The Legal Characterisation of Modern Yacht Charter Agreement

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Abstract

This article examines the legal classification of the modern yacht charter agreement in the within EU and UK maritime private law, drawing on civil law typology and common law contract doctrine. Although yacht chartering presents structural elements familiar from the charterparty doctrine - like owner-retained command, obligations of delivery and redelivery and ship management control - its functional purpose is fundamentally different from the traditional contracts of carriage. The charterer buys organised recreational use of a ship and not necessarily the transport of goods or passengers from one port to another. Using doctrinal and functional comparative methods, the study examines competing classifications such as lease, passenger carriage, and mixed-contract models. The inquiry draws upon classical charterparty doctrine, legal theories of contractual cause and yacht-specific scholarship. Attention is given to the limits of analogy with cruise operations and to the scope of passenger carriage regimes such as the Athens Convention. The analysis shows that yacht charter agreement operates through one shared contractual framework, in which hospitality and navigation are both performed within the retained control of the owner. The article concludes that the modern yacht charter is best considered as a sui generis maritime service contract: charterparty in form, experiential in function and conditioned by mandatory maritime norms without being reducible to either lease or passenger carriage.

Keywords: *yacht charter agreement; maritime service contract; charterparty; contractual classification; nautical tourism; passenger carriage by sea; Athens Convention; maritime private law.*

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1. Introduction

Charterparties provide the substantive contractual framework supporting maritime transport. Within the conventional body of shipping law, the charter agreement has functioned as an instrument of apportionment of navigational power and commercial risk.

The contemporary yacht charter retains structural elements derived from carriage and charterparty practice but with a purpose that is quite different to carriage *per se*. In the yacht and leisure markets, the agreement is not concerned with the carriage of goods, nor ordinarily with the commercial transportation of passengers between

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ports. Instead, the charterer seeks the organised recreational use of a vessel. Navigation still exists, but movement is not the economic goal of the transaction, as the contract also includes privacy, safety, personalised leisure, and hospitality requests at sea, bringing about a change in legal classification. Thus, the issue of classification influences the interpretation of the contract, the type and distribution of obligations and the interaction with mandatory (public) regulatory regimes. It determines whether the agreement relates to the contractual special laws of the lease, or the principles of charterparties. Furthermore, it has implications for the applicability of consumer protection rules, the review of standard terms for fairness and the degree to which maritime autonomy is shielded from external regulatory intrusion. Accordingly, this study addresses the following research question:

What is the juridical classification of the modern yacht charter agreement within maritime private law? This inquiry examines the issue within the EU and UK maritime private law, while drawing on selected civil and common law traditions.

The term "experiential" is used descriptively, not in a commercial sense, but to define the juridical object of the contract: It relates to the promise of an organised leisure environment under the owner's professional management. Legally, this enriches and hence transforms the progress of performance at sea, e.g. from a duty of 'reasonable dispatch' (typical of carriage) into a warranty of service quality and availability.

Structurally, the yacht charter resembles a non-demise time charterparty, in which the owner has operational control over the ship, management appoints the crew; moreover, delivery and redelivery of the vessel are based on standard maritime practice. Also, possession does not pass as in a lease, save in the distinct case of a demise charter. However, yacht charter is neither a conventional contract of carriage with a specified duty to transport goods and/or passengers between designated ports. Cruise operation provides a point of comparison because both maritime and hospitality components coexist there as well. However, that similarity does not further support the argument that yacht charter would be treated as a mixed contract. This study looks at these options and proposes a unitary classification based on the organising role of the contract.

While yacht operations are conducted in the context of the international maritime regulation, the article does not undertake a public maritime law analysis. Norms are only taken into consideration as far as they illuminate the allocation of control and responsibility within leisure chartering. In particular, the study recognises three interconnected normative cores of the yacht charter. The first is the maritime core: It comprises international conventions, flag state obligations, navigational safety standards, and environmental compliance requirements. The second is the structural contractual core: It includes operational control, seaworthiness, delivery and redelivery procedure and risk allocation derived from charterparty doctrine. The third is the service and regulatory core: It contains the hospitality elements, such as the quality of on-board services, undertakings of compliance and constraints of fairness that are applicable to leisure contracting. These cores are not considered as separate contracts but rather are analytical categories used to assess whether the agreement retains a single organising function.

The study concludes that the modern yacht charter is still a *sui generis*

recreational/hospitality maritime service contract. Its maritime core sits in the law of the sea; its structural core protects the operational logic of charterparty doctrine; and its service-regulatory core reflects the recreational function of the agreement. The presence of detailed compliance and regulatory clauses adds to the complexity of contracts but does not transform the contract into a lease, or a contract of carriage or a technically mixed contract. Instead, the yacht charter emerges as a sui generis agreement of modern maritime private law, adapted to the realities of high value leisure use and under retained maritime control.

2. Methodology

This research adopts doctrinal and comparative legal analysis. It does not attempt empirical measurement. It is based on text-centred primary sources, such as standard form contracts and conventions, and secondary ones, such as the relevant bibliography. The task is interpretive: To reconstruct the contractual logic of the yacht charter and to test its classification against established legal categories.[3]

The research question concerns the classification of the yacht charter *per se*. The analysis of the legal characterisation focuses on the identification of the contract's organising function, i.e. what the agreement is legally bound to achieve and how it allocates obligations, control, and risk among the parties. Competing classifications, such as the time charter, lease, passenger carriage and mixed contract, are also examined with reference to structural features such as possession, operational command and the nature of promised performance. Classification thus derives from coherent reading of the contractual details rather than as a purely abstract conceptual debate.[4]

The comparative dimension supports this inquiry. Yacht chartering interpretation is examined from both its civil law typology (causa, contractual type, and functional unity) and common law contractual structure (control, possession, and employment orders). The method is functional comparative and compares how different legal traditions address analogous questions of operational authority, risk distribution, without attempting to construct a hybrid theory.[5] We aim to determine whether yacht charter is best explained as a maritime service framework evolving from charterparty logic, or if lease or carriage models offer a more persuasive rationale.

