port the more difficult it becomes to link the danger to the port.

[192] Compania Naviera Maropan S/A v. Bowater's Lloyd pulp and paper mills Ltd (The "Stork"), 1955, 1 Lloyds Rep 349, p. 373.
[193] See section 2.2.
[194] See section 2.3 with subsections.

Further, when it has been held that the port is unsafe it has to be proven that the port was unsafe in connection with the vessel's actual call, i.e. that the port was prospectively unsafe.[195] Owners have the right to call an unsafe port and still be able to claim for damages, unless the port was obviously unsafe, then they will lose this right.

Even if it is held that the port was not obviously unsafe but still unsafe, and it was so in connection with the vessel's call the charterer have still some possibilities to avoid liability. The first event is when the danger can be considered unexpected and abnormal and which will not be considered as a characteristic of the port.[196] This could be compared to force majeure and would hence not fall under the charterer's liability. The second event is a situation where a master reasonably should be able to avoid the danger. Hence the master's negligence, but also sometimes the pilot's negligence, will not fall under the charterer's liability.[197]

Under the Scandinavian law, on the other hand, the test whether the charterer is liable is based on the charterer's negligence.[198] The main rule is that the shipowner is responsible for his vessel and the navigation of the vessel. Thus, he would be held liable for damage to the vessel unless the charterer can be found negligent in his orders to direct the vessel to an unsafe port. The master is not allowed to call a port where he would think the vessel can be damaged, that would free the charterer from liability. In order to protect the shipowner to some more extent, the legislator has introduced a reversed burden of proof, hence it is for the charterer to show that he is not negligent if the vessel was damaged at an unsafe port.

The legal regime regarding unsafe port is much less developed in Scandinavian law compared with English law, where there are a number of case law and different examples. In Scandinavian law, the definition is very general, the doctrine states that a safe port is "a port that at least protects the ship against such natural dangers which a good port normally should protect a ship against"[199]. This opens up for the court to decide more freely on a case-to-case basis.

It is to be noted that Scandinavian law related to unsafe ports stems from the English law where it is common to apply the rule of negligence in tortious or other form of liability. However, in this particular area of law, the use of warranties is more common under the English law.[200]

The definition in The "Eastern City"[201], compared to a Scandinavian view, leads to a narrow definition of a "safe port". At the same time, the charterer

[195] See section 2.4.
[196] See section 2.5.
[197] See section 2.6.
[198] See section 3.3.
[199] Hans Peter Michelet, *Håndbok i Tidsbefraktning,* Oslo, Sjörettsfondet, 1997, p. 75.
[200] NOU 1993:36, *Godsbefordring til sjøs,* p.90.
[201] Leeds Shipping Company Ltd. v. Societe Francaise Bunge (The "Eastern City"), 1957, 2 Lloyds Rep 153.

would not be held liable to the same extent in Scandinavia as in England where the courts have put a greater burden on the charterer.[202] Under English law it is evident that the owners would still have the right to claim damages from the charterers even if they decide to continue going to an unsafe port, unless this port is "obviously" unsafe.[203] However, under Scandinavian law it seems that the danger does not have to be obvious to defeat the shipowners claim, it would be sufficient that the master believes that there is a certain probability that the vessel might become damaged if he would continue going to the port.

[202] Hans Jacob Bull & Thor Falkanger, *Innföring I Sjörett*, 6 ed, Oslo, Sjörettsfondet, 2004, p. 336.
[203] See section 2.4.1.

5 Conclusion

Undoubtedly, the charterers' liability for unsafe ports is a matter of importance. In this thesis an attempt has been made to demonstrate various factors that make a port unsafe. The approach to charterers' liability in the English and Scandinavian law was presented and analysed.

