

DEMURRAGE AND THE AVAILABILITY OF GENERAL DAMAGES

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1 Introduction

Demurrage is an amount payable by the charterers to the owners for detention of the vessel beyond the agreed laytime. Demurrage compensates the owners for the loss of freight. The demurrage provision in the charterparty quantifies the amount of compensation.

The owners may seek to recover general damages in addition to (or in lieu of) demurrage. The availability of such damages was first recognised in England in 1926 but has been the subject of controversy ever since. The matter has not been considered in Australia. The English Court of Appeal recently revisited the availability of general damages in addition to demurrage in *ERG Raffinerie Mediterranee SpA v Chevron USA Inc (The Luxmar)*.¹

The Luxmar considers the four central matters which determine whether the owners can recover general damages, which this article will examine:

- (1) the nature of demurrage;²
- (2) the nature of the breach;³
- (3) whether general damages are recoverable;⁴ and
- (4) the circumstances in which the owners may recover general damages.⁵

It is well established that general damages may be awarded in addition to demurrage. However, the circumstances in which such damages are recoverable remains contentious. The authorities establish that damages are available where there is a breach additional to, or separate from, the detention of the vessel. Until *The Luxmar*, it was widely considered that general damages were also available where the owners incur an additional loss. *The Luxmar* confines an award of general damages to where there is a breach additional to, or separate from, the failure to load within the lay days and/or at the agreed rate.⁶

Further, the availability of general damages turns on the circumstances of the case. The construction of the demurrage provision in the charterparty is significant. The nature of demurrage is also significant. This article suggests that the court should draw a distinction between demurrage and other damages. To define demurrage as damages for breach of the laytime/demurrage provision causes confusion as to whether general damages are available in addition to demurrage. The circumstances in which general damages should be awarded would be more easily determined were demurrage defined as a payment for the use of the ship beyond the agreed lay days rather than damages for breach of the laytime/demurrage provision.

2 Scenario

The issue of whether general damages are available in addition to demurrage arises in circumstances where:

- (a) the vessel is under a voyage charter;
- (b) the charterparty contains a laytime clause;⁷

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¹ [2007] 2 Lloyd's Rep 542 (CA (Civ Div)), on appeal from *ERG Raffinerie Mediterranee SpA v Chevron USA Inc (The Luxmar)* [2006] 2 Lloyd's Rep 543 (QBD (Comm)).

² See Part 4 below.

³ See Part 5 below.

⁴ See Part 6 below.

⁵ See Part 7 below.

⁶ *ERG Raffinerie Mediterranee SpA v Chevron USA Inc (The Luxmar)* [2006] 2 Lloyd's Rep 543, [58], citing *Richco International Ltd v Alfred C Toepfer International GmbH (The Bonde)* [1991] 1 Lloyd's Rep 136, 143 (QBD (Comm)).

⁷ For standard form laytime clauses see eg:

Shellvoy 5: 'The laytime for loading, discharging and all other Charterers' purposes whatsoever shall be the number of running hours specified in Part I(I). Charterers shall have the right to load and discharge at all times, including night, provided that they shall pay for all extra expenses incurred ashore.'

- (c) the charterparty contains a demurrage clause;⁸
- (d) the vessel is detained in port beyond laytime;
- (e) the detention is not caused by the owners; and
- (f) the owners seek to recover general damages on account of:
 - (1) an additional or separate breach; and/or
 - (2) an additional loss.

3 Commercial Context

The issue arises where the vessel is under a voyage charter. A voyage charter is a contract for the hire of a vessel for a particular voyage. The owners promise to carry on board a specific ship a particular cargo from port A to port B. The charterers pay freight in return for the owners' performance of the voyage.⁹ In the normal course of events, the charterers are responsible for loading and discharging the cargo. Where the charterers are responsible for the cargo operations they are also responsible for the efficiency of loading and discharge.¹⁰ The charterparty allows the charterers a certain time for loading and discharging the vessel. This period is termed laytime. Where the charterers fail to load and/or discharge the vessel within the specified laytime, the charterers are liable to pay for the additional time during which the vessel remains in port at the rate agreed in the charterparty. This payment is termed demurrage. This reflects the apportionment of liability under a voyage charter — the owners are liable for delay in connection with transit; the charterers for delay in loading and discharge.¹¹

4 Demurrage

Demurrage is a standard provision in a voyage charterparty.¹² Demurrage is an amount payable by the charterers to the owners for detention of the vessel beyond the agreed laytime.¹³ The owners are not entitled, merely because the lay days have expired, and the contract is not completed, to treat the contract as at an end and withdraw the ship.¹⁴ Time is not of the essence of the contract, even if the number of lay days for loading or discharging is fixed.¹⁵ The nature and purpose of demurrage is compensation for the owners' loss of the use of the vessel.¹⁶ Detention of the vessel prevents the owners using the vessel as a freight-earning instrument.¹⁷ Demurrage is provided for in the charterparty so that, if the vessel has to remain in port in order to enable the charterers to complete loading or discharge, the compensation to be paid for detention is certain.¹⁸ On proof of detention exceeding laytime, the owners are entitled to the demurrage payments without proof of the loss they have suffered as a consequence.¹⁹ In *Chandris v Isbrandtsen-Moller Company*,²⁰ Devlin J considered that the demurrage rate presumably reflects the parties' estimate of the loss of prospective freight which the owners are likely to suffer if the ship is detained beyond the lay days.²¹

Gencon: 'The cargo shall be loaded and discharged within the number of total running days/hours indicated in Box 1, weather permitting, Sundays and holidays excepted, unless used, in which event time used shall count.'

⁸ For standard form demurrage clauses see eg:

Shellvoy 5: 'Charterers shall pay demurrage at the rate specified in Part I(J). [...] Demurrage shall be paid per running day or pro rata for part thereof for all time which, under the provisions of this charter, counts against laytime or for demurrage which exceeds the laytime specified in Part I(I). Charterers' liability for exceeding the laytime shall be absolute and shall not in any case be subject to the provisions of Clause 32.'

Gencon: 'Demurrage at loading and discharging port is payable by the Charterers at the rate stated in Box 20 in the manner stated in Box 20 per day or pro rata for any part of a day. Demurrage shall fall due day by day and shall be payable upon receipt of the Owners' invoice.'

⁹ Gorton, L, Hillenius, P, Ihre, R, and Sandevan, A, *Shipbroking and Chartering Practice* (6th Ed, 2004), 113.

¹⁰ Ibid.

¹¹ Ibid, 114-115.