Interpretation throughout is also purposive but controlled.[6] Teleology is used to explain the function of clauses and regimes; it is not used to replace textual meaning. The method strives for coherence across normative layers and avoids misclassification as the result of surface similarities, e.g., the inability to distinguish between leisure navigation and passenger carriage because persons are on board or the inability to

[3] Terry Hutchinson and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research", *Deakin Law Review* 17, no. 1 (2012): 85, 116, https://doi.org/10.21153/dlr2012vol17no1art70.
[4] Ibidem.
[5] Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law* [*Einführung in die Rechtsvergleichung*], trans. Tony Weir, 3rd rev. ed. (Oxford: Clarendon Press, 1998), 34-36.
[6] Agus Budianto, "Legal Research Methodology Reposition in Research on Social Science," *International Journal of Criminology and Sociology* 9 (2020): 1339-40.

distinguish between "hire" and lease because the retention of operational control by the owner. The article does not undertake a comparative survey of non-EU/UK regimes and does not address tax or package travel regimes, except where such regimes are directly relevant to the classification of contracts.

3. Legal Characterisation of the Yacht Charter Agreement

In this section we proceed with our analysis in three steps:

First, we employ doctrinal tools for contractual classification of the charterparty with emphasis on the distinction between intention and *causa* and on the criteria that distinguish *sui generis* from mixed contracts. Second, we examine the classical charterparty paradigm against the particularities of the yacht charter agreement. Third, we analyse the yacht specific literature, and we examine the analogy with cruise operations. We overall support that the yacht charter may be hereinafter considered as a special type of maritime contract, which is oriented towards leisure and availability but not transport.

3.1. Contractual Classification and the Organising Function of the Agreement

For the purposes of legal characterisation of complex formations of the modern economic relations, we draw comparative references offered by systems of traditional codifications of civil law and common law, as regards the interpretation of representations of intent and the freedom of contract. The scope of the present section is both methodological and direct. Instead of asking what the charterer would "intend" in some subjective sense (e.g. honeymoon, leisure, celebration, island-hopping), it identifies a legally relevant *causa* of the yacht charter operation, the function that arrangement performs in the legal order (availability of a vessel under owner control, together with an organised service framework). The intention to visit ports may be doctrinally important, but it must be dealt thoughtfully as either (a) an element integrated into the *causa*, or (b) a motive given legal importance only if the parties have juridically "externalised" it (e.g. by converting it into an express clause capable of producing legal obligations). A common methodological oversight with complex contracts of mixed type of obligations is to rely on the label the parties have called the transaction and only afterwards inquire into the contract's juridical classification.

From an Italian perspective, Santoro-Passarelli (2012) outlines the same architecture, by distinguishing between the "immediate and constant function" of the transaction (the one which the law uses to organise contractual categories), from the supplementary and various purposes, which remain extrinsic to the contractual framework. In that sense, *causa* may be deemed as objective, as far as it is inherent to the type of transaction, whereas any underlying motives remain subjective

circumstances.[7]

Alessi (2017) articulates that the legal effects of a transaction are produced by law (*vi legis*), not by the parties' mere representational choice, and the judge must reconstruct the concrete arrangement of interests rather than follow the "naming" assigned by the parties.[8] Accordingly, an atypical, *sui generis*, contract often comes about by the combination of more than one type of contract; in that case we have a mixed contract. In this respect, we observe two methodological consequences as regards our research question: First, there is unity before taxonomy, as classification is not a semantic exercise. Alessi highlights that the judge will not be conditioned by the name which the parties decided it would be; but he reconstructs the arrangement of interests and only after that asks if it fits a type.[9] Moreover, the rule-selection has structure, as Alessi records the two classical methods of controlling mixed contracts: (a) or - the combination criterion (apply, in a tailored way, the rules of all the types with which its elements are combined), and (b) of the case: the absorption criterion i.e. to identify the prevalent type and treat the contract as "absorbed" by the discipline of the type".[10]

Paladini et al. (2019) use an example to stabilise any hyper-analysis regarding *causa* and parties' motives. Two parties may stipulate the same lease, one for holidays, another for job relocation. Here, the absolute motive changes, but not the type of the contract. The point is that identical contractual forms - such as sales or leases - may accommodate a large array of personal objectives. Consequently, whereas the *causa* remains constant and immutable, the underlying motives of the parties are shifting and variable.[11] The authors are clear on the fact that motives only become legally important when the parties intentionally give them certain juridical relevance through a condition, a term or an express clause.[12]

In the section that follows, the term "*causa*" is used a term of legal classification, denoting the objective of the transaction, as it is reconstructed from stipulated obligations. The term "intention", or "motive" is used in order to denote the inner wishes of the contracting party (island hoping, entertainment etc.). Additionally, the term "expectation" is used to describe the content of performance as exists in the express or implied terms.