It follows from the previous chapters that there are two main solutions on how to approach the issue of charterers' liability, namely a strict liability, which is the case in English law, and, liability based on negligence, as in Scandinavian law. While the English law system offers more cases, and hence makes it easier for courts to find guidance, the Scandinavian system is less developed, which adds a certain amount of uncertainty on the current legal position. In addition, the system of negligence is not as straightforward as the more categorised strict liability system.

There are several arguments elucidating how the respectively parties should be liable for the damage to the vessel. For example, when there are several ports named in the charterparty, the charterer will be held liable to a greater extent. This could be explained by the fact that the charterer is allowed to take more advantage of the vessel, and hence should bear a greater risk. On the other hand, the charterer would hold that it is more favourable for the shipowner to bear the risk to his vessel as he insures and arranges for the crewing.[204] It is, however, important to note that the insurances that the shipowner hold, such as, for example, hull and machinery insurance for the physical damage to the hull, or loss of hire insurance for the loss of income or prolongation of the voyage, also often have significant deductibles which will never be recovered. In addition, a damage under the insurance policy will most probably render increased premiums which the shipowner will suffer from. Hence, it can be argued that it is irrelevant who holds the insurance as there will always to some extent be a loss for the affected party.[205]

It can be argued that an advantage by using strict liability is that it will force the charterer to use the vessel with a greater care, and hence make more research on the ports where the vessel shall call. On the other hand, it can also be argued that the shipowner is having a better nautical understanding, and would hence be in a better position to understand the dangers a port could render. This argument is to some extent limited as there is, even under strict liability, already an exemption for damage which a prudent master could avoid by using good seamanship.

There is hence advantages and disadvantages with the both systems, and independently on which one of the two solutions is chosen it will always boil down to a question of fact in each case.

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[204] NOU 1993:36, *Godsbefordring til sjøs,* p.90.
[205] Jan Ramberg, *Unsafe ports and berths,* Oslo, Universitetsförlaget, 1967, sp. 119.

One contributing factor why the charterer's liability issue is important, is because the harbour authorities are very seldom strictly liable for damage to the vessel and it is usually difficult to lodge a claim against the harbour.[206] Hence, the line between shipowner's and charter's liability must be clear.

It does, however, not seem to be an easy task to divide the liability every time since the facts are different in each case, and by that the line is far from clear. One alternative could be a joint insurance, which is paid by both the shipowner and charterer, covering both parties for all damage resulting from dangers in the port. This could however turn out to be difficult as the different charterparties differ in length and number of port calls, where every port call increases the risk. It can also be very short term charterparties which make it difficult to arrange for insurance cover for each charterparty.

Finally, in the view of this author another solution, and perhaps the most favourable one for all parties, would be to look at the offshore business where it is much more common to regulate the damage to each other's property on a "knock for knock" basis, meaning that the damage is covered by the one it affects.[207] Perhaps, by analogy this would be a way forward even for shipping business. It is also proposed that the shipowner is responsible for the repairs of the physical damage to the vessel; however, the charterer must stand the risk in relation to the time, i.e. the daily hire during the prolongation of the voyage in time charters and damages for detention in voyage charters. This would give incitement to both parties to act prudently and avoid dangers.

[206] Jan Ramberg, *Unsafe ports and berths*, Oslo, Universitetsförlaget, 1967, p. 28.
[207] NOU 1993:36, *Godsbefordring til sjøs,* p.90.

Supplement

Baltime charterparty

Adopted by the Documentary Committee of the Chamber of Shipping of the United Kingdom and the Documentary Committee of the Japan Shipping Exchange, Inc.

