

Laytime and demurrage clauses in contracts of sale—links and connections

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Laytime and demurrage clauses (L&D clauses) have attracted much attention and analysis in their original habitat, charterparties. They exist also in international sale contracts where they raise two issues: first, what is the link between a laytime and demurrage clause in a sale contract and its counterpart in the relevant charterparty; secondly, in applying such a clause in a sale contract, are we to be guided by court decisions on charterparties? These questions have given rise to many practical problems. A new approach to the drafting of such clauses in international sale contracts is suggested: to separate such clauses—and the accompanying law—from their counterparts in charterparties.

Laytime disputes and demurrage claims under charterparties are the staple diet of shipping lawyers the world over, monies obtained as demurrage or despatch being well recognized both by owners and charterers not only as devices encouraging speed in loading and discharge, but also as hedges against fluctuating freight markets. The law reports and the literature are replete with decisions and guidance on the application and construction of these L&D clauses in charterparties.¹ However, charterparties are concluded in most cases in order to perform obligations under sale contracts and charterers may find themselves liable under charterparties for delays caused by their counterparties under their sale contracts. Consequently, most sale contracts, at any rate in the commodity markets, also contain as a matter of course clauses which provide for a period of laytime on the lapse or saving of which demurrage or despatch money is respectively due.

The purpose of this paper is to answer two questions, both of which relate to the link between such clauses in sale contracts and charterparties: first, what is the financial link between the two clauses: is an L&D clause in a sale contract intended simply to indemnify the party to the sale contract against losses suffered under the counterpart clause in the charterparty, or does the clause in the sale contract stand quite independently of the liability under the charterparty? Secondly, what is the legal link between these clauses: when applying and construing an L&D clause in a sale contract, ought we to transplant into the sale contract all the law surrounding similar clauses created in the context of charterparties? The following answers will be suggested. In answer to the first question, the default position is that L&D clauses in sale contracts stand free and independent of

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1. For the law on laytime and demurrage clauses in charterparties, see H. Tiberg, *Law of Demurrage*, 4th edn (Sweet & Maxwell, 1994 hereafter "Tiberg"); J. Schofield, *Laytime and Demurrage*, 4th edn (2001 Informa); D. Davies, *Commencement of Laytime*, 3rd edn (Informa, 1998); J. Cooke *et al.*, *Voyage Charters*, 2nd edn (2001, Informa) (hereafter "Cooke").

their counterparts in the relevant charterparty. Secondly, it should, but does not always, follow from this that L&D clauses in sale contracts should be construed and applied as clauses in sale contracts, not as adjuncts to charterparties. Their interpretation should therefore be coloured not by decisions on laytime and demurrage in charterparties, but by their relationship to the contractual duties of c.i.f. and f.o.b. sellers and buyers. The answers suggested to the two questions here discussed have implications for the drafting of L&D clauses in sale contracts, implications drawn in the concluding part of this paper.

The purpose of laytime and demurrage clauses in sale contracts

The shipowner has an interest in ensuring that his voyage-charterer does not delay in loading or discharge: delay prolongs the duration of the voyage beyond the profit margins allowed by the shipowner in setting the freight. The shipowner enforces this interest by stipulating for laytime and demurrage in the charterparty. Where the charterer is a seller c.i.f. or c.&f., though, he may find himself paying demurrage to the shipowner on account of a delay caused by the buyer while discharging the goods. Precisely the reverse may occur where the charterer is an f.o.b. buyer. The purpose of an L&D clause in the sale contract is to pass on to the counterparty to the sale contract the cost of demurrage paid to the shipowner by the charterer but caused by delay by the charterer's counterparty under the sale contract.

These clauses come in a bewildering number of shapes and sizes, some looking in all their detail remarkably similar to L&D clauses in charterparties, others so simple that they bear little resemblance in style to charterparty equivalents. At the first end of the spectrum, *Gafta*² Contract 112, a c.i.f. contract for feedingstuffs in bulk free out, contains at cl. 13 a "Discharge" clause: the clause allocates discharge costs to the buyer; it establishes an average rate of discharge with typical charterparty holiday exclusions, complete with a "time lost to count" provision; it provides for notice of readiness triggering the commencement of laytime at the first discharge port but not at the second or third, where laytime is to start "immediately on arrival at the port(s)"; the rate of demurrage is to be as per the charterparty or the booking note, with despatch at half the demurrage rate. At the other extreme of length and precision, *Gafta* Contract 79B, a contract for the sale and purchase of UK and Ireland Grain on delivered terms, whether or not for export, contains a clause stating quite simply that, in the event of there being unreasonable delay by sellers in loading vehicles, buyers to be entitled to any proved additional expense, with the reverse applying in the case of delay by the buyers in discharging vehicles. It is surprising perhaps that, despite the fact that the contract can be used whether or not the goods are being exported, and despite the brevity of the clause, the standard form calls it a "Demurrage" clause, typically a shipping term attracting lengthy drafting. In between these two extremes, *Gafta* Contract 21, a c.&f./c.i.f. intra-Asia supply contract for feedingstuffs, provides quite simply that the vessel is to be discharged at an agreed rate, with demurrage/despatch rate as per charterparty unless otherwise agreed.

Some heavily used standard term contracts, frequent visitors to the Commercial Court and beyond, are surprisingly laconic about laytime and demurrage. Given the currency of

2. Grain and Feed Trade Association.

the standard c.i.f. Gafta 100 among commodity traders, it is, for example, surprising that cl. 13 of that contract, entitled "Discharge", states simply that discharge shall be as fast as the vessel can deliver in accordance with the custom of the port, without referring to laytime, demurrage or notices of readiness. Equally, given the frequency of use of standard form Fosfa³ 54, a c.i.f. contract for vegetable and marine oil shipped in bulk, imposes on the buyer only a duty to take delivery "with customary quick despatch after notice of readiness is given by the shipowner . . . in accordance with the Bill/s of Lading, Charter Party or Contract of Affreightment". It is perhaps because frequently used standard sale forms such as these state their loading or discharging codes so briefly that so many contracts concluded between commodity traders contain express terms regarding laytime and demurrage, not in the standard forms incorporated into the contract itself, but in the special contract made by the parties in an exchange of letters or faxes.

