



# EXAMINER'S REPORT

## NOVEMBER 2021

### LEGAL PRINCIPLES IN SHIPPING BUSINESS

#### **General Comments**

Overall, the standard displayed was fair, given the objectives of the examination, with over half of the students displaying competence in identifying legal problems.

Both the essay and problem type questions were answered fairly well. Legibility and tidiness were fair in the majority.

The only criticism is that a number of answers omitted to include authorities (i.e., cases and statutes).

Comments on individual questions are as follows:

### **Question 1**

**Explain and discuss giving your own examples the legal and practical implications of (i) contributory negligence, and (ii) vicarious liability.**

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A reasonably well answered essay-type question. Most students seemed comfortably dealing with both legal principles. Two remarks on contributory negligence: Firstly, it is not a complete defence, in that, if successfully pleaded, it reduces the claimant's damages, rather than extinguishes his claim – it cannot zero it. Secondly, in establishing contributory negligence, it is not necessary to show that the claimant owed the defendant a duty of care. So, the burden of proof for Defendant to show that Claimant contributed to the loss claimed, is not the same.

### **Question 2**

**Give an outline explanation of the requirements for a General Average contribution, and discuss the scope and use of the so called "Amended Jason Clause".**

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A popular question with students, and well answered overall. A tendency was noted to define general average only in relation to sacrificing property, thereby omitting to include extraordinary expenditure. A few answers erroneously considered that saving of life was a factor in establishing general average.

### Question 3

**A charter-party would usually contain a warranty on the part of the charterer that the vessel will only be traded between safe ports. Explain how such warranty operates in practice, and identify and critically discuss any practical difficulties that arise from the application of such warranty.**

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A reasonably well answered question overall. A few answers confused trading limit warranties. It should also be born in mind that a port suffering disruption to operations caused by strikes (or similar action) is unlikely to be unsafe in a legal sense. Strikes like bad weather may affect ports at any time and to recognise within strikes the incidents of unsafety would probably be to render the world in respect of safety, "portless" (see for example the judgments delivered in the Court of Appeal in *Reardon Smith Line, Ltd. v. Ministry of Agriculture, Fisheries and Food* [1962], 1 Q.B. 62).

### Question 4

**You are a bill of lading holder whose goods have been delivered to you badly damaged. Discuss, giving reasons, whether you would try to have your claim against the carrier for the damage to your goods held in a jurisdiction signatory to the Hague-Visby or Hamburg Rules.**

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Most answers made the general remark that Hague-Visby Rules were friendlier to Carriers/Shipowners, mentioning the differences of, e.g., notice of claim periods, or limitation of liability SDR amounts, with Hamburg Rules. In explaining this assertion, however, numerous answers omitted to put forward the main reason, i.e., that under Hamburg Rules there is no long list of 17 perils for which the Carrier/Shipowner is exempted!

**Question 5**

**Discuss why parties to a charter-party would agree to resolve their disputes by arbitration. What alternatives could be considered?**

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Most answers showed an understanding of the main advantages of reference to arbitration, e.g., finality of award, arbitrator's knowledge and experience in charter-party disputes, etc.

**Question 6**

**Outline what is an in rem action and explain in detail its purpose.**

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Those who attempted answering the question seem to have done rather well, averaging high marks. Most answers mentioned maritime liens, as an example where an action *in rem* may be pursued.

### Question 7

**A shipbroker has had his authority to conclude contracts in the dry cargo market withdrawn by his principal. He is still permitted to fix crude oil contracts. Despite these instructions he fixes a contract for dry cargo on behalf of his Owners.**

**Discuss in detail his actions and the possible course of actions open to the Owner.**

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Considering agency is a major part of a shipbroker's practice, it was surprising that those who attempted it did not seem to appreciate the issues raised in the scenario. For example, when the facts point to an agent's authority having been revoked/withdrawn by his/her principal, it is expected, unless the question specifically excludes it, that a consideration be given as to whether through previous course of dealings with third parties raises the issue of apparent/ostensible authority. A principal who withdraws his/her broker's authority runs the "risk"; If such apparent/ostensible authority is established, then the principal is bound by the contract with the third party.

On the breach of the implied warranty of authority by the agent, the question to be addressed is "to whom an agent warrants his authority"? A person contracting as agent for another is deemed to warrant his authority to the third party. Therefore, the potential claim in such case is that of the third party against the agent only.

If the principal does not ratify the unauthorised agent's contract with the third party, then, the agent can be sued by the third party for damages for breach of the implied warranty of authority, even if the agent in good faith believed him/herself to have authority; *Yonge v. Toynbee* [1910] 1 K.B.215.

Provided the third party does not know of the agent's lack of authority and the third party suffers loss as a result of his/her lack of knowledge, then the agent's liability for breach of implied warranty of authority is strict and does not depend upon his/her fraud or misrepresentation.

## Question 8

Fully explain ALL of the following:

- a) Notice of Readiness, and its effect.
- b) Laytime.
- c) Demurrage.

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The most popular question, and well answered overall. Numerous answers suggested that if the agreed time for loading/discharging (laytime) has been exceeded, then there is a breach of the charter-party (which is correct), and owners would be entitled to liquidated damages. This would be correct where demurrage has been agreed; if not, then such damages would be unliquidated (damages for detention).