Issued 5/2 1909
Amended 13/5 1911
Amended 6/3 1913
Amended 19/6 1939
Amended 1/3 1950
Amended 1/7 1974

THE BALTIC AND INTERNATIONAL MARITIME CONFERENCE
UNIFORM TIME CHARTER (Box Layout 1974)
CODE NAME: "BALTIME 1939"

PART I

1. Shipbroker	2. Place and date
3. Owners/Place of business	4. Charterers/Place of business
5. Vessel's name	6. GRT/NRT
7. Class	8. Indicated horse power
9. Total tons d.w. (abt.) on Board of Trade summer freeboard	10. Cubic feet grain/bale capacity
11. Permanent bunkers (abt.)	
12. Speed capability in knots (abt.) on a consumption in tons (abt.) of	
13. Present position	
14. Period of hire (Cl. 1)	15. Port of delivery (Cl. 1)
	16. Time of delivery (Cl. 1)
17. (a) Trade limits (Cl. 2)	
(b) Cargo exclusions specially agreed	
18. Bunkers on re-delivery (state min. and max. quantity) (Cl. 5)	
19. Charter hire (Cl. 6)	20. Hire payment (state currency, method and place of payment; also beneficiary and bank account) (Cl. 6)
21. Place or range of re-delivery (Cl. 7)	22. War (only to be filled in if Section (C) agreed) (Cl. 21)
23. Cancelling date (Cl. 22)	24. Place of arbitration (only to be filled in if place other than London agreed) (Cl. 23)
25. Brokerage commission and to whom payable (Cl. 25)	26. Numbers of additional clauses covering special provisions, if agreed

It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter which shall include Part I as well as Part II. In the event of a conflict of conditions, the provisions of Part I shall prevail over those of Part II to the extent of such conflict.

Signature (Owners)	Signature (Charterers)

PART II
"BALTIME 1939" Uniform Time-Charter (Box Layout 1974)

It is agreed between the party mentioned in Box 3 as owners of the Vessel named in Box 5 of the gross/net Register tonnage indicated in Box 6, classed as stated in Box 7 and of indicated horse power as stated in Box 8, carrying about the number of tons deadweight indicated in Box 9 on Board of Trade summer freeboard inclusive of bunkers, stores, provisions and boiler water, having as per builder's plan a cubic-feet grain/bale capacity as stated in Box 10, exclusive of permanent bunkers, which contain about the number of tons stated in Box 11, and fully loaded capable of steaming about the number of knots indicated in Box 12 in good weather and smooth water on a consumption of about the number of tons best Welsh coal or oil-fuel stated in Box 12, now in position as stated in Box 13 and the party mentioned as Charterers in Box 4, as follows:

1. Period/Port of Delivery/Time of Delivery

The Owners let, and the Charterers hire the Vessel for a period of the number of calendar months indicated in Box 14 from the time (not a Sunday or a legal Holiday unless taken over) the Vessel is delivered and placed at the disposal of the Charterers between 9 a.m. and 6 p.m., or between 9 a.m. and 2 p.m. if on Saturday, at the port stated in Box 15 in such available berth where she can safely lie always afloat, as the Charterers may direct, she being in every way fitted for ordinary cargo service .

The Vessel to be delivered at the time indicated in Box 16.

2. Trade

The Vessel to be employed in lawful trades for the carriage of lawful merchandise only between good and safe ports or places where she can safely lie always afloat within the limits stated in Box 17.

No live stock nor injurious, inflammable or dangerous goods (such as acids, explosives, calcium carbide, ferro silicon, naphtha, motor spirit, tar, or any of their products) to be shipped.

3. Owners to Provide

The Owners to provide and pay for all provisions and wages, for insurance of the Vessel, for all deck and engine-room stores and maintain her in a thoroughly efficient state in hull and machinery during service.

The Owners to provide one winchman per hatch. If further winchmen are required, or if the stevedores refuse or are not permitted to work with the Crew, the Charterers to provide and pay qualified shore-winchmen.