Laytime and demurrage clauses in sale contracts—free-standing clauses in independent contracts

Although the purpose of an L&D clause in a sale contract is to pass on to the counterparty to the sale contract a liability incurred under a carriage contract, an express term in a sale contract imposing a duty to load or discharge goods within a specific period exists within its own contract independently of the carriage contract. Consequently, saving an express term in the sale contract making it clear that the intention is simply to indemnify the charterer for demurrage incurred under the charterparty, an L&D clause in the sale contract imposes its own independent obligation of despatch in loading or discharge and its own duty to pay damages where that obligation is breached. The default position is, in other words, that an L&D clause in a sale contract liquidates damages caused by delay as between sellers and buyers: it does not indemnify them against liabilities incurred towards the shipowner under a different clause under a different contract.⁴

3. Federation of Oils, Seeds and Fats Associations Limited.

4. See *OK Petroleum v. Vitol Energy* [1995] 2 Lloyd's Rep. 160, esp. at 164. In this case, a c.i.f. seller had taken care to incorporate the terms of his charterparty into his sale contract through an incorporation clause located in the demurrage clause in the sale contract: doubtless, the seller/charterer hoped thus to secure full back-to-back cover against his buyer for any demurrage liabilities incurred towards his owner. The seller/charterer was, however, rather hoist by his own petard: the demurrage clause in the charterparty contained an extremely short time-bar of 90 days, highly beneficial to the seller/charterer when defending a demurrage claim under the charterparty, but a surprising inconvenience to him when pursuing such a claim against the buyer under the sale contract. In a judgment which clearly accorded with the commercial merits of the case, Colman, J., refused to give the benefit of the charterparty time-bar to the buyer. The ratio was carefully constructed. The argument for the sellers was initially put on the ground that the laytime and demurrage clause in the sale contract simply gave rise to an indemnity covering the seller's liabilities under the charterparty and that, if this were right, it could not have been the intention of the parties that the seller/charterer might run the risk of losing his right of recourse against the buyer through receiving notice of a claim for demurrage by the owner just before the lapse of the 90-day time-bar. Clearly anxious not to go down the "indemnity" road, however, Colman, J., was happier to justify his decision against the buyer on incorporation grounds. Holding that the L&D clause under the sale contract was entirely free-standing of the charterparty, Colman, J., decided that the time-bar part of the demurrage clause in the charterparty was ancillary to the subject-matter of the sale contract and could not therefore be incorporated through what he considered to be general terms of incorporation in the sale contract: see also *The Northern Progress* [1996] 2 Lloyd's Rep. 319, 326-327.

For the view that a laytime and demurrage clause in a sale contract imposes an obligation to indemnify the charterer for demurrage due under the charterparty and *not* an independent, free-standing obligation, see *Suzuki v. Companhia Mercantile Internacional* [1921] 9 Ll.L.Rep. 171. This case, rather surprisingly for a Court of Appeal judgment on this subject-matter composed of Scrutton, Bankes and Atkin, L.JJ., has somewhat sunk

The independent nature of the clause in the sale contract has consequences which have been illustrated in a number of decided cases: (a) Liability to pay demurrage under a sale contract does not arise simply because the charterer is liable for demurrage under his charterparty; for such liability to arise under the sale contract, there needs to be an express clause in the sale contract. (b) Liability to pay demurrage under a sale contract making it payable “as per charterparty” will only arise if “demurrage” is actually payable under the charterparty. (c) The rate of loading and the rate of payment of demurrage in the sale contract governs the sum due under the sale contract, whether that sum is higher or lower than the sum payable under the charterparty. (d) Just as the laytime and demurrage clause in the sale contract is independent, saving contrary terms, of liability under the charterparty, so is it independent of liability under other contracts of sale in a string—saving clear terms to the contrary.

(a) *The need for express clauses in the sale contract*

The fact that one of the parties to the sale contract has had to pay demurrage to the shipowner under an L&D clause in the charterparty does not of itself mean that he can recover that loss from his sale counterparty under the sale contract:⁵ the route to such recovery is through express clauses in the sale contract itself. This is true for two reasons, the first more obvious than the second. First, “it is important to keep in mind that the contract of sale and the charter are different contracts between different parties”⁶ and that clauses in the charterparty cannot simply be applied to the sale contract in the absence of an express incorporation clause. Secondly, and possibly more surprisingly, without express loading and discharge terms in the sale contract itself, it is not at all clear what loading and discharge duties sellers and buyers owe each other by way of implied default terms. And, if there are no implied terms, or if those terms are not robust enough, sellers and buyers would be best advised to have detailed express terms regarding loading and discharge in their sale contracts.

No implied duty to discharge in a c.i.f. contract—at all?

Thus, in a c.i.f. contract containing no such express terms, can a seller/charterer recover damages for charterparty demurrage incurred on the basis of delay by the buyer in discharging the goods? The seller might consider putting his case in one of two ways: first, that the buyer owed him a duty to discharge with reasonable despatch;⁷ or, more specifically, to discharge at a rate which would avoid incurring demurrage under the charterparty. It is difficult to see how an English court would imply either of such terms,

without trace: very clearly out of favour with a later Court of Appeal in *Malozzi v. Carapelli* [1976] 1 Lloyd’s Rep. 407, 411, it was more recently distinguished by Clarke, J., in *Gill & Duffus v. Rionda* [1994] 2 Lloyd’s Rep. 67, 77, where an L&D clause in a sale contract was held to create a free-standing obligation.

5. The reverse is also true. Thus, if a clause in a c.i.f. sale contract imposes a duty on the buyer to pay demurrage, then the buyer must so pay under the terms of that clause, whether or not the seller is liable for demurrage under a charterparty to a shipowner: see *Ets Soules v. Intertraded* [1991] 1 Lloyd’s Rep. 378, 385.

6. *Einar Bugge v. Bowater* (1925) 31 Com. Cas. 1, 2, per Scrutton, L.J.

7. Or, if it was up to the buyer to book a berth for the discharge of the goods, to nominate a berth for the purpose.

given the decision in *Congimex v. Tradax*,⁸ which held, perhaps somewhat remarkably, that there is no implied duty on a c.i.f. buyer even to discharge the goods, much less to discharge at a given rate. In that case, regulations at Lisbon, the discharge port, prevented a c.i.f. buyer from importing goods and he sought to avoid paying the price on the ground, *inter alia*, that the contract had been frustrated through supervening illegality. Both Staughton, J., and the Court of Appeal found that the contract had *not* been frustrated through supervening illegality: the contract, concluded on the basis of Gafta Contract 100, imposed no obligation on the buyer at all regarding discharge and there was therefore no obligation which the local regulations could frustrate. Staughton, J., said: “discharge at Lisbon formed no part of the performance of these contracts and . . . they were not frustrated when discharge there became unlawful.”⁹ If, in the absence of express stipulation,¹⁰ the buyer is under no duty to discharge, neither can he be under an implied duty to discharge within a given time nor to indemnify the seller for any demurrage for which he, the seller, is liable as charterer to the shipowner. Express stipulation in the sale contract consequently becomes crucial to the c.i.f. seller/charterer’s recovery of damages from his buyer to cover charterparty demurrage liabilities towards his owner.