Alessi supports that in a mixed contract the arrangement between the parties gives rise to a single contract, comprising a mixture of elements from various contract types. In a linked - contract structure, by contrast, the parties spread their economic purpose across several distinct contracts, with each of which retaining its own

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[7] Francesco Santoro-Passarelli, *Dottrine generali del diritto civile*, (Jovene Editore, 2012), 128 (noting that "...the cause is an objective element of the transaction...(the motives) are nothing but subjective circumstances" [original Italian: "...la causa e un elemento oggettivo del negozio...(i motivi) non sono che circostanze soggettive"]).

[8] Rosalba Alessi, *La disciplina generale del contratto*, 2nd ed. (G. Giappichelli Editore, 2017), 20-25.

[9] Ibidem, 24.

[10] Ibidem, 30.

[11] Mauro Paladini and Andrea Renda and Daniele Minussi, *Manuale di diritto civile*, (Milano: Giuffrè Francis Lefebvre, 2019), 1345 (stating that "while the cause is fixed and invariable, the motives... turn out to be shifting" [original Italian: "mentre la causa e fissa e invariabile, i motivi... risultano essere mutevoli"]).

[12] Ibidem, 1346.

individuality and causa; the "link" is functional and teleological, not a fusion into one contract. Once *causa* and motives are clarified, the next interpretive step then becomes the treatment of transactions that combines elements with different nominate models. Italian doctrine does though treat every atypical contract as "mixed".[13] A contract is "mixed" only when causal elements belonging to several nominated types remain co-essential, so that the practical performance cannot be covered by a single organising function. Alessi's account is useful here because he distinguishes between the "combination" and the "absorption" theories.[14] Applied to yacht chartering the issue is not whether hospitality, safety, availability and regulatory compliance duties exist (they do), but whether they co-exist side by side as contractual causes, or whether these coexist as integrated into one operational type with one dominant function.

Greek private law reaches a similar result through its interpretive method that allows the interpreter to move beyond the literal wording of the parties, in order to confirm the objectives of the contract, as reflected in articles 173 and 200 of the Greek Civil Code ("CC").[15] The Greek contract doctrine sits in the Romano-Germanic is less causa-centric and more interpretation-centric; the practical significance of aforementioned provisions become useful mainly in the event of breach of contract and defective performance. Yacht charter is an atypical contract, to the extent that this is not regulated in the context of a special legislative regime, the regulation of separate issues depends on the principle of the combined interpretation of the individual special provisions for specific contracts of the CC [e.g. lease of property (CC 574 et seq.),[16] a loan agreement (CC 810 et seq.),[17] in order to determine the special characteristics diverse similarities to the contract in question, at least according to its original characteristics. This basic possibility of concluding interpretation may even go beyond the narrow limits of the subjective limits of the representation of intention of the parties, by introducing more objective elements; it already reinforces a more accurate review of the legal characterisation of the specific agreement.[18]

A yacht charter examination due to its *de facto* international character needs to expand beyond the civil-law categories. The next section of literature is on common law.

Common law classification does not work with *causa* as formal category, but it reaches the same conclusion through construction. Promisor is asked what he has

[13] Alessi, *op. cit.* 334.
[14] Paladini et al. *op. cit.* 1356.
[15] On the methodology of contractual interpretation under Arts 173 and 200 of the Greek Civil Code (CC), see Apostolos Georgiadis, *Enochiko Dikaio. Geniko Meros* [General Law of Obligations], vol. I, 5th ed. (Athens, Thessaloniki: P. N. Sakkoulas, 2007) paras 14-15 (on the principle of freedom of contract, the formation of obligations and the interpretive rules governing declarations of will).
[16] Apostolos Georgiadis, *Encheiridio Eidikou Enochikou Dikaiou* [Special Law of Obligations], 2nd ed. (Athens, Thessaloniki: P. N. Sakkoulas, 2024), 351 et seq., 449 et seq.
[17] Vasilios I. Tsoumas, *Daneio and Chrisidaneio*. [Loan and Commodatum, Theory, Case Law, Templates], (Athens: Nomiki Bibliothiki, 2006), 77-86.
[18] Apostolos Georgiadis and Michalis Stathopoulos (eds), *Astikos Kodix. Kat'Arthro Ermineia,* [Civil Code. A Commentary], vols Ia and Ib, 2nd ed, (Athens, Thessaloniki: P.N. Sakkoulas, 2016), commentary on Art. 173 CC (interpretation of declarations of will: ascertainment of true intent without adherence to the literal wording) and on Art. 200 CC.

committed to perform and how risk is allocated. Fried's (2015) - our first common law perspective - promissory theory is the clean autonomy model: Contract law is warranted as it enables persons to impose obligations upon themselves, and enforcement honours self-authorship. The principal line is unmistakable: Contract is first a form of promise that is based on the morality of keeping one's word.[19] If the charter is an experience contract, its normative centre is the promise of organised enjoyment under a controlled maritime framework. In contrast, this also suggests that the more the contractual text is populated by mandatory rules (consumer fairness, safety, environmental duties), the less the transaction can be treated as purely will - based. Atiyah's (1979) account offers a distinct perspective.[20] In his seminal monography, "*The Rise and Fall of Freedom of Contract*", he expands his thought around "benefit-based", "reliance based", and "promise-based" liability. This particularly important as he warns that legal analysis may be "bogged down" on technical distinctions, including the suggestion that everything depends on "intention of the parties", rather than concentrating on the justification of reliance.