4. Charterers to Provide

The Charterers to provide and pay for all coals, including galley coal, oil-fuel, water for boilers, port charges, pilotages (whether compulsory or not), canal steersmen , boatage, lights, tug-assistance, consular charges (except those pertaining to the Master, Officers and Crew), canal, dock and other dues and charges, including any foreign general municipality or state taxes, also all dock, harbour and tonnage dues at the ports of delivery and re-delivery (unless incurred through cargo carried before delivery or after re-delivery), agencies, commissions, also to arrange and pay for loading, trimming, stowing (including dunnage and shifting boards, excepting any already on board), unloading, weighing, tallying and delivery of cargoes, surveys on hatches, meals supplied to officials and men in their service and all other charges and expenses whatsoever including detention and expenses through quarantine (including cost of fumigation and disinfection).

All ropes, slings and special runners actually used for loading and discharging and any special gear, including special ropes, hawsers and chains required by the custom of the port for mooring to be for the Charterers' account. The Vessel to be fitted with winches, derricks, wheels and ordinary runners capable of handling lifts up to 2 tons.

5. Bunkers

The Charterers at port of delivery and the Owners at port of re-delivery to take over and pay for all coal or oil-fuel remaining in the Vessel's bunkers at current price at the respective ports.

The Vessel to be re-delivered with not less than the number of tons and not exceeding the number of tons of coal or oil-fuel in the Vessel's bunkers stated in Box 18.

6. Hire

The Charterers to pay as hire the rate stated in Box 19 per 30 days, commencing in accordance with Clause 1 until her re-delivery to the Owners.

Payment

Payment of hire to be made in cash, in the currency stated in Box 20, without discount, every 30 days, in advance, and in the manner prescribed in Box 20.

In default of payment the Owners to have the right of withdrawing the Vessel from the service of the Charterers, without noting any protest and without interference by any court or any other formality whatsoever and without prejudice to any claim the Owners may otherwise have on the Charterers under the Charter.

7. Re-delivery

The Vessel to be re-delivered on the expiration of the Charter in the same good order as when delivered to the Charterers (fair wear and tear excepted) at an ice-free port in the Charterers' option at the place or within the range stated in Box 21, between 9 a.m. and 6 p.m., and 9 a.m. and 2 p.m. on Saturday, but the day of re-delivery shall not be a Sunday or legal Holiday.

Notice

The Charterers to give the Owners not less than ten days' notice at which port and on about which day the Vessel will be re-delivered.

Should the Vessel be ordered on a voyage by which the Charter period will be exceeded the Charterers to have the use of the Vessel to enable them to complete the voyage, provided it could be reasonably calculated that the voyage would allow re-delivery about the time fixed for the termination of the Charter, but for any time exceeding the termination date the Charterers to pay the market rate if higher than the rate stipulated herein.

8. Cargo Space

The whole reach and burthen of the Vessel, including lawful deck-capacity to be at the Charterers' disposal, reserving proper and sufficient space for the Vessel's Master, Officers, Crew, tackle, apparel, furniture, provisions and stores.

9. Master

The Master to prosecute all voyages with the utmost despatch and to render customary assistance with the Vessel's Crew. The Master to be under the orders of the Charterers as regards employment, agency, or other arrangements. The Charterers to indemnify the Owners against all consequences or liabilities arising from the Master, Officers or Agents signing Bills of Lading or other documents or otherwise complying with such orders, as well as from any irregularity in the Vessel's papers or for overcarrying goods.

The Owners not to be responsible for shortage, mixture, marks, nor for number of pieces or packages, nor for damage to or claims on cargo caused by bad stowage or otherwise.

If the Charterers have reason to be dissatisfied with the conduct of the Master, Officers, or Engineers, the Owners, on receiving particulars of the complaint, promptly to investigate the matter, and, if necessary and practicable, to make a change in the appointments.

10. Directions and Logs

The Charterers to furnish the Master with all instructions and sailing directions and the Master and Engineer to keep full and correct logs accessible to the Charterers or their Agents.