Implied loading duties in f.o.b. contracts

If it is remarkable that a c.i.f. buyer is under no implied obligation to discharge goods, it is impossible to suggest that an f.o.b. seller is under no implied obligation to load—and, if he is under an obligation to load, he must be under an obligation to do so within a specific time. It is of the essence of an f.o.b. contract that the seller performs his obligation to deliver by loading the goods free on board.¹¹ That obligation is also of the essence in the sense that the seller must deliver the goods within the shipment period stipulated in the sale contract,¹² subject of course to the buyer’s making appropriate arrangements for the

8. [1981] 2 Lloyd’s Rep. 687, approved [1983] 1 Lloyd’s Rep. 250 (C.A.).

9. [1981] 2 Lloyd’s Rep. 687, 692. Moreover, the mere fact that the Gafta Contract 100 provided for weighing and sampling at Lisbon did not frustrate the contract: there was no evidence that the prohibition of import extended to sampling and the goods might just as easily have been weighed in France, with any losses being remedied through an award of damages rather than a finding that the contract had been frustrated.

10. It is worth noting that, where Incoterms 2000 are incorporated into the sale contract, a c.i.f. buyer is under an express duty not only to “accept delivery when they have been delivered” (i.e., when they have been loaded on board the vessel) but also to “receive them from the carrier at the named port of destination:” see c.i.f., B4.

11. See *Wimble v. Rosenberg* [1913] 3 K.B. 743, 756–757, *per* Hamilton, L.J.: “It is well settled that, on an ordinary f.o.b. contract, when ‘free on board’ does not merely condition the constituent elements in the price but expresses the seller’s obligations additional to the bare bargain of purchase and sale, the seller does not ‘in pursuance of the contract of sale’ or as seller send forward or start the goods to the buyer at all except in the sense that he puts the goods safely on board, pays the charge of doing so, and, for the buyer’s protection but not under a mandate to send, gives up possession of them to the ship only upon the terms of a reasonable and ordinary bill of lading or other contract of carriage. There his contractual liability as seller ceases, and delivery to the buyer is complete as far as he is concerned.” Whether or not the seller is in breach towards his buyer where the seller “delivers” the goods to a carrier who then fails to place the goods on board will depend on the type of f.o.b. contract concluded between the parties: see *Benjamin’s Sale of Goods*, 6th edn (Sweet & Maxwell, 2002) (hereafter “*Benjamin*”), para 20–013.

12. This is why, where a seller is bound to tender a bill of lading, he must tender a “shipped” rather than a “received for shipment” bill of lading: see *Yelo v. Machado* [1952] 1 Lloyd’s Rep. 183.

engagement of shipping space allowing the seller to ship within the shipment period where the sale contract leaves such arrangements to the buyer.

However, to say that the f.o.b. seller is under an implied duty to place the goods free on board a vessel within the shipment period stipulated in the sale contract does not mean that the f.o.b. seller is under an implied duty to load within such a time as to avoid the buyer's potential liability to the shipowner for demurrage.¹³ Thus, for example, in a contract providing for shipment in May, there is no reason to suppose that, in the absence of any express term in the contract of sale, a seller must ship goods before the end of May within the laytime allowed to the buyer as charterer under his charterparty with the shipowner simply to avoid triggering the buyer's liability to pay demurrage under the charterparty.¹⁴ For that result to occur, the buyer would need to have stipulated to that purpose in the sale contract.

In the absence of such an express term, however, could the f.o.b. buyer/charterer rely on an implied obligation that the seller would load with reasonable despatch or that he would do all that was necessary to facilitate loading with reasonable despatch, e.g., by organizing the berthing of the vessel? It is clear on authority that an f.o.b. seller is indeed bound by both of these implied obligations; it is equally interesting, however, that in the cases in which these duties were implied, they availed the buyer little in practice. Thus, in *Einar Bugge v. Bowater*,¹⁵ where coal was to be supplied by an f.o.b. seller "in accordance with the custom of the port", Scrutton, L.J., was clearly of the view that the seller was under a duty to load within a reasonable time.¹⁶ The value of that duty to the buyer was diluted, however, by two factors. First, the sale contract might—and on the facts of this case did—exclude liability for breach of the implied duty through a *force majeure* clause excluding liability in case of strikes. More importantly, however, the Court of Appeal made it clear that, in computing the reasonable time which the implied term allowed the seller for loading, "his other reasonable engagements were to be considered and . . . he was not bound to have all the cargo at the port prior to loading or continuously there while he was loading".¹⁷ The seller's duty to load within a reasonable time was implied by the Court of Appeal in terms so "soft" that it gave the buyer an inadequate route to damages against the seller.

Nor does it appear that the buyer can achieve much through implying a slightly different obligation that the seller would do all that was necessary to facilitate loading with reasonable despatch. Such an implied duty was explicitly recognized in *The World*

13. Or, indeed, to load the goods within the laytime allowed to the seller under the sale contract: that time is his as is the privilege of loading after the expiry of laytime, albeit incurring liability for demurrage. The seller's only loading duty is to ship the goods within the shipment period, even where the sale contract requires him to ship "at buyer's call": see *Tradax Export v. Italgrani* [1986] 1 Lloyd's Rep. 112; cf. *The Navos* [1989] 2 Lloyd's Rep. 462.

14. It is suggested in *Benjamin*, para. 20–019, that, "[i]f such liability results from the seller's *wrongful delay* [emphasis added] in shipping the goods, any payments made by the buyer in respect of it would appear to be recoverable by the buyer as damages from the seller . . .". No authority for this proposition is given and it is immediately then said that "the buyer's right to recover such payments may be put *beyond doubt* [emphasis added] by a provision in the contract of sale making the seller liable for demurrage".

15. (1925) 31 Com. Cas. 1; (1925) 21 Ll.L.Rep. 80.

16. The report of the case in (1925) 21 Ll.L.Rep. 80, 82, attributes this duty to the shipowner, although the context makes it clear that the word "seller" must have been intended.