Neyers et al. (2009) introduces a methodological point that is relevant to yacht chartering: Contract issues that may overlap domains create "terminological confusion," since the jurist is operating "near the borders" of the field.[21] Their discussion on remedies emphatically raises this matter, especially with reference to the public/private overlap. They define interim measures (i.e. injunctions and specific performance) as rights which can be public, or private, or "mixed", involving both the claimant's right, and the coercive machinery of the state.[22]

3.2. The Classical Charterparty Paradigm

Foxton et al. (2020) define charterparties as one of the main types of contracts of affreightment.[23] The authors principally distinguish between the two kinds of charterparties: the non-demise and the demise forms.[24] The difference is fundamental, as under a demise charter, the possession and control pass to the charterer who becomes - for practical reasons - an owner *pro hac vice*. In contrast, under the non-demise charter, the owner retains possession and navigational control, while the charterer obtains the right to direct the vessel's employment within the limits of the contract. The time charter is therefore not a lease because the operational command remains with the owner. Thus, the charterer gives orders with respect to the employment, whereas navigation safety

[19] Charles Fried, *Contract as a promise. A theory of Contractual Obligation*, 2nd ed. (Oxford University Press, 2015), 16-17.
[20] Patrick Selim Atiyah, *The rise and fall of freedom of contract,* (Clarendon Press, 1979), 773.
[21] Jason W. Neyers and Richard Bronaugh and Stephen G. A. Pitel (eds), *Exploring contract law*, (Hart Publishing, 2009), 1.
[22] Ibidem, 16.
[23] David Foxton et al., *Scrutton on Charterparties and Bills of Lading*, 24th ed., (Sweet & Maxwell, 2020), 1-006. First published in 1886 by Sir Thomas Edward Scrutton, this treatise has remained the leading authority on the law of charterparties.
[24] Ibidem, 1-013.

and seaworthiness remain fundamental responsibilities of the owner.[25] This distinction is particularly useful as most yacht charters are closer to non-demise (regular) time charters.

Moreover, as regards the allocation of obligations between the parties, we note that the structural elements in a time charter are the payment of the hire, off-hire mechanism, delivery and re-delivery obligation and indemnity of the owner to the orders of the charterer. However, there are differences behind the scope of the obligations. For instance, whereas the obligation of seaworthiness is at the centre, for commercial carriers this is an undertaking related to navigation fitness, not comfort or hospitality.[26] Also, reasonable dispatch is associated with transport performance not experiential enjoyment.[27] Foxton et al. (2020) further elaborate the categorisation of the contractual terms, distinguishing between conditions, warranties and innominate terms.[28] This is important in later analysis of the clauses of itinerary in yacht chartering. The authority of the master on the voyage and its supremacy of judgment over the employment convenience.[29] Deviation is allowed where it's necessary, as safety overrides itinerary.[30] Taken together, the authors describe the time charterparty as: A transport-based risk allocation tool, which is embedded in the logic of maritime operations, structured by control, seaworthiness and commercial efficiency. This is the doctrinal benchmark against which the yacht charter is to be tested. If yacht chartering was just a variation of time chartering, then it would have the same organising function: transport and commercial deployment of tonnage. The inquiry is whether that functional core is still dominant.

Coghlin et al. (2014) explain the distinction between non-demise and demise charterparties by means of a simple, but instructive metaphor:[31] The difference is like hiring a boat to row one about (demise), as opposed to contracting with someone to row one about (service). The time charter therefore is a service-based arrangement rather than a transfer of proprietary control. The New York Produce (NYPE) form makes this express, stating that nothing therein is to be construed as a demise of the vessel. In doctrinal terms, the time charter signifies retained maritime command and conditional compliance to charterer's employment orders.

Plomaritou (2014) and Plomaritou and Papadopoulos (2018) address the commercial aspect of chartering.[32] In chartering practice the charterer is ordinarily a commercial operator who takes on the risk of freight, arranges cargo operations, and utilizes the vessel as part of a profit generating transport chain. The charterparty spreads

[25] Ibidem, 7-019 et seq.
[26] Ibidem.
[27] Ibidem, 7-044.
[28] Ibidem, 7-001.
[29] Ibidem, 12-004 et seq.
[30] Ibidem, 12-028 et seq.
[31] Terence Coghlin et al., *Time Charters*, 7th ed. (Informa Law from Routledge, 2014), I.6. In the maritime legal world, this treatise is considered the preeminent, global authority specifically for time charters.
[32] Evi Plomaritou, "A Review of Shipowner's & Charterer's Obligations in Various Types of Charter," *Journal of Shipping and Ocean Engineering* 4 (2014): 307-321; Evi Plomaritou, Anthony Papadopoylos, *Shipbroking and Chartering Practice*, 8th ed. (Informa Law from Routledge, 2018), 349 et seq, 387 et seq.

out the economic risk and responsibilities for operation in a transport enterprise. This classical model therefore offers a coherent model of transport-based paradigm: the vessel is ready for carriage; efficiency and risk allocation are the keys; and the logic of commerciality is the charterer's arena. However, if yacht charter were just a variation of the time charter, its organising function would remain transport centred. The question that follows is if the yacht charter still has that transport-oriented causa, or whether its functional centre has changed towards another contractual logic.

3.3. Yacht Charter in Nautical Tourism and Maritime Doctrine

The doctrinal tools outlined above are now to be tested against the literature which deals directly with yacht chartering. The discussion turns to the authors who have examined yacht chartering in its own doctrinal setting. Their analysis highlights the functioning of the contract in nautical tourism and the way that parties' obligations are organised in terms of availability, operational command, and services on board the ship.