¹² *R & H Hall v Vertom Scheepvaart en Handelsmaatschappij BV (The Lee Francis)*, (QBD (Com Ct)), Steyn J, 18 May 1989, LMLN 253 (15 July 1989).

¹³ *Inverkip Steamship Co Ltd v Bunge & Co* [1917] 2 KB 193 (CA), 200 and 201 (Scrutton LJ); see Summerskill, M, *Laytime* (4th Ed, 1989), 247; see also Voylarules 1993: "'Demurrage" shall mean an agreed amount payable to the Owner in respect of delay to the vessel beyond the laytime for which the Owner is not responsible ...'; Baltic Code 2000: '26. DEMURRAGE - an agreed amount payable to the owner in respect of delay to the vessel beyond the laytime, for which the owner is not responsible. Demurrage shall not be subject to exceptions which apply to laytime unless specifically stated in the charterparty.'

¹⁴ *Aktieselskabet Reidar v Arcos Ltd* (1926) 25 Ll L Rep 513, 515 (CA) (Bankes LJ).

¹⁵ Ibid, 515 (Bankes LJ).

¹⁶ *ERG Raffinerie Mediterranee SpA v Chevron USA Inc (The Luxmar)* [2007] 2 Lloyd's Rep 542, [4].

¹⁷ *Suisse Atlantique Societe d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale* [1965] 1 Lloyd's Rep 533, 541 (CA) (Diplock LJ).

¹⁸ *Aktieselskabet Reidar v Arcos Ltd* (1926) 25 Ll L Rep 513, 515 (Bankes LJ).

¹⁹ *Suisse Atlantique Societe d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale* [1966] 1 Lloyd's Rep 529, 542 (HL) (Lord Dilhorne).

²⁰ (1950) 83 Ll L Rep 385 (KBD).

²¹ Ibid, 395.

The English courts have not articulated a definitive statement of what is meant by demurrage. The issue has been explored in few cases. What demurrage includes and what it circumscribes remains uncertain. A satisfactory statement of the principle in its proper context is articulated by Scrutton LJ in *Inverkip Steamship Co Ltd v Bunge & Co*.²²

The sum agreed for freight in a charter covers the use of the ship for an agreed time for loading or discharging, known as 'the lay days,' and for the voyage. But there is almost invariably a term in the agreement providing for an additional payment, known as demurrage, for detention beyond the agreed lay days. This is sometimes treated as agreed damages for detaining the ship, sometimes as an agreed payment for extra lay days. [...] The mere fact that the charterer has not loaded the ship in the lay days does not entitle the shipowner to withdraw the ship from the service; and whether the payment for these days after the lay days on which the ship is detained is treated as agreed liquidated damages or as an agreed payment for the time which the charterer has a right to use at his option, the amount to be paid for these days is fixed by the charter.²³

5 Breach

The availability of general damages where there has been a single breach or multiple breaches of the charterparty are two distinct issues, have separate authorities and result in different conclusions. The two circumstances must be treated as distinct. It is therefore necessary to determine whether the facts disclose a single breach or multiple breaches. However, whether there has been a single breach or multiple breaches may be difficult to determine.

The three leading cases are the English Court of Appeal decisions in *The Luxmar*, *Inverkip Steamship Co Ltd v Bunge & Co*, and *Aktieselskabet Reidar v Arcos Ltd*.²⁴ *The Luxmar* and *Inverkip Steamship Co Ltd v Bunge & Co* concern a single breach. *Aktieselskabet Reidar v Arcos Ltd* concerns multiple breaches.

5.1 Single Breach

5.1.1 *The Luxmar*

The Luxmar is the most recent decision concerning a single breach. The decision affirms the earlier decision of the Court of Appeal and the leading case concerning single breach, *Inverkip Steamship Co Ltd v Bunge & Co*.²⁵

In *The Luxmar*, ERG agreed to sell to Chevron FOB ISAB Refinery North Side Priolo Terminal 30 000 mt +/- 10 per cent of gasoline at Chevron's option.²⁶ The contract specified laycan,²⁷ laytime²⁸ and demurrage.²⁹ Chevron nominated the vessel *Luxmar* to load the cargo. The vessel arrived at the loading port and issued notice of readiness to load. The cargo was not ready because of problems at ERG's plant. Four days after the expiry of the laycan period, Chevron terminated the contract on the basis that ERG was in breach of its obligation to deliver the cargo. ERG claimed Chevron was not entitled to terminate the contract. Chevron counter-claimed for general damages on account of late delivery of the cargo in addition to demurrage.

²² [1917] 2 KB 193 (CA).

²³ Ibid, 200-201; applied, *ERG Raffinerie Mediterranee SpA v Chevron USA Inc (The Luxmar)* [2006] 2 Lloyd's Rep 543, [52]; see also *Lockhart v Falk* (1874-75) LR 10 Ex 132, 135 (Cleasby B).

²⁴ (1926) 25 Ll L Rep 513 (CA).

²⁵ [1917] 2 KB 193.

²⁶ [2006] 2 Lloyd's Rep 543, 544.

²⁷ Clause 7 of the written contract read:

'BUYER WILL NARROW SUCH PERIOD TO A TWO DAY LAYCAN LATEST BY 21/05/2004 C.O.B. ITALIAN TIME. THE LAYCAN IS AN ESSENTIAL ELEMENT OF THE CONTRACT IN FAVOUR OF THE SELLER.'

²⁸ Clause 9 of the written contract read:

'36 RUNNING HOURS SHINC WEATHER PERMITTING PLUS 6 HOURS NOTICE ALWAYS DUE, (NOTICE OF READINESS MUST BE TENDERED ONLY AFTER THE VESSEL HAS ARRIVED WITHIN THE CUSTOMARY ANCHORAGE) PROVIDED VESSEL CAN RECEIVE THE TOTAL CARGO IN A PERIOD OF TIME EQUIVALENT TO THE TWO THIRDS OF THE AGREED LAYTIME HOURS. IF THE VESSEL TENDERS N.O.R. TENDERED AT LOADPORT OR UPON BERTHING, WHICHEVER IS EARLIER AND EXPIRE AT HOSES DISCONNECTION, OR RECEIPT OF DOCUMENTS, WHICEVER IS EARLIER. TIME USED FROM HOSES DISCONNECTIONS TILL RECEIPT OF DOCUMENTS ON BOARD SHALL BE EQUALLY SHARED BETWEEN BUYER AND SELLER AFTER THE THREE HOURS USUALLY GRANTED BY SHIP.'