17. (1925) 31 Com. Cas. 1, 6.

*Navigator*¹⁸ but the Court of Appeal's strictures in the judgment in that case regarding the quantification of loss ensured that the buyer did not recover any damages from his recalcitrant seller. An f.o.b. contract imposed upon the seller a minimum average loading rate once the vessel was berthed and this gave the sellers a full 48 days in which to load. When the vessel gave notice of readiness to load, she could not berth because the seller did not have the necessary berthing documentation to hand. The vessel consequently lost its turn at the port and started loading a full three weeks later, when the cargo was shipped in four days. The buyer, charterer of the *World Navigator*, incurred demurrage towards the shipowner which he sought to recover from the seller. Although the seller was held to have been in breach of an implied obligation to do what was necessary to allow the vessel to berth,¹⁹ the Court of Appeal found against the buyer. The court held that, although the vessel would have berthed earlier had the seller's documentation been in order, the seller would still have had, under the terms of the sale contract, far more loading time than he in fact used. The seller was entitled to that loading time and was not bound to load more expeditiously in order to save the buyer from incurring liability for demurrage under the charterparty. To allow the buyer recovery against the seller in these circumstances would have given the buyer the benefit of a loading obligation for which he had not stipulated in the sale contract. Again, the implied term was simply not strong enough to give the buyer what he should have exacted through an express term.

Moreover, the decision in *The World Navigator* shows that, where L&D clauses are not explicitly linked to their counterpart clauses in the charterparty, the loading and discharge regime between the seller and buyer is to be found exclusively in the sale contract, and that regime is not affected or limited by the charterer's liability under the charterparty. The seller had 48 days in which to load—and nothing in the charterparty could limit that period. The effect of the decision therefore is that, if an f.o.b. buyer wishes to cover his demurrage liability towards his shipowner by recourse against the seller, the loading clause in the sale contract needs to mirror much more accurately than it did in *The World Navigator* the loading schedule set out in the charterparty.

Implied terms as to loading and discharge will not, then, greatly assist charterers in recovering demurrage from their sale counterparties. A c.i.f. buyer's implied obligation to effect or procure discharge within a given time is non-existent, and an f.o.b. seller's obligation to load at a stated rate is too weak. If charterers wish to cover their charterparty demurrage liabilities through their sale contracts, it is for them to ensure that express terms in their sale contracts impose clear loading and discharge obligations, setting a schedule for their performance and sanctions for their breach.

18. *Kurt A. Becher v. Roplak Enterprises (The World Navigator)* [1991] 2 Lloyd's Rep. 23 (C.A.). See also *Miserocchi v. Agricultores Federados Argentinos (The Sotir and Angelic Grace)* [1982] 1 Lloyd's Rep. 202, esp. at 209, where Staughton, J., was reluctant to articulate the precise ambit of the implied duty. The decision of the Court of Appeal in *Kurt A. Becher v. Roplak Enterprises* [1991] 2 Lloyd's Rep. 23 was not followed in *Glencore Grain v. Goldbeam Shipping Inc. (The Mass Glory)* [2002] 2 Lloyd's Rep. 244, 251: this was a charterparty demurrage claim and Moore-Bick, J., was reluctant to transplant the reasoning in *The World Navigator*, a sale demurrage case, to a charterparty demurrage case.

19. A somewhat inchoate obligation, the precise ambit of which, in the view of Parker, L.J. [1991] 2 Lloyd's Rep. 23, 30, was "undesirable, and probably impossible, to define".

(b) Direct linkage to the charterparty clause

If an express term in the sale contract is necessary to ensure recovery of charterparty demurrage, it might appear to follow that a charterer can best cover himself against the charterparty consequences of delay caused by the counterparty to his sale contract by expressly linking the laytime and demurrage regime in the sale contract to the charterparty. Such express linkage may vary in its ambit. For example, the sale contract may contain a blanket reference to the charterparty, stating simply “laytime, demurrage and despatch as per charterparty”; alternatively, the sale contract may establish its own loading or discharge regime, but then incorporate the demurrage and/or despatch rates from the charterparty. Such clauses might be thought to provide the charterer with clear back-to-back recourse under the sale contract for demurrage paid under the charterparty.

It is clear from *Malozzi v. Carapelli*,²⁰ however, that inadvertent mismatches between the two contracts may still leave the charterer exposed to liability under the charterparty with no recourse under the sale contract. In that case, a c.i.f. seller/charterer time-chartered a vessel and then sold grain under two sale contracts which contained express discharge rates, “demurrage/half despatch on unloading at the rates indicated in the charterparty for Buyer’s account”. The Court of Appeal unanimously held²¹ that the seller/charterer could not recover by way of “demurrage” the value of the hire paid to the owner under the time charterparty while the buyer of the goods delayed discharge. Megaw, L.J., put it thus:²²

The relevant charter-party contains no provision for demurrage on unloading and no rates for demurrage. So the buyers’ case was really perfectly simple: never mind how long the time was that was occupied and whether or not that involved not complying with the “average rate of discharge” laid down in the first sentence [of the discharge clause in the sale contract]: having regard to the fact that the sellers had chosen—no doubt for their own good purposes—to enter into a contract with shipowners, namely the time charter-party, which did not involve any provision for demurrage nor indicate any rates for demurrage, there was nothing to be paid. In my judgement it is as simple as that; and that contention is right.

A remarkable feature about the facts of the case is that the sellers chartered first and sold later²³ and ought, therefore, to have known that the reference in the sale contract to the charterparty rate of demurrage was meaningless: the court was clearly unwilling to assist the sellers out of a problem which was so patently of their own making. The same result would presumably follow where the sale contract precedes the charterparty: the seller here would know—or should be presumed to know—when he time-charters the vessel that a reference to “demurrage” in the previously concluded sale contract would turn out to be meaningless and therefore unenforceable. In either case, despite the illusion of incorporation of the charterparty demurrage clause into the sale contract, the two contracts are not back-to-back and the seller-charterer pays the price for mis-matched drafting.

20. [1976] 1 Lloyd’s Rep. 407.

21. “The judicial and arbitral score” was “10-nil against the seller on this point”: see Roskill, L.J. [1976] 1 Lloyd’s Rep. 407, 414.

22. *Ibid.*, 411.

23. The facts are clearly set out in Megaw, L.J.’s judgment at [1976] 1 Lloyd’s Rep. 409 and 410, although Megaw, L.J., also says, at 410, somewhat surprisingly, that “[a]s a result of the sale contracts the sellers arranged for the charter of a ship”.