3.3.1. Doctrinal Characterisation of Yacht Charter

The yacht specific literature agrees on the following propositions: Firstly, the vessel becomes available over time; secondly, it is a non-demise charter; thirdly, the performance is evaluated based on hospitality. In particular:

Benelli's (2022) monograph is valuable because it deals with the classification of yacht charter by exploring the structure of obligation and the legal extent whereby the yacht charter borrows from conventional (maritime) charter doctrines. His hypothesis is to treat the pleasure-craft charter as a contract of availability over time. He is clear that is essential the making available of the vessel for a period of time,[33] regardless of whether it is used for navigation.[34] His analysis deals with non-demise charter for cruise purposes, in which the owner has made the yacht available "complete with crew" for a period; the itinerary is, in principle, determined by the charterer; and the master must follow such directions, within the limits of safety and norms of public law.[35] On the market side, Benelli recognises that charter practice gives rise to mixed forms interpretation in which the time and voyage modes are combined. Benelli's approach is just as important as his conclusion: He argues that rules stemming from the Navigation Code "apply subsidiarily by analogy and - crucially - only when the charter is for a period to be spent in navigation and not at rest.[36] The implication here is not that

[33] Gianfranco Benelli, *Il contratto di noleggio di unità da diporto*, (Milano: Giuffrè Francis Lefebvre, 2022), 94 (referring to "only the making available of the unit for a certain time" [original Italian: "solo la messa a disposizione dell'unita per un certo tempo"]).

[34] Ibidem, 18 (stating "regardless of the use for navigation" [original Italian: "indipendentemente dall'utilizzo per la navigazione"]).

[35] Ibidem, 159.

[36] Ibidem, 94 (arguing that "The consequence is that 'to the charter of pleasure craft, the rules of the navigation code on chartering apply subsidiarily by analogy and not directly, and only when the charter of pleasure craft is stipulated for a period to be spent in navigation and not at rest'" [original Italian: "La conseguenza è che «al noleggio di unità da diporto le norme del codice della navigazione sul noleggio si

the element of maritime venture disappears, but that it is held through the pleasure-craft charter's own purpose and operating setting. In other words, the yacht charter may be able to borrow elements from the classical charterparty law but is not conceptually reducible to it. The point of the classification is subtle: the itinerary forms part of the schedule of use rather than the legal objective of the contract, in the analogous way that it would be in a carriage agreement. Even in the cruise model, Benelli emphasises the fact that the contract provides "services linked to staying on board, also of an accommodation type with cabins, meals, beverages, and use of on-board services.[37]

Benelli holds that the contractual meaning of "control" and "delivery" reinforces the non-lease character of the agreement. He registers the fact that the vessel remains in the possession of the owner and that the owner appoints the crew so that the technical and ship management remains with the owner or disponent owner. He further notes that, under the pleasure-craft charter definition, the concept of delivery is not being used in the same way as in classical charterparty thinking, precisely because the unit is still "at the disposal" of the charterer but not out of the control of the owner. Finally, his discussion of "cabin charter" is useful from a doctrinal perspective because it represents the line between exclusive charter logic (on the one hand) and mass tourism logic (on the other). Benelli connects it to the concept of tourist cruise and the relevance of tourism regulation together with pleasure-craft regime.[38]

Lorenzon and Coles (2021) in their seminal monograph on the "*Law of the Yachts*",[39] observe that the nature of standard industry contracts (e.g. the MYBA form) preserves the maritime terminology and legal character of a maritime contract especially as the aspects relating to crew, captain, seaworthiness, safety compliance are concerned. Nonetheless, the substance of the contract is supplemented by the service-oriented and leisure warranties regarding the hospitality aspects. Their analysis puts the yacht charter into the family of time chartering, but they do so only to mark, at one stroke, a decisive divergence. The frame of doctrine may be familiar i.e. the availability of a vessel for a defined period, remuneration and operational discipline. However, the performance of the contract might not be restricted to the commercial aspect of classical shipping operations (e.g. voyage / time efficiency, allocation of risks etc.). It is, rather, the provision of a luxury leisure service, in which the charterer's expectations are like those of hospitality, in particular, the comfort, discretion and the onboard experience. That repositioning leads the authors to a careful legal characterisation: Yacht charter is a service contract for recreational use, analogous in structure to a time charterparty, but

applicano sussidiariamente per analogia e non in via diretta e soltanto quando il noleggio di unità da diporto sia stipulato per un periodo da trascorrere in navigazione e non da fermo»"]).

[37] Ibidem, 148 (noting that "The charterer offers, in addition to navigation, the performance of the crew and a whole series of services related to the stay on board, including of an accommodation type, such as berths or cabins, the provision of meals, beverages, the use of services, etc." [original Italian: "Il noleggiante offre, oltre alla navigazione, le prestazioni dell'equipaggio e tutta una serie di servizi legati al soggiorno a bordo, anche di tipo ricettivo, quali le cuccette o cabine, la somministrazione dei pasti, le bevande, l'uso dei servizi, ecc."]).

[38] Ibidem, 157.