²⁹ Clause 10 of the written contract read:

'DEMURRAGE, IF ANY, WILL BE REQUESTED BY BUYER ONLY IF SHIP-OWNERS ACTUALLY CLAIM IT. DAILY RATE AS PER CHARTER PARTY'

The Court of Appeal affirmed the decision of Langley J at first instance that Chevron was entitled to demurrage as provided for in the demurrage provision but not to general damages for delay.³⁰ Langley J approved *Inverkip Steamship Co Ltd v Bunge & Co*.

5.1.2 *Inverkip Steamship Co Ltd v Bunge & Co*

Inverkip Steamship Co Ltd v Bunge & Co governs the circumstance where there is a single breach. In *Inverkip Steamship Co Ltd v Bunge & Co*, the only breach was detention of the vessel. The charterparty provided that the vessel *Inverkip* should proceed to the loading port to load a cargo of grain. Shortly before the vessel arrived, a tidal wave struck and damaged the shipping facilities at the loading port. The charterers nominated an alternate port. However, at the alternate port there were long delays due to port congestion. The vessel was loaded four weeks after laytime expired.³¹ The owners claimed they were entitled to recover damages of an unliquidated amount in addition to the rate of demurrage fixed by the charterparty. The Court of Appeal held that the owners could only claim the fixed rate of demurrage in the charterparty.³²

5.2 Multiple Breach

In circumstances where multiple breaches have occurred, the charterers' liability is governed by *Aktieselskabet Reidar v Arcos Ltd*. The case raised a question of considerable general importance in shipping circles.³³ It has been discussed in relation to the availability of damages in addition to demurrage for 80 years and remains of continuing importance. However, the case is problematic on account of the three individual and largely inconsistent judgments of Atkin, Bankes and Sargant LJ.

In *Aktieselskabet Reidar v Arcos Ltd*, the owners brought an action for breach of the charterparty. The owners alleged that the charterers failed to load a full and complete cargo.³⁴ The question was whether the breach was satisfied by payment of demurrage at the stipulated rate or whether general damages fell upon the charterers in addition to demurrage.³⁵

The facts of the case require initial consideration. Bankes LJ identified the material facts (as he saw them). The charterers ordered the vessel to load a complete cargo of timber and sail to a port in the United Kingdom, Northern France, Holland or Belgium at the charterers' option. The charterparty detailed the requirements for loading and discharge.³⁶ The vessel was delayed in completing her previous voyage. The charterers nominated a port in the United Kingdom. The *Merchant Shipping Act 1906* (UK) prohibited a vessel carrying a deck cargo higher than its rails after 30 October. If loading was performed at the agreed rate, fully loaded the cargo was 850 standards and the ship could sail before 20 October. The cargo was not loaded at the agreed rate and by 23 October, the last day by which the vessel had to sail to reach a port in the United Kingdom by 30 October, only 544 standards had been loaded. The master refused to take any more cargo, stating in the deck log that the cargo was level with the height of the rails.

The members of the Court of Appeal reached the same conclusion³⁷ but differed on the number and nature of the breach(es). Bankes LJ considered the facts disclosed one breach — breach of contract to load at the stipulated rate, giving rise to two distinct claims, one, detention of the vessel, two, loss of freight.³⁸ Sargant LJ determined there were two breaches — one, breach of contract to load a full and complete cargo and two,

³⁰ [2006] 2 Lloyd's Rep 543, [59]; affirmed, [2007] 2 Lloyd's Rep 542, [24].

³¹ The charter provided:

'Steamer to be loaded according to berth terms, with customary berth despatch, and if detained longer than five days, Sundays and holidays excepted, charterers to pay demurrage at the rate of four pence British sterling, or its equivalent, per net register ton per day, or pro rata, payable day by day, provided such detention shall occur by default of charterers or their agents.'

³² *Inverkip Steamship Co Ltd v Bunge & Co* [1917] 2 KB 193, 204 (Scrutton LJ), 198 (Warrington LJ), 204 (Lord Cozens-Hardy MR).

³³ *Aktieselskabet Reidar v Arcos Ltd* (1926) 25 Ll L Rep 513, 514 (Bankes LJ), 516 (Atkin LJ).

³⁴ (1926) 25 Ll L Rep 513, 514 (Bankes LJ).

³⁵ *Ibid*, 514 (Bankes LJ), 516 (Atkin LJ).

³⁶ The clause dealing with the loading and discharging was, so far as was material, in the following terms: 'Steamship to be reckoned as a four-hatch steamship, and the cargo to be loaded at the rate of 80 standards per weather working day for deals and battens and 60 standards for other goods. Should the steamer be detained beyond the time stipulated for loading, demurrage to be paid at 24 pounds per day and pro rata for any part thereof.'

³⁷ See Part 6.2 below.

³⁸ (1926) 25 Ll L Rep 513, 516; see *Suisse Atlantique Societe d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale* [1965] 1 Lloyd's Rep 166, 176 (Mocatta J); *Suisse Atlantique Societe d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale* [1965] 1 Lloyd's Rep 533, 541 (Diplock LJ); *Total Transport Corporation v Amoco Trading Co (The Altus)* [1985] 1 Lloyd's Rep 423, 433.

detention of the vessel — giving rise to separate recoverable losses.³⁹ As Potter J noted in *Richco International Ltd v Alfred C Toepfer International GmbH (The Bonde)*, Atkin LJ's judgment presents some difficulties in its analysis.⁴⁰ Diplock LJ sitting in the Court of Appeal in *Suisse Atlantique Societe d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale*⁴¹ and Potter J in *The Bonde* were of the opinion that Atkin LJ determined there were two breaches. Webster J in *Total Transport Corporation v Amoco Trading Co (The Altus)*⁴² disagreed.⁴³ Webster J considered that Atkin LJ decided that there was one breach.⁴⁴ With respect, the former view should be preferred. Atkin LJ determined there were two breaches — one, failure to load a complete cargo by the expiry of laytime; two, the detention of the vessel.⁴⁵ In *Suisse Atlantique Societe d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale*, Sellers LJ considered the majority view as to breach was derived from the decisions of Atkin and Sargant LLJ.⁴⁶ Consequently, the case applies to circumstances where multiple breaches have occurred.

6 Availability of General Damages

6.1 Single Breach

The availability of general damages where there is a single breach, the consequence of which is the detention of the vessel, is governed by *Inverkip Steamship Co Ltd v Bunge & Co* as affirmed by *The Luxmar*.

