



EXAMINER'S REPORT

JULY 2020

SHIPPING LAW

Q1. An 18-month time CP states that the hire is due on 14 of every month, and there is no anti-technicality clause contained in the contract. Charterers have been making the hire payments promptly on or before the due date. In the 9th month, the payment was delayed by one day, and the shipowners duly notified the charterers about the delay, indicating that the vessel will be withdrawn if there were to be a repeat of the delay in hire payment. In response, the charterers made the payment immediately. In the 12th month however, the charterers have faltered, and have been notified by the shipowners that they are withdrawing the vessel with immediate effect. The Charterers are looking to you for advice as to the payment obligation under a time CP; if the shipowners can withdraw the vessel without further notice; and if the shipowners' actions constituted a breach.

A problem question where students are expected to be familiar with primary obligation of payment of hire charges under time charterparties, and how payment is to be made promptly.

To get a pass, it is essential that the student presents a critical analysis of the scenario, followed by a detailed discussion on **i.** payment of hire charges under time CPs, and late payment is considered as 'no payment' in practice, **ii.** how in recent years the discussion of payment of hire before the UK courts had focussed on the term – *a condition or an innominate term*, leading to differing rulings being handed down, **iii.** if in the absence of an anti-technicality clause in the time CP contract, can the shipowner withdraw the vessel without notice, and **iv.** If the waiver by the shipowner to withdraw the vessel during the 9th month will be put against them. Importantly, references is to be made to judgements from 1976 and 2015.

The students were expected to use both case laws and examples in their discussions – those cited in the study material/ textbook and student's own choice. Case Laws: ***The Laconia* [1976] 1 Lloyd's Rep 395; *The Astra* [2013] 2 Lloyd's Rep 69; *Spar Shipping v Grand China Logistics Holding (Group) Co Ltd* [2015] EWHC 718.** Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q2. A time charterparty provides for a duration of minimum 12 months plus 15 days more in charterers' option. On the last day of the 12th month of the charterparty, the charterers declared that they were exercising the option to extend the charter period by 15 days and carry out a final voyage, which it was estimated in good faith at the time the order was given, to last for not more than 7 days. Although the vessel departed on its voyage immediately, the voyage could not be completed in such time to be properly re-delivered at the agreed charterparty location in 15 days. Analyse the options available to the owners of the vessel in respect of the charterers' voyage instructions with reference to suitable case law.

A problem question on legal issues arising from time charterparty operations, *i.e.*, redelivery of the vessel. Here the students were expected to be familiar with the obligation of the charterer regarding re-delivery of the vessel to the shipowner, the use of the optional 15 days provided under the time CP, and last orders. Students were to carry out a critical analysis of the facts presented followed by a detailed discussion of the legal issues of redelivery, last orders, if under the circumstances the last orders are legitimate, and if not, what are the remedies available to the shipowner under the circumstances.

The students were expected to use both case laws and examples in their discussions – those cited in the study material/ textbook and student's own choice. Case Laws: ***The London Explorer* [1971] 1 Lloyd's Rep 523; *The Astra* [1991] 1 Lloyd's Rep 100; *The Gregos* [1995] 1 Lloyd's Rep 1.** Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references

Q3. Answer BOTH parts of the question. Compare and contrast the arrest of a vessel before the English Admiralty court a) for a cargo claim and b) for a salvage claim. Use suitable case law to support your answer.

A two-part essay type question on cargo claims and salvage claims before the English Admiralty court. The students were expected to be familiar with what assets (vessels) are available to secure a claim and to enforce against, should the claim be successful before the English Admiralty court.

The students were expected to be aware of arrest of seagoing ships, and the difference between a maritime lien and a maritime claim. Students were to carry out a critical analysis of **a)** the law relating to maritime claim (cargo), and **b)** maritime liens (salvage), followed by a detailed discussion of where the claims for cargo damage, salvage reward will rank. The students were expected to include in the discussion the that could be brought before the Admiralty court in the England & Wales, and the laws, *i.e.*, Section 20, Senior Courts Act 1981, Arrest Convention 1952.

The students were expected to use both case laws and examples in their discussions – those cited in the study material/ textbook and student's own choice. Case Laws: ***The Bold Buccleugh* [1851] 7 Moo PC 267; *The Maersk Nimrod* [1991] 1 Lloyd's Rep 269; *The Sennar* [1983] 1 Lloyd's Rep 295.** Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q4. One of the passengers travelling on board an international cruise has been injured. The incident happened while she was reclining on the sun bed provided by the cruise operators, and she was injured due to no fault of her own. It later came to light that the operation and maintenance of the swimming pool and sun beds was conducted and supervised by a third party engaged by the Owners of the cruise. The passenger now seeks your advice as to any rights of recourse that she may have against the Owners of the ferry, and/or any other party and in particular as to the circumstances in which the Owners and/or any other party can limit their liability under the Athens Convention (Merchant Shipping Act 1995) and if so, as to the applicable limits under such Convention.

A problem question, where students were expected to have a good understanding of the provisions of the Athens Convention 1974 relating to the carriage of passengers and their baggage by sea.

Students were expected to be aware that the liability under Athens Convention is fault-based, as opposed to being strict. The Protocol PAL 2002 imposes a strict liability for loss of life and personal injury arising from a shipping injury. Students were to carry out a detailed discussion on the legal issues arising for discussion from the facts presented and the key provisions of the Athens Convention on the carriage of passengers and their baggage by sea, that are relevant to the facts presented. The students were expected to identify and deal with legal issues clearly and be able to demonstrate a good understanding of the application of the provisions to the problem presented.