11. Suspension of Hire etc.

(A) In the event of drydocking or other necessary measures to maintain the efficiency of the Vessel, deficiency of men or Owners' stores, breakdown of machinery, damage to hull or other accident, either hindering or preventing the working of the Vessel and continuing for more than twentyfour consecutive hours, no hire to be paid in respect of any time lost thereby during the period in which the Vessel is unable to perform the service immediately required. Any hire paid in advance to be adjusted accordingly.

(B) In the event of the Vessel being driven into port or to anchorage through stress of weather, trading to shallow harbours or to rivers or ports with bars or suffering an accident to her cargo, any detention of the Vessel and/or expenses resulting from such detention to be for the Charterers' account even if such detention and/or expenses, or the cause by reason of which either is incurred, be due to, or be contributed to by, the negligence of the Owners' servants.

12. Cleaning Boilers

Cleaning of boilers whenever possible to be done during service, but if impossible the Charterers to give the Owners necessary time for cleaning. Should the Vessel be detained beyond 48 hours hire to cease until again ready.

13. Responsibility and Exemption

The Owners only to be responsible for delay in delivery of the Vessel or for delay during the currency of the Charter and for loss or damage to goods onboard, if such delay or loss has been caused by want of due diligence on the part of the Owners or their Manager in making the Vessel seaworthy and fitted for the voyage or any other personal act or omission or default of the Owners or their Manager. The Owners not to be responsible in any other case nor for damage or delay whatsoever and howsoever caused even if caused by the neglect or default of their servants. The Owners not to be liable for loss or damage arising or resulting from strikes, lockouts or stoppage or restraint of labour (including the Master, Officers or Crew) whether partial or general.

The Charterers to be responsible for loss or damage caused to the Vessel or to the Owners by goods being loaded contrary to the terms of the Charter or by improper or careless bunkering or loading, stowing or discharging of goods or any other improper or negligent act on their part or that of their servants.

14. Advances

The Charterers or their Agents to advance to the Master, if required, necessary funds for ordinary disbursements for the Vessel's account at any port charging only interest at 6 per cent. p.a., such advances to be deducted from hire.

15. Excluded Ports

The Vessel not to be ordered to nor bound to enter: a) any place where fever or epidemics are prevalent or to which the Master, Officers and Crew by law are not bound to follow the Vessel

Ice

b) any ice-bound place or any place where lights, lightships, marks and buoys are or are likely to be withdrawn by reason of ice on the Vessel's arrival or where there is risk that ordinarily the Vessel will not be able on account of ice to reach the place or to get out after having completed loading or discharging. The Vessel not to be obliged to force ice. If on account of ice the Master considers it dangerous to remain at the

PART II
"BALTIME 1939" Uniform Time-Charter (Box Layout 1974)

loading or discharging place for fear of the Vessel being frozen in and/or damaged, he has liberty to sail to a convenient open place and await the Charterers' fresh instructions.
Unforeseen detention through any of above causes to be for the Charterers' account.

16. Loss of Vessel
Should the Vessel be lost or missing, hire to cease from the date when she was lost. If the date of loss cannot be ascertained half hire to be paid from the date the Vessel was last reported until the calculated date of arrival at the destination. Any hire paid in advance to be adjusted accordingly.

17. Overtime
The Vessel to work day and night if required. The Charterers to refund the Owners their outlays for all overtime paid to Officers and Crew according to the hours and rates stated in the Vessel's articles.

18. Lien
The Owners to have a lien upon all cargoes and sub-freights belonging to the Time-Charterers and any Bill of Lading freight for all claims under this Charter, and the Charterers to have a lien on the Vessel for all moneys paid in advance and not earned.

19. Salvage
All salvage and assistance to other vessels to be for the Owners' and the Charterers' equal benefit after deducting the Master's and Crew's proportion and all legal and other expenses including hire paid under the charter for time lost in the salvage, also repairs of damage and coal or oil-fuel consumed. The Charterers to be bound by all measures taken by the Owners in order to secure payment of salvage and to fix its amount.