The Luxmar provides that the owners cannot recover general damages in addition to demurrage where there is a single breach, the delay of the vessel.⁴⁷ Longmore LJ (with whom Buxton LJ and Sir Martin Nourse agreed), affirming the decision of Langley J at first instance,⁴⁸ held that 'where a demurrage figure is contained in a contract it is intended to cover loss for delay and general damages for delay cannot be awarded as well'.⁴⁹

Similarly, in *Inverkip Steamship Co Ltd v Bunge & Co*, Warrington and Scrutton LLJ (with whom Lord Cozens-Hardy, MR agreed) decided that where the only consequence of the breach is detention and the damages for detention are agreed in the charterparty, the owners must accept compensation at the fixed rate in respect of the detention and can recover no more.⁵⁰ Warrington LJ said:⁵¹

[W]hether deliberately or by inadvertence, the parties have provided that the shipowners shall accept compensation at a fixed rate in respect of the detention which as in fact occurred ... they must be content with that.

Similarly, Scrutton LJ said:⁵²

If there was a breach ... the only consequence [of which] is detention of the ship, and damages for that, which is the same detention, however it arises, are agreed in the charter and have been paid ... I can see no valid legal or business reasons for helping them [to get out of their agreement].

The opinions of Mocatta J and Harman LJ in *Suisse Atlantique Societe d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale* support this proposition. *Suisse Atlantique Societe d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale* concerned the availability of general damages where the only breach was

³⁹ (1926) 25 Ll L Rep 513, 518; see *Suisse Atlantique Societe d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale* [1965] 1 Lloyd's Rep 533, 541 (Diplock LJ), 541; *Total Transport Corporation v Amoco Trading Co (The Altus)* [1985] 1 Lloyd's Rep 423, 433 (QBD (Comm)) (Webster J); cf *Suisse Atlantique Societe d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale* [1965] 1 Lloyd's Rep 166, 176 (QBD (Comm)) (Mocatta J).

⁴⁰ *Richco International Ltd v Alfred C Toepfer International GmbH (The Bonde)* [1991] 1 Lloyd's Rep 136, 140 (Potter J).

⁴¹ [1965] 1 Lloyd's Rep 533 (CA).

⁴² [1985] 1 Lloyd's Rep 423 (QBD (Comm)).

⁴³ *Ibid*, 433.

⁴⁴ *Ibid*, 435.

⁴⁵ *Aktieselskabet Reidar v Arcos Ltd* (1926) 25 Ll L Rep 513, 516, 517; see *Richco International Ltd v Alfred C Toepfer International GmbH (The Bonde)* [1991] 1 Lloyd's Rep 136, 141 (Potter J); *Suisse Atlantique Societe d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale* [1965] 1 Lloyd's Rep 533, 541 (Diplock LJ); cf *Suisse Atlantique Societe d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale* [1965] 1 Lloyd's Rep 166, 176 (Mocatta J).

⁴⁶ [1965] 1 Lloyd's Rep 533, 539.

⁴⁷ [2007] 2 Lloyd's Rep 542, [24].

⁴⁸ [2006] 2 Lloyd's Rep 543, [58].

⁴⁹ [2007] 2 Lloyd's Rep 542, [24].

⁵⁰ *Inverkip Steamship Co Ltd v Bunge & Co* [1917] 2 KB 193, 198 (Warrington LJ), 203 (Scrutton LJ).

⁵¹ *Ibid*, 198 (Warrington LJ).

⁵² *Ibid*, 203 (Scrutton LJ).

detention. Mocatta J at first instance said that, ‘for a claim for detention by a shipowner due to the laytime provisions in a charter being exceeded, the demurrage provisions quantify the damage recoverable’.⁵³

Similarly, on appeal Harman LJ made clear:⁵⁴

For breaches of that kind the parties have entered into a conventional figure for damage, which is called demurrage. That being so, there is no room for saying that damages are at large. The parties have agreed that they should not be at large ...

The subsequent decision of the House of Lords on appeal does not affect the validity of these observations.

The view that general damages are available in addition to demurrage where there is a single breach is founded on the individual minority judgment of Bankes LJ in *Aktieselskabet Reidar v Arcos Ltd*. Bankes LJ held:⁵⁵

If the [owners’] claim was in substance, though not form, a claim for detention of the vessel, the special damage here claimed for would not be recoverable. ... [The owners’] claim appears to me to be both in substance and in form *essentially distinct from any claim for detention of the vessel*. ... This loss is, in my opinion, on the facts of this case recoverable as damages for the breach of contract to load at the agreed rate. At one time I was inclined to think that where parties had agreed a demurrage rate, the contract should be construed as one fixing the rate of damages for any breach of the obligation to load or discharge in a given time on further consideration I do not think that such a view is sound.

Consequently, where the only breach is on account of the detention of the vessel, general damages are restricted to the demurrage rate. However, general damages may be available in accordance with Bankes LJ’s *dicta*, where the claim is essentially distinct from any the claim for detention of the vessel.⁵⁶

6.2 Multiple Breaches

The availability of general damages where there are multiple breaches is governed by *Aktieselskabet Reidar v Arcos Ltd*. In *Aktieselskabet Reidar v Arcos Ltd*, the Court of Appeal held that the owners were entitled to damages for the loss of freight on account of the charterers’ breach of their obligation to load a full and complete cargo, in addition to demurrage.⁵⁷ In circumstances where multiple breaches have occurred general damages are available in accordance the following statement:⁵⁸

The provisions as to demurrage quantify the damages, not for the complete breach, but only such damages as arise from the detention of the vessel If however, for reasons other than the shipowner’s default, the charterer becomes unable to do that which he contracted to do ... the breach is never repaired, the damages are not completely mitigated, ... the shipowner may recover the loss that he has incurred in addition to his liquidated damages or his unliquidated damages for detention.

Until the House of Lords considers another case involving multiple breaches and decides to the contrary, or the Court of Appeal departs from its earlier decision,⁵⁹ *Aktieselskabet Reidar v Arcos Ltd* will continue to apply to cases involving a multiple breaches, with the attendant uncertainty which surrounds the decision in the case.

7 Circumstances

The availability of damages in addition to demurrage is generally accepted. However, the circumstances in which such damages can be recovered remains uncertain. The circumstances in which such damages are

⁵³ [1965] 1 Lloyd’s Rep 166, 178.

⁵⁴ [1965] 1 Lloyd’s Rep 533, 540.

⁵⁵ *Aktieselskabet Reidar v Arcos Ltd* (1926) 25 Ll L Rep 513, 516 (Bankes LJ). Emphasis added.

⁵⁶ *Aktieselskabet Reidar v Arcos Ltd* (1926) 25 Ll L Rep 513, 514 (Bankes LJ); see *Adelfamar SA v Silos E Mangimi Martini SPA (The Adelfa)* [1998] 2 Lloyd’s Rep 466; see also *Total Transport Corporation v Amoco Trading Co (The Altus)* [1985] 1 Lloyd’s Rep 423.