It is conceivable, however, that facts might occur where the blame for a mismatch between the sale contract and the charterparty cannot be laid so squarely at the seller's door. In *Gill & Duffus v. Rionda*,²⁴ the claimant was a c.i.f. seller, the second trader in a string of four. He bought goods from the charterer and sold them on to a buyer under a sale contract which contained its own discharge rate but incorporated the charterparty demurrage clause. The claim was for demurrage under the sale contract and was brought against the buyer's guarantor.²⁵ On the date of the conclusion of the sale contract between the claimant and his buyer, the charterparty had not yet been drawn up; Clarke, J., found as a matter of fact, however, that there was at that time an agreement between the owners and the charterers that the vessel would proceed to agreed ports of discharge and that demurrage would be incurred at a stated rate. Clarke, J., stated that:²⁶ "Provided that the charterparty concerned was a genuine commercial arrangement I do not think that it matters that the charterparty had not been drawn up at the time when the contract of sale was made or indeed that the rate of demurrage depended upon a standing arrangement between [the charterer and the owner.]" The claimant seller was consequently due his demurrage from his buyer under their sale contract, despite the fact that the charterparty to which that sale contract referred was not itself in existence at the time the sale contract was concluded. The seller did not know, nor could he reasonably have known, the precise stage reached in the conclusion of the charterparty when he made his sale. His buyer, on the other hand, knew perfectly well that their sale contract obliged him to discharge at a certain rate. Clarke, J., clearly saw no reason why the seller should be denied compensation for the buyer's breach of a clear discharge duty simply because the charterparty liquidating damages for that breach happened not yet to have been drawn up.

The result of the two cases taken together²⁷ can be summarized as follows. First, simple incorporation of charterparty demurrage clauses into sale contracts does not guarantee a remedy to the charterer: indeed, the very use of the word "demurrage" in the sale contract may well have the effect of excluding a remedy where the charterparty does not itself impose liability for demurrage. Secondly, the courts will, on the other hand, adopt a somewhat more flexible approach where the party seeking recovery for delay under the sale contract is not himself the charterer responsible for any mismatch²⁸ between the demurrage regime under the sale contract and the counterpart regime under the charterparty.

(c) Rates independent of charterparty—windfalls and shortfalls

Not all mismatches between the clauses in the two contracts are inadvertent. A party who is weak in the charter market but strong on the commodity market may well find it

24. [1994] 2 Lloyd's Rep. 67.

25. The guarantor's duty to pay on the guarantee depending on whether the buyer was bound to pay demurrage to the seller under the sale contract.

26. *Ibid.*, 73.

27. *Malozzi v. Carapelli* [1976] 1 Lloyd's Rep. 407 was cited in *Gill & Duffus v. Rionda* [1994] 2 Lloyd's Rep. 67, but in its first instance manifestation, *per* Kerr, J. [1975] 1 Lloyd's Rep. 229, and on another point: see [1994] 2 Lloyd's Rep. 67, 77.

28. The charterer may run the risk of prejudicing his remedy against his sale counterparty not through a mismatch between the sale contract and the charterparty, but because those two contracts match only too closely: see the facts of *OK Petroleum v. Vitol Energy* [1995] 2 Lloyd's Rep. 160, at fn. 4 *supra*.

possible to reduce the impact of charterparty demurrage and to increase his margin of profit on the commodity sold by stipulating for a higher rate of demurrage in a c.i.f. contract than that agreed in the charterparty.²⁹ The same result follows if laytime is set to end—and demurrage to start—earlier under the sale contract than it does under the charterparty. In either case, the c.i.f. seller may more than cover his charterparty liabilities and make a windfall under his sale contract. The reverse too may happen and a shortfall occur. A weak charterer incurring high demurrage rates under the charterparty may find himself stipulating in a buyer's market for an even lower demurrage rate from his buyer in his c.i.f. sale contract. These consequences follow from the fundamental propositions that an L&D clause in a sale contract stands free and independent from its counterpart in the charterparty and that it is the clause in the sale contract which regulates the recovery of demurrage as between seller and buyer. Thus, in *Houlder Bros v. Commissioner of Public Works*,³⁰ the House of Lords allowed a c.i.f. seller to recover more demurrage under his sale contract than that for which he was liable under his charterparty. Lord Atkinson put the position thus:³¹ “There is . . . no rule of law that the vendor in a c.i.f. contract may not secure for himself a profit under a demurrage clause contained in it. Nor is there any indisputable presumption of law that the parties to such a contract did not intend that he should receive such a profit.”

(d) Independent of other sale contracts in a string

An L&D clause in a sale contract is independent not only of a similar clause in a charterparty for the vessel on which the goods sold are carried: it is also independent of other L&D clauses in other sale contracts up or down a string. In *The Adolf Leonhardt*,³² f.o.b. buyers, the third in a string of four traders, claimed demurrage from their sellers under a sale contract which provided that time was to count “as per Centrocon charter party” with “Demurrage/Despatch as per C/P”. Staughton, J., dismissed the buyers' claim for demurrage on the ground that the strike clause contained in the incorporated Centrocon charterparty form exempted the sellers from such liability towards the buyers. The judge also considered, explicitly *obiter*,³³ another argument advanced by the sellers. The sellers argued that their obligation to pay demurrage to the buyers was dependent upon the buyers' own liability towards their on-buyers and that as the buyers could not prove that they had suffered any loss under *that* contract, the sellers' liability to pay demurrage under the main contract could not be triggered. Staughton, J., disagreed:³⁴

My answer would be that the sellers have an independent obligation. . . . I do not find it surprising that a buyer should contract to receive demurrage at a different rate, or on different conditions, than those governing his liability to pay a shipowner or a sub-buyer. What persuades me that an independent obligation was intended here is the reference in the sale contract to the Centrocon

29. It has been suggested that, where the sale contract stipulates for a demurrage rate higher than that previously agreed in a charterparty, there might be some grounds for arguing that the demurrage clause in the sale contract is unenforceable as a penalty clause: see Tiberg, 666, fn. 16. For such an attack to be sustainable, it is suggested that the margin between the two rates would need to be particularly large.

30. [1908] A.C. 276.

31. [1908] A.C. 276, 291.

32. [1986] 2 Lloyd's Rep. 395.

33. *Ibid.*, 400.