The students were expected to use both case laws and examples in their discussions – those cited in the study material/ textbook and student's own choice. Case Laws: ***Davis v Stena Line Ltd* [2005] 2 Lloyd's Rep 13; *Dawkins v Carnival* [2011] EWCA Civ 1237**; Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references

Q5. The vessel arrived at a loading port and tendered Notice of Readiness outside of the stipulated hours contained in the charterparty to load a part cargo of sugar. The vessel's holds were subsequently rejected by the Inspectors and, after cleaning, the vessel loaded two separate parcels of sugar. The vessel then proceeded to the discharge port but could not proceed directly to the berth by reason of congestion. The Charterparty contained a WIBON Clause. Notice of Readiness was tendered and a few days later the vessel proceeded to the berth and discharged both parcels of cargo. Please advise the owners as to their right to claim demurrage. Use case laws to support your answer.

A problem question giving rise to legal issues relating to the performance of a voyage charterparty contract. Here, students were expected to be familiar with the obligations arising under a voyage CP contract in relation to issue of NOR by the shipowners, the legal effect of WIBON (whether in berth or not) clause in a CP contract. The students were to carry out a detailed analysis of scenario presented, followed by a detailed discussion of the legal issues surrounding the issue of NOR in the loading and discharging process, the effect of the WIBON clause in the voyage CP contract, on the NOR, etc.

The students were expected to use both case laws and examples in their discussions – those cited in the study material/ textbook and student's own choice. Case Laws: ***The Peter Schmidt* [1997] 1 Lloyd's Rep 284; *The Lindaros* [1994] 1 Lloyd's Rep 28**. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q6. The inclusion of a “Himalaya Clause” into the bill of lading contract extends the defences available to the carrier to third parties to the bill of lading contract. Critically discuss with reference to relevant case law examples.

In this essay type question, the students were expected to have a good understanding of the use of Himalaya clause in carriage contracts. The answers presented were to include the case law ***The Himalaya***, and how such clauses are incorporated into bills of lading contracts to extend the defences available under the bill of lading contract to third party contractors.

A detailed discussion on Himalaya Clauses and how it worked in extending the same set of defences/ protection available to a carrier under the contract to that of a third-party sub-contractor, how the same worked when cargo claims are brought directly against in the sub-contractor. The discussions should also refer to how the legal principles handed down in *The Himalaya* case came to be extended and incorporated in the H-Visby Rules in Article IV *bis* (2).

The students were expected to use both case laws and examples in their discussions – those cited in the study material/ textbook and student’s own choice. Case Laws: ***The Himalaya; The Eurymedon, The Mahkutai, The New York Star***. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references

Q7. The ship A owned by the Liberian company 'C', sinks just off the English coast in heavy weather due to lack of up to date sea chart of the English Channel, taking its entire cargo with it. The Charterer who is also the owner of the lost cargo is concerned that even if they succeed in the litigation, it may not be possible to recover any funds because it is believed that the Owners of the vessel 'A' have no other assets and in any event the vessel, which was carrying his cargo, was also lost. The Cargo Owner have now discovered that the Liberian company 'C' in fact, continues to own and operate a small tanker vessel, and have also purchased a new gas carrier. All of these vessels regularly trade in and out of English ports. Advise the Cargo Owner as to their options in recovering their loss.

A problem question on maritime liens, sister ship arrest and other the legal issues arising from the scenario. Here, the students were expected to be familiar with the maritime liens and the possible claim of the cargo owner. The students were to carry out a critical analysis of the scenario presented, which is to be followed by a detailed discussion of the legal issues arising from consideration under the circumstances, and the formation of a 'limitation fund' by the shipowner under the given circumstances. Students were to have a good understanding of how maritime liens arise (as opposed to maritime claims), *in rem* proceedings, the relevant provisions of the Senior Courts Act, and the remedies available to the cargo interest against the vessels currently owned by Company 'C', including sister-ship arrest [s21(4)(b)] before the Admiralty in the UK.

The students were expected to use both case laws and examples in their discussions – those cited in the study material/ textbook and student's own choice. Case Laws: ***The Bold Buccleugh* [1851] 7 Moo PC 267; *The Esso Malaysia* [1975] QB 198; *The Indian Grace (No 1)* [1993] AC 410; *The Evpo Agnic* [1988] 2 Lloyd's Rep 411; *The Berney*.** Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references

Q8. Answer BOTH parts of the question using case law to support your answers: a) The rationale and scope of limitation of shipowners' liability under the 1976 Limitation Convention; b) Identify the conduct that is necessary to debar the right to limit under the Convention.

A two-part essay type question on the rationale and scope of shipowner's liability under the 1976 Limitation Convention and the conduct that could debar the right to limit under the Convention.

The students were expected to be aware of the LLMC regime known as the 'global limitation' regime. The students were to carry out a detailed discussion on **a)** the rationale and scope of the Limitation Convention 1976, which is designed to deal with disasters in which shipowner faces claims from variety of claimants, and how the Convention seeks to create one overall maximum limit in relation to all claimants (tonnage limitation), and **b)** how if it were to be proved that the loss resulted from the claimant's personal act or omission, or such acts were committed by the claimant with an intend to cause such loss, etc., then under Article 4, the shipowner could lose the right to limit.

The students were expected to use both case laws and examples in their discussions – those cited in the study material/ textbook and student's own choice. Case Laws: ***The Eurysthenes* [1976] 2 Lloyd's Rep 171; *The Garden City* [1982] 2 Lloyd's Rep 382; *The Lady Gwendolen* [1965] 1 Lloyd's Rep 335.** Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

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