⁵⁷ (1926) 25 Ll L Rep 513, 517 (Atkin LJ), 518 (Sargant LJ); cf (1926) 25 Ll L Rep 513, 516 (Bankes LJ) (the loss was recoverable as damages for breach of the obligation to load at the agreed rate). On the ratio decidendi of the case, see *Total Transport Corporation v Amoco Trading Co (The Altus)* [1985] 1 Lloyd’s Rep 423, 436 (Webster J); *Suisse Atlantique Societe d’Armement Maritime SA v NV Rotterdamsche Kolen Centrale* [1965] 1 Lloyd’s Rep 533, 539 (Sellers LJ), 541 (Diplock LJ); *Richco International Ltd v Alfred C Toepfer International GmbH (The Bonde)* [1991] 1 Lloyd’s Rep 136, 140 (Potter J).

⁵⁸ (1926) 25 Ll L Rep 513, 516 (Atkin LJ); cf (1926) 25 Ll L Rep 513, 518 (Sargant LJ); see also *Total Transport Corporation v Amoco Trading Co (The Altus)* [1985] 1 Lloyd’s Rep 423, 433 (Webster J); *Chandris v Isbrandtsen-Moller Company* (1950) 83 Ll L Rep 385, 398 (Devlin J).

⁵⁹ See *Young v Bristol Aeroplane Co Ltd* [1944] 1 KB 718.

available has been the subject of significant difference of judicial opinion.⁶⁰ The case law has explored what is required so that general damages are not circumscribed by the demurrage provision. The authorities establish that in circumstances where multiple breaches have occurred, the owners must establish an additional or separate breach.⁶¹ In circumstances where there is a single breach, the owners must establish additional loss.⁶²

7.1 Additional and Separate Breach

In order to make out a claim for general damages the owners must point to a breach additional to, or separate from, the failure to load within the lay days.⁶³ In *The Luxmar* Langley J came to the conclusion that a separate breach was sufficient. In so concluding Langley J applied the decision of Potter J in the *The Bonde*.⁶⁴ Langley J said:⁶⁵

In *The Bonde*, ... Potter J held that, in order to advance a claim for general damages for delay ..., there had to be a breach additional to or separate from that of failing to load within the laydays and/or at the agreed rate of loading, so as to establish a separate right not circumscribed the right to demurrage.

To obtain general damages in addition to demurrage, therefore, the owners must establish, in accordance with the *ratio decidendi* of *The Bonde*, 'a breach additional to or separate from that of failing to load within the lay days and/or at the agreed rate'.⁶⁶

In *The Bonde*, the sellers sold to the buyers 30 000 tonnes of wheat by FOB contract. The sellers failed to load at the agreed rate.⁶⁷ The sellers claimed the buyers were liable to pay the carrying charges in respect of the time taken by the sellers loading the vessel in excess of the loading time permitted in the contract. The buyers denied liability and the matter was referred to arbitration. The sellers were awarded demurrage the carrying charges. The buyers appealed on the ground that the sellers were limited to the demurrage rate.⁶⁸ Potter J held that no separate right to damage in addition to demurrage arose since the buyers failed to establish an additional or separate breach.

The proposition that the owners must establish a breach additional to, or separate from, the failure to load within the lay days and/or at the agreed rate is logically attractive and has received extensive support from learned commentators.⁶⁹ The decision in *The Bonde* is now widely accepted and is not reasonably challenged.⁷⁰ The further question is whether an additional or separate breach alone is sufficient or whether the owners must also have suffered additional loss.

7.2 Additional Loss and Additional and/or Separate Breach

The proposition that a separate breach is insufficient, and that there must also be additional loss has received some support. In *The Bonde*, Potter J concluded on the law:⁷¹

[T]he opinion I have formed upon analysis of the cases ... is that, where a charter-party contains a demurrage clause, then in order to recover damages in addition to demurrage for breach of the charterers' obligation to complete loading within the lay days, it is a requirement that the plaintiff

⁶⁰ See *Aktieselskabet Reidar v Arcos Ltd* (1926) 25 Ll L Rep 513, 514 and 515 (Banks LJ).

⁶¹ See Parts 7.1 and 7.2 below.

⁶² See Part 7.3 below.

⁶³ *ERG Raffinerie Mediterranee SpA v Chevron USA Inc (The Luxmar)* [2006] 2 Lloyd's Rep 543, [52] (Langley J), citing *Richco International Ltd v Alfred C Toepfer International GmbH (The Bonde)* [1991] 1 Lloyd's Rep 136, 143 (Potter J).

⁶⁴ [1991] 1 Lloyd's Rep 136.

⁶⁵ [2006] 2 Lloyd's Rep 543, [58].

⁶⁶ [1991] 1 Lloyd's Rep 136, 144.

⁶⁷ The special conditions contained in the brokers' sale confirmation contract provided *inter alia*:

'Sellers guarantee to load vessel at the rate of 3,000 metric tons per weather working day of 24 hours, Thursday afternoon/Friday, holidays excluded, even if used. Time to count at 08.00 next business day after Friday/Holiday. Time to begin to count at 00.00 next working day after presentation of notice of readiness, vessel having passed inspection and been declared ready to load.'

⁶⁸ The demurrage provision provided:

'Demurrage/despatch: to be for sellers' account at charter-party rate but maximum 8,000/4,000 US \$/day.'

⁶⁹ McGregor, H, *McGregor on Damages* (14th Ed, 1980), 344; Boyd, S C, Burrows, A S, and Foxton, D, *Scrutton on Charterparties* (20th Ed, 1996), 308; Gay, R, 'Damages in Addition to Demurrage' [2004] LMCLQ 72, 94; Summerskill, above n 13, 268.

⁷⁰ *London Arbitration* 19/80, LMLN 19 (24 July 1980); *California & Hawaiian Sugar Co v The National Cereal & Produce Board of Kenya (The Sugar Islander)*, LMLN 318 (11 January 1992); *Scrutton on Charterparties*, above n 69; Summerskill, above n 13; Schofield, J, *Laytime and Demurrage* (5th Ed, 2005), Baughen, S, *Shipping Law* (3rd Ed, 2004).