[39] Filippo Lorenzon and Richard Coles, eds., *The Law of Yachts and Yachting*, 2nd ed. (London: Routledge, 2021). 8-001 - 8-003, 8-005 - 8-006.

it is different from two neighbouring categories with which it might be confused. Considering the above, we assume that, in principle, yacht charter is not a lease. For instance, when the authors turn to Clause 1 of the MYBA form and the language "let and hire" they are faced with the intuitive interpretation that "let" may mean a transfer of possession; they reject that reading explicitly. Thus, the charterer does not get possession of the vessel, although he is entitled to give orders. In this context, the vessel remains in the possession of the owner and under the command of the owner through the captain. In fact, the master must use "best endeavours" to comply with charterer's orders, but he must refuse for reasons relating to "reasonable requirements of safety," and seaworthiness.[40] The underlying *ratio* is therefore not "hire plus possession" (lease), but availability plus services under the operational control of the owner. It is a time charter/service model, modified for leisure. Moreover, the yacht charter is not a cruise ticket arrangement. The dividing line is the issue of exclusivity. The charterer buys the private use of the yacht (as a whole), not a participation in a mass passenger service that is organised according to ticketing logic. This is not a superficial differentiation. It determines that yacht charter disputes fall within charterparty type allocation of liabilities (concerning delivery and redelivery, readiness for service, performance of the service promised etc.) than within the doctrinal vocabulary of carriage of passengers. Finally, Lorenzon and Cole's embed the concept of hospitality, a "hotel service", expectation into their explanation of why yacht charters call for a different legal and practical approach from mainstream shipping. Overall, a consistent maritime skeleton is preserved, while the charterer is treated as a consumer of high-value leisure services, rather than the commercial operator of maritime transport.

Martin and Conn's (2023) guide may not be a scholarly work *per se*, but it is useful manual that demonstrates how yacht charter is perceived by the practitioners and business managers.[41] Their analysis is based on the standard MYBA[42] form as hospitality contract that could reach "a seven-star hotel at sea," even so this term could relate mainly to mega yachts.[43] In the yacht charter agreement, the legal obligations of the owner and crew resemble with those of a luxury hospitality provider. Contractual emphasis falls on preparedness, safety and quality of personal service, disputes arise from failures of comfort, privacy or crew professionalism as opposed to navigational incident. Under this reading, the charter relationship is more in line with the conditions established under hospitality and tourism services, than the law of carriage. Overall, a charter yacht operates in parallel as a hotel and the master of a chartered vessel is also in charge of the hospitality services.[44]

Lukovic, does not attempt a legal taxonomy, but his work supports the doctrinal conclusion reached from Benelli, as well as Lorenzon and Coles. Lukovic includes

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[40] Ibidem. 8-036 -8-037.

[41] Penny Martin and Francesca Conn (eds), *Charter Contracts for Yacht Captains. Superyacht Lawyers' Guidance for the MYBA Charter Agreement*, Hill Dickinson and YPI Crew, 2023.

[42] MYBA The Worldwide Yachting Association, *Standard Yacht Charter Agreement: Revised 2025* (Nice: MYBA, 2025). The MYBA (Mediterranean Yacht Brokers Association) form is a standardized yacht charter contract used globally.

[43] Martin and Conn, *op. cit.* 6-7.

[44] Ibidem.

yacht chartering within the wider context of nautical tourism and carefully distinguishes it from the classical logic of maritime transport. His starting move is conceptual: "maritime affairs" is treated as an economic activity related to the shipping business while tourism is approached as a social phenomenon of traveling and temporary stay.[45]

That contrast is important in legal characterisation because it moves the reader away from thinking of chartering as "carriage" by default, and towards thinking of it as organised leisure use in a regulated coastal market. Within that framework, Lukovic defines nautical tourism through its functional centre: It is a "sum of multifunctional activities" associated with the stay of tourist-boaters and its use of vessels and related facilities, oriented to the recreation and other allied needs.[46] He also grounds the concept in positive law. Using the Croatian Act on Provision of Tourism Services he notes that nautical tourism not only includes navigation/stay for rest and recreation, but also a list of regulated services; among them, expressly, "Leasing of vessels with or without crew, with or without the provision of accommodation services" for rest, recreation, and cruising.[47]

In the same business context, Paker and Gok (2021) discuss the yacht chartering through the perspective of commercial and service management.[48] However, their results also contribute to the discussion about the functional identity of the contract, as per the expectations and intentions of the parties. They define yacht charter as a luxury type of nautical tourism where the operators compete by providing services that include the most basic facilities on board to the most luxurious ones. The yacht is treated as service environment that provides safe navigation as well as comfortable holiday experience. They have highlighted the importance of the centrality of the crew performance, privacy, cabin comfort, and visible safety measures in the development of satisfaction. Although it is constrained by a particular tourism setting, the research evidence confirms that yacht chartering is experienced and evaluated as more of an experiential hospitality service as opposed to a transport service.

3.3.2. Cruises, Passengers and the Limits of Analogy

Cruises and carriage of passengers have obvious doctrinal split with yacht charter. First, in the cruise vessels and ferries, the holidays and/or transport relationship is evidence by a ticket. Second, that contractual relationship falls under the international convention or the national law regulating the carriage of passengers, depending on the international or domestic character of carriage. Moreover, both models are based on a "volume service" model, whereby the vessel is absolutely under the management of the carrier. In this setting, the cruise/ferry passenger has no operational control, and the service is evidenced by the ticket. Conversely, the yacht charter is a free stipulation for