20. Sublet
The Charterers to have the option of subletting the Vessel, giving due notice to the Owners, but the original Charterers always to remain responsible to the Owners for due performance of the Charter.

21. War
(A) The Vessel unless the consent of the Owners be first obtained not to be ordered nor continue to any place or on any voyage nor be used on any service which will bring her within a zone which is dangerous as the result of any actual or threatened act of war, war hostilities, warlike operations, acts of piracy or of hostility or malicious damage against this or any other vessel or its cargo by any person, body or State whatsoever, revolution, civil war, civil commotion or the operation of international law, nor be exposed in any way to any risks or penalties whatsoever consequent upon the imposition of Sanctions, nor carry any goods that may in any way expose her to any risks of seizure, capture, penalties or any other interference of any kind whatsoever by the belligerent or fighting powers or parties or by any Government or Ruler.
(B) Should the Vessel approach or be brought or ordered within such zone, or be exposed in any way to the said risks, (1) the Owners to be entitled from time to time to insure their interests in the Vessel and/or hire against any of the risks likely to be involved thereby on such terms as they shall think fit, the Charterers to make a refund to the Owners of the premium on demand; and (2) notwithstanding the terms of Clause 11 hire to be paid for all time lost including any lost owing to loss of or injury to the Master, Officers, or Crew or to the action of the Crew in refusing to proceed to such zone or to be exposed to such risks.
(C) In the event of the wages of the Master, Officers and/or Crew or the cost of provisions and/or stores for deck and/or engine room and/or insurance premiums being increased by reason of or during the existence of any of the matters mentioned in section (A) the amount of any increase to be added to the hire and paid by the Charterers on production of the Owners' account therefor, such account being rendered monthly.
(D) The Vessel to have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or in any other wise whatsoever given by the Government of the nation under whose flag the Vessel sails or any other Government or any person (or body) acting or purporting to act with the authority of such Government or by any committee or person having under the terms of the war risks insurance on the Vessel the right to give any such orders or directions.
(E) In the event of the nation under whose flag the Vessel sails becoming involved in war, hostilities, warlike operations, revolution, or civil commotion, both the Owners and the Charterers may cancel the Charter and, unless otherwise agreed, the Vessel to be re-delivered to the Owners at the port of destination or, if prevented through the provisions of section (A) from reaching or entering it, then at a near open and safe port at the Owners' option, after discharge of any cargo on board.
(F) If in compliance with the provisions of this clause anything is done or is not done, such not to be deemed a deviation.
Section (C) is optional and should be considered deleted unless agreed according to Box 22.

22. Cancelling
Should the Vessel not be delivered by the date indicated in Box 23, the Charterers to have the option of cancelling.
If the Vessel cannot be delivered by the cancelling date, the Charterers, if required, to declare within 48 hours after receiving notice thereof whether they cancel or will take delivery of the Vessel.

23. Arbitration
Any dispute arising under the Charter to be referred to arbitration in London (or such other place as may be agreed according to Box 24) one Arbitrator to be nominated by the Owners and the other by the Charterers, and in case the Arbitrators shall not agree then to the decision of an Umpire to be appointed by them, the award of the Arbitrators or the Umpire to be final and binding upon both parties.

24. General Average
General Average to be settled according to York/Antwerp Rules, 1974. Hire not to contribute to General Average.

25. Commission
The Owners to pay a commission at the rate stated in Box 25 to the party mentioned in Box 25 on any hire paid under the Charter, but in no case less than is necessary to cover the actual expenses of the Brokers and a reasonable fee for their work. If the full hire is not paid owing to breach of Charter by either of the parties the party liable therefor to indemnify the Brokers against their loss of commission.
Should the parties agree to cancel the Charter, the Owners to indemnify the Brokers against any loss of commission but in such case the commission not to exceed the brokerage on one year's hire.