⁷¹ *Richco International Ltd v Alfred C Toepfer International GmbH (The Bonde)* [1991] 1 Lloyd's Rep 136, 142 (Potter J) (emphasis added); see also *London Arbitration* 19/80, LMLN 19 (24 July 1980).

demonstrate that *such additional loss is not only different in character from loss of use but stems from the breach of an additional and/or independent obligation.*

Although this statement of law did not form the *ratio decidendi* of *The Bonde*, it is at least persuasive on account of Potter J's extensive survey of the authorities.

Until the House of Lords adopts the contrary position to *The Luxmar*, or the Court of Appeal decides not to follow its earlier decision,⁷² the decision in *The Bonde*⁷³ will dictate the availability of general damages with the consequence that the owners need only prove an additional or separate breach.

7.3 Additional Loss/Single Breach

The more contentious matter regards the availability of damages in addition to demurrage where there is a single breach. *The Luxmar* has placed the owners' ability to recover on this basis into further doubt.

The circumstances in which general damages are recoverable in addition to demurrage where there is a single breach are discussed in the judgments of Evans J in *Adelfamar SA v Silos E Mangimi Martini SPA (The Adelfa)*,⁷⁴ Devlin J in *Chandris v Isbrandtsen-Moller Company*, and Webster J in *The Altus*, along with authoritative statements in *Suisse Atlantique Societe d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale*.

The Adelfa and *The Altus* hold that the owners can recover damages flowing directly or consequentially from the detention of the vessel where owners establish a distinct claim. In both cases there was a single comprehensive breach. In *The Adelfa*, the owners' vessel was detained for five weeks exceeding laytime on account of there being no discharging berth available, and was subsequently arrested by the receivers of the cargo. The owners claimed from the charterers demurrage from the expiry of laytime and the sum paid for the release of the vessel. In *The Altus*, the charterparty provided for a minimum of 40 000 tons of crude oil to be loaded. The charterers loaded only 34 447 tons. The owners claimed that laytime expired before the vessel left the loading port.⁷⁵ The owners sought to recover demurrage and damages for the charterers' breach of their obligation to load the minimum 40 000 tons.

In *The Altus*, Webster J, following the decision of Bankes LJ in *Aktieselskabet Reidar v Arcos Ltd*,⁷⁶ considered that general damages were available in addition to demurrage where 'the shipowner [has] in addition to a claim for demurrage attributable to the breach [on account of detention of the vessel], an "essentially" distinct claim'.⁷⁷

Webster J interpreted the *ratio decidendi* of *Aktieselskabet Reidar v Arcos Ltd*, by which he felt bound (albeit incorrectly, it is suggested),⁷⁸ as being:⁷⁹

[W]here the charterer commits any breach, even if it is only one breach, of his obligation ... to detain the vessel for no longer than the stipulated period, the owner is entitled not only to the liquidated damages directly recoverable ... for the breach of the obligation with regard to detention (demurrage), but also for ... *damages flowing indirectly or consequentially from any detention of the vessel*

⁷² *Young v Bristol Aeroplane Co Ltd* [1944] 1 KB 718.

⁷³ See Part 7.1 above.

⁷⁴ [1988] 2 Lloyd's Rep 466 (QBD (Comm)).

⁷⁵ Clause 7 of the charterparty, so far as material, provided:

'HOURS FOR LOADING AND DISCHARGING. The number of running hours specified in laytime in Part I shall be permitted to the Charterer as laytime for loading and discharging cargo; but any delay due to the Vessel's condition shall not count as used laytime ... Time consumed by the vessel in moving from loading or discharge port anchorage to her loading or discharge berth ... will not count as used laytime.'

Clause 8 provided:

'DEMURRAGE. Charterer shall pay demurrage per running hour and pro rata for a part thereof at the rate specified in Part I for all time that loading and discharging and used laytime as elsewhere herein provided exceeding the allowed laytime elsewhere herein specified.'

⁷⁶ See Part 6.1 above.

⁷⁷ [1985] 1 Lloyd's Rep 423, 433, 434.

⁷⁸ The point is in principle determined by *Inverkip Steamship Co Ltd v Bunge & Co* [1917] 2 KB 193; see *Chandris v Isbrandtsen-Moller Company* (1950) 83 Ll L Rep 385, 398, where Devlin J correctly determined that the point is not touched upon by the reasoning in *Aktieselskabet Reidar v Arcos Ltd* (1926) 25 Ll L Rep 513.

⁷⁹ [1985] 1 Lloyd's Rep 423, 435. Emphasis added.

On this basis, Webster J awarded the owners general damages for their loss directly flowing from the breach of contract. This was the difference between the demurrage rate and the total loss.⁸⁰

In *The Adelfa*, Evans J decided that owners can recover general damages where there is a single breach in the circumstances of a particular case.⁸¹ Those circumstances are where the owners establish a head of loss recoverable for the charterers' breach of the charterparty which is distinct from the loss of use of the vessel.⁸² Further, the owners must prove the loss which they incurred was caused by the charterers' failure to discharge the cargo within laytime and that the loss was not too remote in consequence of that breach.⁸³

Where the necessary causal connection is present, the owners may recover, not only liquidated damages directly recoverable from the detention, but also damages flowing indirectly or consequentially from the detention.⁸⁴ In *The Bonde*, counsel argued that where the obligation of the owners is simply to provide a vessel to load at the relevant place and the obligation of the charterers is to load the cargo on board, it will be rare for any consequence to flow from exceeding the lay days other than detention of the vessel beyond the time contractually agreed with consequently loss of use.⁸⁵ Nevertheless, such loss could foreseeably include additional berth charges, harbour dues, and the costs of defouling.

However, the decision of the Court of Appeal in *The Luxmar* would seem to deny the availability of general damages in circumstances where there is a single breach. In *The Luxmar*, a case which involved a single breach, Langley J held that a separate breach was required. Langley J approved *The Bonde*.⁸⁶ In *The Bonde*, Potter J decided that there had to be a breach additional to or separate from that of failing to load within the laydays and/or at the agreed rate of loading.⁸⁷ Implicitly, an additional loss was insufficient. Even under the wider test in the summary of the case law given by Potter J, the additional loss must stem from the breach of an additional and/or independent obligation.⁸⁸ Langley J did not discuss *The Adelfa* or *The Altus*. Nevertheless, there would appear little room for their application unless the owners distinguish *The Luxmar* on the facts. In order to recover additional losses arising from the detention of the vessel, owners will have to factor the potential occurrence of such losses into the demurrage rate.