[45] Tihomir Luković, *Nautical Tourism*, (Cabi, 2013), 20.
[46] Ibidem, 25.
[47] Ibidem, 24.
[48] Neslihan Paker, Osman Gök, "Comprehensive Evaluation of Yacht Charter Service Concept: Influence of Voyager-to-Voyager Interaction on Service Satisfaction," *Journal of ETA Maritime Science* 9(3) (2021): 157-167 DOI: 10.4274/jems.2021.94834

the availability of the vessel, and rather structurally closer to non-demise charter than a ticketed transport. In this context, a yacht charterer acquires the exclusive use of the vessel and has certain power to issue orders for its employment, setting it apart from what in maritime doctrine is known as "transport-based risk allocation" of the usual carriage. If yacht charter was to be governed by the cruise / ferry legal regime, then the charterer would be reduced to a "passenger" and the owner to a "carrier" which would result in the specific liability regime of Athens Convention. Yet the *causa* of a yacht charter cannot be defined as the transportation between ports but the provision of an integrated service framework, in which navigation is a constituent to recreational availability. Thus, yacht charter is better understood as a *sui generis* maritime service contract with characteristics of hospitality with navigational execution. The term *sui generis* addresses the legal incompatibility of the yacht charter agreement with the classical performance requirements of the time charterparty doctrine. For instance, in carriage of goods or passengers, an implied obligation of the owner is the reasonable dispatch to a commercial destination. In contrast, in the yachting industry, this is superseded by the warranty of the luxury satisfaction, and the expectation of the hotel-service dominates; any such delay, which would be legally justified in a commercial voyage, may therefore be a breach.

In this respect, Todd's (2013) analysis is useful precisely because he does not consider the cruise voyage and carriage of passengers as mutually exclusive categories.[49] He adopts the descriptive point that big cruise ships resemble "floating hotels", but notices the paradox that Athens Convention was drafted to apportion the risk of shipping, not to regulate the hotel-side of the cruise product (e.g. accommodation, hospitality, entertainment, onboard life, or destinations' visits).[50] Yet his conclusion is not that cruises fall outside of the Athens Convention, the point is one of scope: Athens Convention is directed at marine risks, and it does not lend itself well to serving as a comprehensive code for "hotel risks" occurring on a ship: Todd is useful on this in that his treatment of the Athens Convention highlights why cruise does not need to be "point-to-point transport" in order to fall within a regime of passenger carriage. First, the Convention's gateway concept – "international carriage" - is drafted broadly: It covers not only voyages where the "place of departure" and "place of destination" are in different States, but also situations where they are in one State if, under the contract or "scheduled itinerary", there is an intermediate port of call in another State.[51] This drafting choice is important for the cruise market, since many cruises make return voyages to the same home port while being "international" in their itinerary. At the same time, Todd is explicit that Athens Convention is not a general code for the cruise product. He points out that modern cruise ships are "really floating hotels";[52] moreover and that the Convention is intended to deal "marine risks rather than the "hotel" dimension, in his words, the Athens regime is "not really intended to deal

[49] Paul Todd, *Carriage of passengers by sea: Athens Conventions and UK implementation*, 2013.
[50] International Maritime Organization, *Athens Convention relating to the Carriage of Passengers and their Luggage by Sea* 74/02, 1145 UNTS 1.
[51] Todd, *op. cit.* 16.
[52] Ibidem 28.

with the hotel management of cruise ships".[53] The Athens Convention thus operates in the main in the cruise sector, where the relationship between passengers and the ship is governed by the contracts of carriage. In the context of yacht chartering, however, the relationship is based on a charterparty which grants charterer the exclusive use of the vessel, thus is not a ticketed passenger contract. As a result, Athens Convention liability Rules do not normally cover the charter relationship itself, although they may be of relevance where passengers are carried under a separate carriage arrangement.

Tsimplis (2021), in Baatz et al. "*Maritime Law*", develops the same split - but he puts it in terms of contractual structure and remedial layering. The relationship between passengers in cruise is usually ticket based and in the form of standard form ("the contract is evidenced by the issuance of a ticket"), hence the reason why protective rules evolved around passenger carriage.[54] He also makes a functional distinction between normal passenger carrying and cruises: cruise passengers effectively "live in" the ship so the relevant hazards and potential contractual breaks go far beyond the performance of navigation.[55] The consequence is not that Athens ceases to matter, but that it takes on one layer. Tsimplis explains that the package-travel regime (EU Directive 2015/2302[56] and its implementing measures) can support recovery for "losses not recoverable under the Athens Convention" (including loss of enjoyment, price reduction, lack of conformity and insolvency protection).[57] In parallel, the EU passenger-rights law (Regulation 1177/2010)[58] provides both for disruption-and-assistance rights and specifically for cruise passengers, and also makes a distinction between a cruise service and scheduled passenger services.[59]

Bernauw (2021), in de Aguirre "*Legal Aspects of Cruises*," confirms this "layered" picture based on cruise-specific doctrine and practice. His chapter is startlingly frank on the character of cruise: the mainstream model includes onboard hospitality and entertainment, and "the transportation element is servile to entertainment."[60] Yet that hospitality reality does not displace passenger-carriage liability rules.

De Aguirre (2021), in the same monograph, presents the systematic ticket-term references to the Athens Convention and the explicit reliance on Athens limitations for

[53] Ibidem 30.
[54] Michael Tsimplis, "Carriage of Passengers," in *Maritime Law*, ed. Yvonne Baatz, 5th ed., (London: Informa Law from Routledge, 2021), chap. 6.
[55] Ibidem.
[56] Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, *Official Journal of the European Union* L 326, December 11, 2015, 1–33.
[57] Tsimplis op. cit. 6 § 6.2.
[58] Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway, *Official Journal of the European Union* L 334, December 17, 2010, 1–16.
[59] Tsimplis op. cit. 6 § 6.1.
[60] Kristiaan Bernauw, "Legal Aspects of Cruises from a Belgian Perspective," in *Legal Aspects of Cruises*, ed. Cecilia Fresnedo de Aguirre (Cham: Springer, 2022), 127.

itineraries outside the U.S.[61] He further points out that EU Regulation 392/2009 (Athens-based) is the extension of the Athens-type liability regime in the EU and can therefore apply to cruises that would not be "international carriage" by the Convention definition.[62]

These sources support a practical conclusion: it is often conceptually safer to treat Athens Convention (and its EU implementing instruments) as a specialised liability layer for accidents and luggage during carriage, while treating the broader obligations relating to hospitality and enjoyment as being part of consumer and package travel logic. These are not "parts of the voyage", in a geographic sense; it is a division according to the type of obligation and the head of loss which is exactly how the cruise literature explains the coexistence of passenger carriage rules with modern tourism regulation.