34. *Ibid.*, 404.

charter-party, scilicet in its printed form. Whatever terms might be agreed between the buyers and a shipowner, or their sub-buyers, it was all Lombard Street to a china orange that they would not be precisely the printed terms of the Centrocon form. The buyers had not, when they contracted with the sellers, concluded their sub-sale, at any rate in point of form; it makes good sense that they should bargain for an independent obligation in the terms of the printed form, if only as an approximation to what they might agree with their sub-buyers.

It is, of course, possible for two parties in a string to agree that the obligation to pay demurrage under the contract between them is contingent upon the incurring or recovery of demurrage under another contract in the string. Thus, for example, it is possible for a c.i.f. buyer in a string to cover his liability for demurrage towards his seller by stipulating that he will only pay demurrage to his seller if and to the extent that he actually recovers demurrage from his on-buyer. The independent and free-standing nature of each L&D clause in each contract of sale in a string is so ingrained, however, that extremely clear words are needed to bring about that result. In *The Ama Uglen*,³⁵ a c.i.f. buyer agreed in his purchase contract that demurrage would be payable to his seller as per charterparty "but recoverable to the extent that same *can be recovered*"³⁶ from his sub-buyer. The buyer sought to rebut his seller's claim for demurrage by arguing that the words "can be recovered" were to be construed as "is recovered" and, as the buyer had recovered no demurrage from his sub-buyer, no demurrage was due to the seller. Finding unanimously for the seller, the Court of Appeal construed the words "can be recovered" to mean "can with the exercise of due diligence be recovered".³⁷ In simply presenting a claim for demurrage to his sub-buyer without actively pursuing the claim, the buyer had not exercised due diligence and demurrage was therefore due by the buyer to the seller under the main contract.

Links between the law on laytime and demurrage in charterparties and sale contracts

So far, we have looked at the status of L&D clauses in sale contracts and we have seen that they are considered to establish free-standing duties rather than simply a duty to indemnify the charterer against charterparty losses. The second part of this article is devoted not so much to the link between the clauses themselves as much as to the connection between sale contract L&D clauses and the law of charterparties. More particularly, in operating such sale clauses, should we apply the body of case law which has grown around the construction of L&D clauses in charterparties? Money has turned on this issue in litigation in four different but related contexts: (a) First, in deciding when

35. [2001] 1 Lloyd's Rep. 512.

36. Emphasis added.

37. Emphasis added. In *Socap International v. Marc Rich* [1990] 2 Lloyd's Rep. 175, Saville, J., held that a clause in an f.o.b. contract restricting the buyer's right to demurrage from the seller "to the extent that Seller is able to recover such demurrage from his Supplier" should be construed to mean that the buyer could only recover demurrage from the seller if the seller actually "recovers" demurrage from *his* seller and that as he had not, neither could the buyer. The Court of Appeal in *The Ama Uglen* considered Saville, J.'s decision carefully but declined to follow it, first distinguishing it on the basis that it was dependent on its own particular facts and on the form in which it was pleaded and then (perhaps rather more convincingly) emphasizing that Saville, J., too had added the caveat that the sellers were under a duty of due diligence in recovering demurrage from their suppliers: see [2001] 1 Lloyd's Rep. 512, 515, 518.

laytime starts under a sale contract, does laytime start so soon as the vessel arrives, such that the risk of congestion at a loading or discharge port is passed by the charterer to his counterparty under the sale contract? (b) Secondly, where the sale contract provides for a notice of readiness, does laytime start when the notice of readiness is validly given by the master under the charterparty or only when the goods are actually made available to the buyer? (c) Thirdly, where a c.i.f. seller's obligation to load is subject to a condition precedent, e.g., the procuring of a letter of credit by the buyer, can laytime start despite the non-occurrence of the condition precedent? (d) Finally, does a demurrage clause in a sale contract state the entire remedy in damages for delay? We shall see that the answer given by the courts to these questions betrays on occasion a misplaced tendency to apply charterparty law to sale contracts, a trend which sits ill with the independent nature of the sale clauses and, moreover, one which has at times led to surprising results for traders. The four issues will be dealt with in ascending order of the courts' affinity for charterparty analysis in sale disputes.

(a) *Can laytime start so soon as the ship has "arrived"?*

Where a charterparty names a port as the terminus for loading or discharge, then, subject to any term in the charterparty stipulating for the giving of a notice of readiness, laytime starts so soon as the ship reaches the agreed terminus, i.e., so soon as the ship has "arrived" at the port. The precise ambit of the port consequently becomes an issue between owner and charterer: any time spent idle between "arrival" and actually berthing for the benefit of the charterer eats into the laytime agreed in the charterparty and brings closer the moment at which the owner starts earning demurrage. There is on this what Staughton, L.J., called in *Ets Soules v. Intertradex*³⁸ "a great deal of learning in the books". The issue in the case was, however, a novel one in that the same issue—who bore the risk of congestion between the arrival of the vessel at the port and her berthing?—arose not as between owner and charterer under the charterparty but as between seller and buyer under the sale contract. The sale contract, concluded c.i.f. free out Lorient (a French port), had its own terms as to discharge and demurrage with no reference to a charterparty. On arrival at Lorient, the vessel waited 13 days for a berth and the issue was whether laytime ran during that period. Travelling down the charterparty route, eight trade arbitrators found that it had, a matter which gave both judges who gave judgments in the Court of Appeal some pause for thought.³⁹ Despite this, however, the Court of Appeal found that the laytime did *not* run against the buyer while the vessel was waiting for a berth.⁴⁰ Staughton, L.J., put it thus:⁴¹

To undertake a liability for demurrage while the vessel is in port but waiting for a berth would be an open-ended commitment in a contract for the purchase of what must probably be a part cargo.

38. [1991] 1 Lloyd's Rep. 378, 383. See, e.g., Cooke, paras 15.26–15.30.

39. See Staughton, L.J., and Neill, L.J. [1991] 1 Lloyd's Rep. 373, 386.

40. Some standard terms make it explicitly clear that time will only run once the vessel berths; see the Argentine Centro terms: "*Loading rate*. Once vessel is berthed alongside berth suitable to sellers and ready to load this parcel, sellers guarantee, provided that the vessel is able to receive, a minimum average loading rate of 500 tonnes per weather working day"

41. [1991] 1 Lloyd's Rep. 378, 386 (emphasis added).

It would also be open-ended for a full cargo . . . I would require rather clearer words before holding that the buyers had assumed such a liability *in this case*.