8 Conceptual Basis of Demurrage

Demurrage has been treated as agreed liquidated damages for detention of the vessel,⁸⁹ and as an agreed payment for the time the charterers have a right to use the vessel at their option.⁹⁰ In origin, demurrage was not an agreed amount of damages for breach of the charterparty.⁹¹ Demurrage was a sum payable under, or by reason of, the charterparty for detaining the ship at the port of loading or port of discharge beyond the contractually agreed lay days.⁹² In essence, demurrage was therefore a payment for the use of the ship for extra lay days.⁹³ In *Steel, Young & Co v Grand Canary Coaling Co*,⁹⁴ Mathew LJ said that '[t]here is no ground for suggesting that the obligation to pay demurrage is by way of damages for breach of the charterparty. It is merely a payment for use of the ship.'⁹⁵

⁸⁰ Ibid, 435, 436.

⁸¹ [1998] 2 Lloyd's Rep 466, 472.

⁸² Ibid, 472.

⁸³ Ibid, 472.

⁸⁴ *Richco International Ltd v Alfred C Toepfer International GmbH (The Bonde)* [1991] 1 Lloyd's Rep 136, 142.

⁸⁵ Ibid, 142.

⁸⁶ See Part 7.1 above.

⁸⁷ [1991] 1 Lloyd's Rep 136, 144; see Part 7.1 above.

⁸⁸ Ibid, 142.

⁸⁹ *Suisse Atlantique Societe d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale* [1966] 1 Lloyd's Rep 529, 542 (Lord Dilhorne).

⁹⁰ *Inverkip Steamship Co Ltd v Bunge & Co* [1917] 2 KB 193, 200-201 (Scrutton LJ); *ERG Raffinerie Mediterranee SpA v Chevron USA Inc (The Luxmar)* [2006] 2 Lloyd's Rep 543.

⁹¹ *Trading Society Kwik-Hoo-Tong of Java v The Royal Commission on Sugar Supply* (1924) 19 Ll L Rep 90, 92 (Roche J); *Steel, Young & Co v Grand Canary Coaling Co* (1902) 7 Com Cas 213, 217 (Collins MR).

⁹² *Trading Society Kwik-Hoo-Tong of Java v The Royal Commission on Sugar Supply* (1924) 19 Ll L Rep 90, 92 (Roche J).

⁹³ *Steel, Young & Co v Grand Canary Coaling Co* (1902) 7 Com Cas 213, 217 (Collins MR), 217 (Mathew LJ); *Lilly v Stevenson* (1895) 22 R 278, 286 (Lord Trayner); see also *Aktieselskabet Reidar v Arcos Ltd* (1926) 25 Ll L Rep 513, 515 (Bankes LJ).

⁹⁴ (1902) 7 Com Cas 213 (CA).

⁹⁵ Ibid, 217.

In *Lockhart v Falk*,⁹⁶ Cleasby B said:⁹⁷

The word demurrage no doubt properly signified the agreed additional payment for an allowed detention beyond a period either specified in or to be collected from the instrument; but it has also a popular or more general meaning of compensation for undue detention ...

Scrutton LJ wrote to a similar effect in *Inverkip Steamship Co Ltd v Bunge & Co.*⁹⁸ In *Trading Society Kwik-Hoo-Tong of Java v The Royal Commission on Sugar Supply*,⁹⁹ Roche J noted:¹⁰⁰

[D]emurrage has for many years a tendency to extend its meaning and ... people use demurrage very often as expressing aptly and conveniently damages for delay in connection with either the loading or discharging of a ship ...

In this way, the term has departed from the intended purpose of demurrage. In modern judicial interpretation and commercial practice, demurrage is regarded as liquidated damages payable to the owners where the charterers cause the ship to be detained in breach of the laytime/demurrage provision, or even for breach of other provisions of the charterparty.¹⁰¹

Ultimately, the significance of the term in a particular case turns on the particular words of the contract.¹⁰² It is necessary to ascertain, from the charterparty in its entirety, the proper meaning to be applied to the demurrage provision.¹⁰³ However, commercial practice is influential. As Lord Wilberforce, considering the nature of the demurrage provision in *Suisse Atlantique Societe d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale*, noted:¹⁰⁴

The form of the clause is, of course, not decisive, nor is there any rule of law which requires that demurrage clauses should be construed as clauses of liquidated damages; but it is the fact that the clause is expressed as one agreeing a figure, and not as imposing a limit: and as a matter of commercial opinion and practice demurrage clauses are normally regarded as liquidated damages clauses.

Nevertheless, it is suggested that, for the purpose of determining whether damages are available in addition to demurrage, the Court should regard demurrage as an agreed payment for extra lay days. This draws a distinction between demurrage and other types of damages. In this way, the court will, more easily, be able to determine whether general damages should be awarded in addition to demurrage. This approach will obviate the conceptual difficulties which the courts have encountered in this area.

9 Conclusion

The availability of general damages in addition to (or in lieu of) demurrage is well established. Until recently, the circumstances in which owners could recover general damages were also well established. *The Luxmar* has narrowed the circumstances in which general damages can be recovered in addition to demurrage.

Formerly, in appropriate circumstances, general damages were available regardless of whether there was a single breach, or multiple breaches had occurred. The availability of general damages where there was a single breach, on the basis that the owners suffered additional loss caused by the detention of the vessel, was recognised in the individual judgment of Bankes LJ in *Aktieselskabet Reidar v Arcos Ltd* and subsequently adopted in *The Altus* and *The Adelfa*. *The Luxmar* rejects this basis for recovery. It applies the test in *The Bonde*. *The Bonde* predicates the availability of general damages on the existence of a breach additional to, or separate from, the failure to load within the laydays and/or at the agreed rate.¹⁰⁵ It would seem, therefore, that owners will be unable to recover additional losses where there has been a single breach. A decision of the Court of Appeal, *The Luxmar* prevails over *The Altus* and *The Adelfa*, decisions of the Queen's Bench Division. To

⁹⁶ (1874-75) LR 10 Ex 132 (Ex Ct).

⁹⁷ Ibid, 135.

⁹⁸ [1917] 2 KB 193, 200-201 (Scrutton LJ).

⁹⁹ (1924) 19 Ll L Rep 90 (KBD).

¹⁰⁰ *Trading Society Kwik-Hoo-Tong of Java v The Royal Commission on Sugar Supply* (1924) 19 Ll L Rep 90, 92 (Roche J).

¹⁰¹ Schofield, above n 70, 343; *Union of India v Compania Naviera Aeolus SA (The Spalmatori)* [1962] 2 Lloyd's Rep 175, 182 (Lord Guest); *Dias Compania Naviera SA v Louis Dreyfus Corporation* [1978] 1 WLR 261, 263 (Lord Diplock); *President of India v Lips Maritime Corporation (The Lips)* [1987] 2 Lloyd's Rep 311, 315 (Lord Brandon).