4. Findings and Conclusion

The difficulty for the contractual classification of the modern yacht charter lies in its appearance. The contract borrows the vocabulary and operational skeleton of charterparty law - delivery and redelivery, owner's command, orders for employment - so it is understandable leaning towards carriage logic. Yet the economic and legal centre of gravity of the yacht charter is diverse. Parties do not negotiate transport of goods and/or passengers between designated ports. Instead, the promisor accepts the obligation to offer the use of a vessel under professional management: privacy, safety, accommodation, service and a controlled nautical experience. Navigation is often essential to that experience but is not the juridical object of the contract. Once classification is decided through organising function, then the main alternatives are easier to discipline. In particular:

First, the yacht charter is not a lease in the legal sense of the word. Even where the charter period is similar to a time-lease, the decisive factor is possession and command. In accordance with the standard yacht model the owner continues to have possession and navigational authority and also appoints the crew; and the charterer does not become owner *pro hac vice*. That single fact affects the legal interpretation of the use: the enjoyment of the charterer is performed through the continuing obligation of the owner's agent (e.g. master and the crew) to keep her running in a manner that is safe and legal, as well as through the continuing responsibility of the owner for seaworthiness and the management of the ship.

Second, the yacht charter is not best understood as a contract for the carriage of passengers. The cruise sector market practice reveals that cruises are volume markets, based on ticketed relationships: the passenger has no operational voice and of course limited or non-existing bargaining power: the operator's packages are usually fixed, and sold on ticket terms and itinerary marketing. The doctrinal regime of passenger carriage (Athens Convention and its EU implementing layer, together with passenger rights

[61] Cecilia Fresnedo de Aguirre, "Legal Aspects of Cruises," in *Legal Aspects of Cruises*, ed. Cecilia Fresnedo de Aguirre (Cham: Springer, 2022), 102 et seq.
[62] Ibidem 49.

instruments) can apply to the "marine risk" (associated to the perils of the sea venture) of that relation, even though the cruise is also marketed and experienced as a "floating hotel." That co-existence between maritime and hospitality lends itself to layering any faults in performance: carriage instruments cover personal injury and luggage within its area of concern, but the broader "holiday product" is influenced by consumer, package-travel, and quality-of-service expectations. The important lesson of the experience of yacht chartering is not that yacht charters should be reduced to cruise tickets logic but that regimes of carriage liability are neither necessary nor sufficient to capture a hospitality centred maritime service.

Third, the yacht charter is not a mixed type of contract in the technical sense of side-by-side types that have separate and independent contractual functions. We deem that a technically mixed-contract analysis would therefore add little explanatory value. The contract does not function as a bundle of (a) sea transport, (b) accommodation and (c) separate hospitality undertakings. Instead, the obligations are interdependent: Of decisive importance is the retention of the operational control of the vessel by the owner - through the master and the crew. Even where the charterer decides on the itinerary or the manner of enjoyment of the yacht, the navigation, safety and management of the vessel remain under the authority of the master. All services provided on board - including accommodation, catering and leisure activities - are therefore provided within the legal framework of the vessel's operation, rather than as independent undertakings by contract. This structural unity is why the yacht charter operates as one maritime service contract instead of being made up of a combination of transport and hospitality contracts. The relevant obligations cohere because they are all directed towards one juridical performance, making a pleasure craft available for organised recreational use under the control of the owner, under the conditions of maritime safety and lawful operation.

In this context, the modern yacht charter agreement can best be classified as a unitary, *sui generis* recreational / hospitality maritime service contract: charterparty in structure, experiential in function, and constantly conditioned by mandatory maritime norms. Public maritime regulation does not re-type the agreement into transport, it secures sustainability, and frames performance, imposing non-negotiable limits (i.e. safety, environmental compliance, third party protection, crew standards etc.) that overturn itinerary preferences and other expectations of leisure, if necessary. To sum up, a confirmation test is deemed necessary:

i. Under lease, possession is not passed, thus the itinerary is not executed by the user;

ii. Under the service framework port visits and sea experience are essential part of the framework;

iii. The agreed framework is subject to the master's approval for reasons of safety and relating maritime constraints;

iv. Itinerary changes are assessed against safety and relating maritime concerns, as per (iii).

This classification offers us the appropriate doctrinal basis for interpreting the rights and obligations of the yacht charter agreement. It explains why yacht charter

disputes often associate with availability, readiness, quality of service, crew conduct, privacy and the line between charterer direction and master's overriding safety discretion. It also covers the carriage liability layers that may be important for certain losses without transforming the charterparty into a passenger carriage one. Most importantly, it avoids category errors: It does not see the fact of "people on board" as good enough reason to support the logic of carriage, or the "hire" term as indicative of a lease, when control and function lie elsewhere.

Yacht chartering illustrates a broader development in understanding private maritime law: Contracts that are still maritime in shape, yet they are evaluated in terms of experiential dimension. The *sui generis* maritime service permits a coexistence of the different elements, without disordering the agreement into fragments.

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