Bibliography

Books and Articles

Boyd et al., *Scrutton on Charterparties,* 21 ed, London, Sweet & Maxwell, 2008

Bull, Hans Jacob & Falkanger, Thor, *Innföring i Sjörett*, 6 ed, Oslo, Sjörettsfondet, 2004

Coghlin et al, *Time charters*, 6 ed, London, Informa, 2008

International Maritime Organisation, *International Shipping Facts and Figures: Information Resources on Trade, Safety, Security, Environment*, (Updated March 2012)

Michelet, Hans Peter, *Håndbok i Tidsbefraktning*, Oslo, Sjörettsfondet, 1997

Ramberg, Jan, *Unsafe ports and berths*, Oslo, Universitetsförlaget, 1967

Schelin, Johan, *Modern law of Charterparties,* 9 ed, Hässelby, Colloquium, 2001

Wilford, Michael, *Time charters*, 4 ed, London, Lloyds of London, 1995

Presentations

Presentation by Ms. Joanna Steele, Partner, *Bentleys, Stokes and Lowless*, at The Swedish Club, Gothenburg, the 20th of November 2012

Presentation by Mr. Michael J. Smith, Partner, *Mills and Co. Solicitors*, at The Swedish Club, Gothenburg, the 28th of March 2012

Legislation and Other Instruments

Statute law

The Norwegian Maritime Code, 24 June 1994 no. 39
The Swedish Maritime Code, 1994:1009

Preparatory works

NOU 1993:36, *Godsbefordring til sjøs*
Proposition 1993/94:195, *Om ny sjölag*
SOU 1990:13, *Godsbefordran till sjöss*

Charterparties

New York Produce Exchange Form 1913, amended 1993, (NYPE 93)
North American Grain Charterparty 1973 (Norgrain)
Shelltime 4, Issued December 1984 amended December 2003.
The Bimco Gas Voyage Charterparty, Issued 1972 (Gasvoy)
The Bimco General Time Charterparty, Issued 1999 (Gentime)
The Bimco Uniform Time Charterparty Box Layout 1974 (Baltime)
The Bimco Uniform Time Charterparty for container vessels (Boxtime)
The Bimco Tanker Voyage Charterparty (Intertankvoy 76)

Table of Cases

English

Aegean Sea Traders Corporation v. Repsol Petroleo S.A. and another (The "Aegean Sea"), 1998, 2 Lloyds Rep 39

AIC Ltd v. Marine Pilot Ltd (The "Archimidis"), 2008, 1 Lloyds Rep 597

Atkins International H.A. v. Islamic Republic of Iran Shipping Lines (The "APJ Priti"), 1987, 2 Lloyds Rep 37

Brostrom & Sons v. Dreyfus & Co (The "Sagoland"), 1932, 44 Lloyds Rep 136

Compania Naviera Maropan S/A v. Bowater's Lloyd pulp and paper mills Ltd (The "Stork"), 1955, 1 Lloyds Rep 349

G.W. Grace & Co. Ltd. v. General Steam Navigation Company. Ltd. (The "Sussex Oak"), 1950, 83 Lloyds Rep 297

Hall Bros Steamship Co, Ltd v. R and W Paul, Ltd (The "Peerless"), 1914, 19 Com Cas 384

Hadley v. Baxendale, 1854, 9 Ex. 341; 156 ER. 145

Independent Petroleum Group Ltd v. Seacarriers Count Pte Ltd (The "Count"), 2008, 1 Lloyds Rep 72

Islander Shipping Enterprises S.A. v. Empresa Maritima Del Estado S.A. (The "Khian Sea"), 1977, 2 Lloyds Rep 439

Islander Shipping Enterprises S.A. v. Empresa Maritima Del Estado S.A. (The "Khian Sea"), 1979, 1 Lloyds Rep 545

Junior Books Ltd. v. Veitchi Co Ltd, 1982, 3 W.L.R. 477

Kodros Shipping Corp of Monrovia v. Empresa Cubana de Fletes (The "Evia"), 1982, 1 Lloyds Rep 307