¹⁰² *Trading Society Kwik-Hoo-Tong of Java v The Royal Commission on Sugar Supply* (1924) 19 Ll L Rep 90, 92 (Roche J).

¹⁰³ *Lockhart v Falk* (1874-75) LR 10 Ex 132, 135 (Cleasby B).

¹⁰⁴ *Suisse Atlantique Societe d'Armement Maritime SA v NV Rotterdamsche Kolen Centrale* [1966] 1 Lloyd's Rep 529, 565.

¹⁰⁵ *Richco International Ltd v Alfred C Toepfer International GmbH (The Bonde)* [1991] 1 Lloyd's Rep 136, 144.

recover additional damages where there is a single breach the owners must confine *The Luxmar* to its facts, or argue that its application is limited to circumstances involving FOB sale contracts.¹⁰⁶ While the decision is troublesome for owners, it remedies much of the uncertainty in the law resulting from the availability of general damages in circumstances where there is a single breach. Now, general damages are available in one set of circumstances — where there is a breach additional to, or separate from, the detention of the vessel on account of the failure to load within the lay days and/or at the agreed rate.

In determining whether general damages should be awarded on account of the additional or separate breach, the nature and purpose of demurrage is determinative. The purpose of demurrage is to compensate the owners for loss of the use of the vessel. Originally, demurrage, in nature, was a payment for additional lay days. In commercial practice, demurrage has become widely regarded as liquidated damages for breach of the laytime/demurrage provision, extending to damages for breach of the charter in general. In order to determine whether the owners are limited to the demurrage rate only, or can recover general damages, it is suggested that the court should conceive demurrage as a payment for extra lay days.

Ultimately, whether the owners can recover general damages in addition to demurrage turns on the particular circumstances of the case. The terms of the charterparty are of primary importance. Does the charterparty contain laytime and demurrage provisions? What is the construction of the demurrage provision? Is the demurrage provision limited to detention of the vessel or does it extend to other circumstances? The events which occur between the commencement of laytime at the loading port and the completion of loading, and the commencement of laytime at the port of discharge and the completion of discharging operations are also significant. Has the vessel been detained beyond laytime? Was the detention the fault of the owners? Has there been an additional breach? Has there been additional loss?

At the time of writing ERG has not applied for leave to appeal to the House of Lords. Until the House of Lords decides to the contrary or the Court of Appeal departs from its earlier decision, *The Luxmar* will govern the availability of general damages where there is a single breach, *Aktieselskabet Reidar v Arcos Ltd* will govern the availability of general damages where there are multiple breaches, and *The Bonde* will define the circumstances in which general damages are recoverable. Absent a conclusive decision of the House of Lords, an element of uncertainty will remain. However, the present position is sufficiently certain for commercial purposes.

10 Analytical Guide

The following analysis should be applied to the appropriate factual scenario:

10.1 Has the vessel been detained beyond the agreed lay days?

Yes — apply the demurrage rate for the number of extra days (subject to any limitation on the number of days on demurrage).

No — the owners cannot recover demurrage.

10.2 Are the charterers claiming damages in addition to demurrage?

Yes — see 10.3.

10.3 Was there a single breach or multiple breaches?

Where there are **multiple breaches**, see 10.4 below.

Where there is a **single breach**, see 10.5 below.

¹⁰⁶ *ERG Raffinerie Mediterranée SpA v Chevron USA Inc (The Luxmar)* [2006] 2 Lloyd's Rep 543, [52].

10.4 Multiple breaches

10.4.1 Are general damages available in addition to demurrage?

Apply *Aktieselskabet Reidar v Arcos Ltd*: '[T]he shipowner may recover the loss ... that he has incurred in addition to his liquidated damages or his unliquidated damages for detention.'¹⁰⁷

10.4.2 Have the owners incurred additional loss?

No — only demurrage rate recoverable.

Yes — apply *The Bonde*: '[There must be] a breach additional to or separate from that of failing to load within the lay days and/or at the agreed rate.'¹⁰⁸

10.4.3 Was there a breach additional to, or separate from the charterers' failure to load within the lay days or at the agreed rate?

No — only demurrage rate recoverable.

Yes — general damages are available in addition to the demurrage rate.

10.5 Single breach

10.5.1 Are general damages available in addition to demurrage?

Apply *The Luxmar*: '[W]here a demurrage figure is contained in a contract it is intended to cover loss for delay and damages for delay cannot be awarded as well.'¹⁰⁹

10.5.2 Does the charterparty/contract contain a demurrage provision?

No — general damages are recoverable.

Yes — apply *Inverkip Steamship Co Ltd v Bunge & Co*: 'If there was a breach [...] the only consequence [of which] is detention of the ship, [the] damages for that, which is the same detention, however it arises, are agreed in the charterparty and have been paid'.¹¹⁰

Distinguish *The Bonde* and *Luxmar*.

Apply the decision of Bankes LJ in *Aktieselskabet Reidar v Arcos Ltd*: 'If the [owners'] claim was in ... both in substance and in form essentially distinct from any claim for detention of the vessel ... [t]his loss is ... recoverable as damages for the breach of contract'.¹¹¹

Apply *The Adelfa*:

10.5.3 Does 'the shipowner [have], in addition to a claim for demurrage attributable to the breach [of the obligation to load at the stipulated rate], an 'essentially distinct' claim'?¹¹²

No — general damages are not recoverable.

Yes — apply *The Altus*: 'the owner is entitled not only to the liquidated damages directly recoverable ... for the breach of the obligation with regard to detention (demurrage), but also for ... damages flowing indirectly or consequentially from any detention of the vessel...'.¹¹³

¹⁰⁷ (1926) 25 Ll L Rep 513, 516 (Atkin LJ).

¹⁰⁸ *Richco International Ltd v Alfred C Toepfer International GmbH (The Bonde)* [1991] 1 Lloyd's Rep 136, 144 (Potter J).

¹⁰⁹ [2007] 2 Lloyd's Rep 542, [24].

¹¹⁰ [1917] 2 KB 193, 203 (Scrutton J); see also [1917] 2 KB 193, 198 (Warrington LJ).

¹¹¹ (1926) 25 Ll L Rep 513, 514 (Bankes LJ).

¹¹² [1985] 1 Lloyd's Rep 423, 433 (Webster J).

¹¹³ *Ibid*, 435 (Webster J).

10.5.4 *Have the owners suffered loss flowing indirectly or consequentially from the detention of the vessel?*

No — only demurrage rate recoverable.

Yes — general damages are available in addition to the demurrage rate.