Neill, L.J., was as clear in his view that, in fixing the start of laytime in a sale contract, overriding regard should be had to the nature of the sale contract rather than to the charterparty origins of laytime. He said:⁴²

It is important to remember throughout that this is a contract between sellers and buyers. *The contract clearly contemplates the shipment of goods but it contains no direct reference to a charterparty or to any of the provisions to be found in a charterparty relating to, for example, the tender of a notice of readiness . . .* The natural meaning to be placed on any stipulation as to the time of discharge between seller and buyer is that the time should run from the moment the seller places the goods at the disposal of the buyer.

This then is a case where the Court of Appeal rightly construed the L&D clause in a sale contract as a sale clause, working back from the moment at which the buyer would reasonably have expected to start paying for congestion. There is, however, some cause for concern about the two parts of the judgments where emphasis has been added. Their Lordships here left room for a different result where the discharge clause in the sale contract referred to the charterparty or provided for a notice of readiness, both features absent in the case before the court. It is, with respect, difficult to see why either circumstance should make any difference to the result. Incorporating, say, the loading, discharge, demurrage or despatch rate from the charterparty into the sale contract does not change the nature of the sale contract into which those rates have been incorporated. Such incorporation helpfully provides the mathematical values necessary for the computation of laytime and demurrage but should not transplant lock stock and barrel *the law* of laytime and demurrage from a charterparty habitat into a sale environment. Likewise, it is difficult to see why a term in a sale contract stipulating for a second key to start laytime, namely the giving of a notice of readiness, should lead to the conclusion that the parties intended the risk of congestion to fall on the buyer. To transplant charterparty discourse about “arrived ships” to sale contracts would have the unwelcome result, reached in the overturned arbitral awards in *Ets Soules v. Intertradex*⁴³ itself, of classifying c.i.f. sale contracts as “port” or “berth” sale contracts, a distinction which makes far less sense on a trading desk than it does in a freight department.

(b) *The notice of readiness: vessel or goods?*

The result of *Ets Soules v. Intertradex*, then, is that, at any rate where there is no provision made, either explicitly or by incorporation from the charterparty, for the giving of a notice of readiness, laytime runs from the moment the seller places the goods at the disposal of the buyer. It has been suggested above that, even where the sale contract provides for a notice of readiness, laytime still runs from that moment provided a valid notice of readiness has been given, such that the risk of congestion remains with the c.i.f. seller/charterer.

42. *Ibid.*, 388 (emphasis added).

43. See *ibid.*, 387.

The question remains, however, where provision is made for a notice of readiness: for that notice to start laytime running against the buyer under the sale contract, is it enough for the *vessel* to be ready to discharge in the sense in which a vessel needs to be ready to discharge for a notice given under a charterparty to be valid? Or must the *goods* themselves actually be available for discharge in the sense that the traders involved are happy for the goods to be discharged? It would seem to follow from Neill, L.J.'s words in *Ets Soules v. Intertradex*⁴⁴ that "time should run from the moment the seller places the goods at the disposal of the buyer" that, if the goods are not available for discharge because of some dispute under the sale contract, or within the string where there is a string, laytime cannot run under the sale contract. If the L&D clause in the sale contract is a free-standing clause in the sale contract, surely it would follow that any terms regarding the notice of readiness need to be coloured not by the law of charterparties but by the basic purpose of the contract of sale, i.e., the discharge of goods into the hands of a buyer.

This issue arose for decision in *Gill & Duffus v. Rionda*.⁴⁵ It will be recalled that the claimant here was a c.i.f. seller in a string, not himself the charterer, pursuing his buyer's guarantor for demurrage under his sale contract. The buyer's on-sale provided for payment by a letter of credit which the on-buyer had failed to open, as a result of which the buyer himself passed instructions up the string to the carrier that the goods should not be discharged. One of the grounds on which the buyer (unsuccessfully) rebutted the seller's claim for demurrage under the sale contract was that the master's notice of readiness was invalid: for it to be valid *under the sale contract* the vessel needed to be not only ready *but willing* to discharge the goods; the vessel here, acting under instructions emanating from the buyer himself, was unwilling to discharge and the notice was therefore invalid. Clarke, J., doubtless influenced by the fact that it was the buyer himself who had given the instructions which the buyer was now saying rendered the notice of readiness invalid, rejected the argument. Clarke, J., observed that the clause in the sale contract stated "master allowed to tender his notice by radio": this was consequently a master's notice, to be given in the usual way under a charterparty and consequently to be regarded as valid if the *vessel* was ready to discharge, whether or not the buyer could actually gain access to the goods.⁴⁶

While it is difficult to argue with the result of this part of Clarke, J.'s judgment on the facts of *Gill & Duffus v. Rionda*, we are left with something of an inconsistency between the thinking behind this case and that of the Court of Appeal in *Ets Soules v. Intertradex*: why does laytime start running against a buyer despite the fact that he cannot get at the goods (*Gill & Duffus v. Rionda*) but does *not* run against him if he cannot get at the ship because of congestion (*Ets Soules v. Intertradex*)? To put it another way, why does the law on charterparties dictate the validity of one of the two starting keys for laytime, *viz.* the notice of readiness, but not the other, *viz.* the arrival of a vessel? It is, of course, easy to

44. *Ibid.*, 383.

45. [1994] 2 Lloyd's Rep. 67, esp. at 74–78.

46. The same issue had previously arisen, slightly more peripherally, in *The Epaphus* [1987] 2 Lloyd's Rep. 215, a Court of Appeal judgment curiously not cited in argument on this point in *Gill & Duffus v. Rionda*. In *The Epaphus*, a c.i.f. seller recovered demurrage from his buyer, laytime running at a period where discharge was held up by port authorities because of infestation: "[t]he infestation affected only the readiness of the cargo to be discharged, not the readiness of the vessel to discharge that cargo which is quite different": see at 220, *per* Donaldson, M.R.

distinguish the two cases on the narrow basis that there was no term regarding a notice of readiness in *Ets Soules v. Intertradex*⁴⁷ and there is therefore no technical conflict between the cases. However, the underlying thinking regarding the link between the clause in the sale contract and the law of charterparties remains uncomfortable.

The practical upshot is that, given Clarke, J.'s willingness in *Gill & Duffus v. Rionda* to colour a notice of readiness clause in a sale contract with charterparty hues, traders may wish to consider whether they want or need to introduce a second key for the start of laytime in their sale contracts and, if so, whether the terms for such a notice could or should be so drafted as to avoid any unwelcome surprises when the notice becomes relevant to a dispute between the counterparties to the sale contract.

