

Description of the vessel

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Description of the vessel, naturally, is very important to both sides of charterparty contract, because it outlines particulars and characteristics of the subject-matter of contract. Therefore charterers have a right to insist on punctual compliance with these provisions. In their turn the shipowners must tender the actual ship as per description in charter and, in the absence of a clearly drafted substitution clause, they are neither bound nor entitled to tender another ship³.

In spite of importance of these provisions not every aspect of the vessel's description is a condition, non-compliance with which would entitle the charterer to terminate the contract. Contrary to the earlier practice, which in absence of the notion of innominate term, considered most of descriptive stipulations as condition precedent because of the opposite party's reliance on them, the modern view was formed on decision in celebrated case *Hong Dong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd* [1962] 1 All ER 474, [1962] 2 QB 26⁴. In *Reardon Smith Line v Hansen Tangen (The Diana Prosperity)* [1976] 2 Lloyd's 621, Lord Wilberforce in answer to the charterers' argument that by analogy with contracts for the sale of goods, any departure from the description entitled the other party to reject, said:

The general law of contract has developed, along much more rational lines (e.g. Hong Dong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd) in attending to the nature and gravity of a breach or departure rather than in accepting rigid categories which do or do not automatically give a right to rescind, ...

Thus, generally⁵, the name of the ship is not treated as a condition of the contract and a change of name would not normally allow the charterer to rescind the contract.

Taking into account this modern approach many descriptive items are likely to be regarded as intermediate terms today, despite earlier authorities which treated them as conditions. For example in *Behn v Burness* (1863) 3 B & S 751 it was held that the statement of the place of the ship is a substantive part of the contract and therefore is a condition. Williams J said in that case⁶:

³ *Niarchos (London) Ltd v Shell Tankers Ltd* [1961] 2 Lloyd's Rep 496; *Terkol Rederierne v Petroleo Brasileiro SA and Frota Nacional de Petroleiros (The Badagry)* [1985] 1 Lloyd's Rep 395, CA.

⁴ Per Diplock LJ at p.486

⁵ Unless the shipowner has expressly promised not to alter the name of the ship, or unless it can be shown that the name of the ship was of material commercial significance to the charterer.

⁶ At p.759