Kodros Shipping Corp of Monrovia v. Empresa Cubana de Fletes (The "Evia"), 1982, 2 Lloyds Rep 334

Kristiansands Tankrederi A/S and others v. Standard Tankers (Bahamas) Ltd. (The "Polyglory"), 1977, 2 Lloyds Rep 353

K/S Penta Shipping A/S v. Ethiopian Shipping Lines Corporation (The "Saga Cob"), 1992, 2 Lloyds Rep 545

Leeds Shipping Company Ltd. v. Societe Francaise Bunge (The "Eastern City"), 1957, 2 Lloyds Rep 153

Leeds Shipping Company Ltd. v. Societe Francaise Bunge (The "Eastern City"), [QA], 1958, 2 Lloyds Rep 127

Lensen Shipping Ltd. v. Anglo-Soviet Shipping Co. Ltd (The "Terneuzen"), 1935, 52 Lloyds Rep 141

Limerick Steamship Company LTD v. W.H. Stott & Co (The"Inishboffin"), 1920, 5 Lloyds Rep 190

Maintop Shipping Company Limited v. Bulkindo Lines Pte Limited (The "Marinicki"), 2003, 2 Lloyds Rep 655

Mediterranean Salvage & Towage Ltd. v. Seamar Trading & Commerce inc. (The "Reborn), 2009, 2 Lloyds Rep 639

Motor Oil Hellas refineries S.A. v. Shipping Corporation of India (The "Kanchenjunga"), 1990, 1 Lloyds Rep 391

Ogden v. Graham, 1861, 1 B & S 773

Palace Shipping Company Limited v Gans Steamship Line, 1916, 1 K.B. 138

Palm Shipping inc v. Vitol S.A. (The "Universal Monarch"), 1988, 2 Lloyds Rep 483

Pearl Carriers Inc. v. Japan Line Ltd. (The "Chemical Venture"), 1993, 1 Lloyds Rep 508

Reardon Smith Line Ltd. v. Australian Wheat Board (The "Houston City"), 1953, 1 Lloyds Rep 131

Reardon Smith Line Ltd. v. Australian Wheat Board (The "Houston City"), 1956, 1 Lloyds Rep 1

Skibsaktieselskapet Snefonn, Skibsaksjeselskapet Bergesend & Co. V. Kawasaki Kisen Kaisha Ltd (The "Berge Tasta"), 1975, 1 Lloyds Rep 422

STX Pan Ocean Co Limited v. Ugland Bulk Transport AS (The "Livanita"), 2008, Vol 1

Tage Bergland v. Montoro Shipping Corporation Ltd (The "Dagmar"), 1968, 2 Lloyds Rep 563

Transoceanic Petroleum Carriers v. Cook Industries Inc (The "Mary Lou"), 1981, 2 Lloyds Rep 272

Ullises Shipping Corporation v. Fal Shipping Co Ltd (The "Greek Fighter"), 2006, 1 Lloyds Rep 99

Uni-Ocean Lines Pte. Ltd. v. C-Trade S.A. (The "Lucille"), 1984, 1 Lloyds Rep 244

Unitramp v. Garnac Grain Co. Inc. (The "Hermine"), 1978, 1 Lloyds Rep 212

Vardinoyannis v. The Egyptian General Petroleum Corp. (The "Evaggelos"), 1971, 2 Lloyds Rep 200

West Ltd. v. Wrights Colchester Ltd. (The "Olive May"), 1935, 51 Lloyds Rep 105

Scandinavian

ND 1926.145
ND 1926.257
ND 1928.108
ND 1928.214
ND 1933.17
ND 1935.436
ND 1945.337
ND 1945.567
ND 1948.42
ND 1959.242 Hilde Storm
ND 1962.143
ND 1962.224
ND 1969.232
ND 1972.183 Vale
ND 1988.308
ND 1989.296 Uglen