(c) Laytime and the obligation to load

Similar drafting considerations might have avoided a rather unwelcome surprise which befell the seller in the recent case of *Kronos Worldwide Ltd v. Sempra Oil Trading*.⁴⁸ In this case, His Honour Judge Chambers, Q.C., applied an L&D clause in an f.o.b. sale contract in exactly the same way as he would have done had the claim for demurrage been brought by a shipowner against a charterer. Demurrage was claimed by an f.o.b. buyer against his seller,⁴⁹ who disputed liability on the basis that laytime had not started running against him because laytime at loadport could only start under the contract of sale when the seller was under a duty to load: as the buyer had not opened a letter of credit by the end of the laycan period under the contract of sale, there was no obligation to load and consequently the loading-time meter, laytime, could not have started. Possibly influenced by the fact that the seller had no cargo to load at the relevant time in any event, the judge held that laytime ran simply in accordance with the terms of the L&D clause in the sale contract, unaffected by the underlying contractual position between the parties regarding the seller's obligation to load. The reasoning was, with respect, somewhat curious: although the L&D clause in the sale contract "did not operate as an indemnity",⁵⁰ the judge did

not think that a postponement of the seller's obligation to load is synonymous with what constitutes the commencement of "laytime" in the present context. It seems to me that to treat the two situations as the same would involve an impermissible elision of [the buyer's] obligation for demurrage under the charterparty *at which the demurrage provision in the contract is aimed* and the separate contractual position between the parties arising from the failure promptly to open the letter of credit.⁵¹

The part of the text to which emphasis has been added reveals what is, with respect, the difficulty at the centre of the judgment. The *aim* of the L&D clause in a sale contract may well be to cover the charterer against charterparty liabilities. However, if (as the judge himself pointed out) such a clause does *not* create an indemnity but an independent, free-

47. As indeed it was in the case itself: see [1994] 2 Lloyd's Rep. 67, 77.

48. [2003] EWHC 378; (2003) LMLN 610.

49. The claimant in the litigation was actually the seller, claiming payment of an amount equivalent to the buyer's claim for demurrage which the buyer had deducted from a sum paid in settlement of another dispute under another sale contract.

50. See para. [18].

51. Para. [17] (emphasis added).

standing obligation, then it should, once it is transplanted from the world of charterparties, be embedded into its new habitat, the world of sales, and must therefore be affected by the underlying contractual position obtaining between the parties to *that* contract. Any other view would lead to the remarkable result that a buyer could use the stick of demurrage to force a seller to load goods for the payment of which he has not yet been secured through the opening of the agreed letter of credit. Charterparty “principle” will then have prevailed over the essential mechanics of a sale contract.

(d) Does a demurrage clause in the sale contract liquidate the parties’ entire remedies for delay?

The notion that L&D clauses in sale contracts bring with them into that contract all the learning associated with such clauses in charterparties was perhaps most explicitly adopted by Potter, J., in *The Bonde*.⁵² The f.o.b. contract in that case imposed a loading rate on the sellers backed up by an obligation to pay demurrage if that rate was not reached. The contract also contained a clause allowing the seller to recover carrying charges from the buyer unless the ship was presented within the shipment period, which it was not. The seller exceeded the laytime and the quantum of demurrage was agreed and settled between the parties. In an attempt to reduce his liability to demurrage, however, the seller sought to recover against the buyer under the carrying charges clause. One of the arguments put forward by the buyer in his defence was that, if the seller were allowed his carrying charges, the buyer would simply be able to claw those charges back as loss caused by the seller’s failure to reach the loading rate. The debate before the court revolved around the charterparty principle that demurrage liquidates the entire sum recoverable for losses caused by delay in loading or discharge, unless the claimant can establish that the additional loss claimed is of a different character from loss of use of the vessel and arises from breach of a duty additional to that of loading within the laytime. Battle was joined between the parties as to whether that principle fell to be applied in the context of a sale contract. Arguing against drawing a direct analogy, the buyers urged that, whereas delay in a charterparty led in the vast majority of cases exclusively to the owner’s inability to use the ship, a seller’s delay in loading a vessel could far more commonly lead to other commercial losses, for example where the price of the goods was dependent on the completion of loading as recorded in the bill of lading date. The buyers consequently argued that it simply did not make sense to apply charterparty principles to a laytime and demurrage clause once this had been transplanted into its new sale environment. Potter, J., was not impressed:⁵³ “. . . the importation of the charterparty ‘regime’ into the Sale of Goods Act regime so far as the incidence of demurrage is concerned should carry with it *mutatis mutandis* the restrictions which apply to the parties’ remedies so far as breach of the laytime/loading rate provision is concerned.” This represents the most explicit example of a judicial tendency to apply to sale clauses the rules developed by the courts for the construction and application of L&D clauses in charterparties.

52. [1991] 1 Lloyd’s Rep. 136.

53. *Ibid.*, 143.

Conclusion

It may be said that this does not matter, that the cross-over between one set of rules and another contract is a matter of purely academic interest. However, the cases examined in the second part of this paper were all cases in which money turned on this precise issue: practical remedies for sellers or buyers depended on whether the clause should be severed from its charterparty parentage. Moreover, can—and should—we really assume that traders and execution officers responsible for speedily drafting the contract notes which are the daily stuff of international trade are familiar with the interstices of the law of laytime and demurrage in charterparties as it has been and continually is developed in the Commercial Court and beyond?

If unwelcome surprises are to be avoided, it seems advisable to start from first principles: what exactly do traders want or need in an L&D clause? They need a clause which covers them against charterparty losses—possibly with a bit left over—where those losses are the result of delay caused by the counterparty to the sale contract. Concentrating on that purpose and bearing in mind the result of the decided cases, several practical questions arise. First, should the loading and discharge code in the sale contract appear in traders' or trade associations' standard terms and conditions or should they be left to *ad hoc* negotiation in contract notes? Secondly, should that code be as complete as possible, covering loading or discharge periods or rates, demurrage and despatch, or is it enough for only some of those matters to be covered explicitly, leaving other matters to be governed "as per charterparty"? Thirdly, does the introduction or incorporation of a stipulation for the giving of a notice of readiness make the start of laytime more or less predictable as between seller and buyer? Finally—and perhaps most radically—should a loading and discharge code in a sale contract actually be called a "laytime and demurrage clause"?