



EXAMINER'S REPORT MAY 2022

SHIPPING LAW

Q1. The vessel 'A' was time chartered for 8 months. The vessel was withdrawn in the 6th month of the charterparty, as the charterers defaulted in hire payments. The charterers are contesting wrongful withdrawal, as they claim that the required 48-hour notice was not given by the shipowners before such withdrawal. The shipowners have now concluded the sale of vessel 'A'. It now transpires that bunkers were supplied to the vessel while it was time chartered, and the bunker receipt signed by the Master of the vessel was addressed to *Charterers/ Owners/ Master*. Advise the time charterers and bunker suppliers on their legal rights and remedies.

A problem question on charterparty obligations with regards to supply of bunkers and the right to withdraw the vessel for late payment of hire. Here, the students are expected to be familiar with the legal position with regards to anti-technicality clauses (as regards withdrawal of vessel), and to whose account will supply of bunkers fall – shipowners or the charterers?

To get a pass, the answers presented should contain a detailed and critical discussion of the facts to determine if **i)** the charterers breached the terms of CP contract as regards payment of hire, warranting the withdrawal of the vessel by the shipowners, and **ii)** whether the shipowners (old/new), or time charterers are liable to pay the bunkers supplied – in the event who should the bunker suppliers pursue?

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 Alev* [1989]; *The Peonia* [1991]; *The Pamela* [1995]; *The Yuta Bondarovskaya* [1998]**. Answers were to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q2. A vessel was successfully salvaged under the LOF 2020 terms and in particular the salvors prevented any leakage of the cargo of oil on board into the sea. Please advise the salvors as to the basis of the remuneration with particular reference to the Salvage Convention 1989.

A not-so-complicated problem question on legal issues arising from a salvage operation under LOF 2020 terms, where the salvors prevented the leak of a cargo of oil into sea. The students were expected to be familiar with provisions of the Salvage Convention 1989.

Students were to carry out a detailed discussion on the salvor's entitlement to reward under Art 14 and the level of remuneration in comparison to a reward under Art 13. The discussion should include a coverage of the 1989 Salvage Convention, which encourage salvors to engage in saving, or minimising the damage done to environment and seek an up-lift on their salvage remuneration, and how it seeks to reward the salvors for such actions. Reference is to be made to the landmark House of Lords decision in *The Nagasaki Spirit* (1997), where problems in the drafting of the Convention were identified.

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 Nagasaki Spirit* (1997)**. Answers were to be well structured, dealing with the issues individually and critically using relevant case laws and references

Q3. Vessel 'A', while entering the port, collided with the stationary vessel 'B'. The vessel 'B' suffered damage and was dry-docked for a considerable period of time to undergo repairs. The owners of the vessel 'B' claim that they have lost a lucrative time charterparty contract as a result of the collision and being dry docked for a prolonged period of time. Please advise the Owners of the vessel 'B' as to the liability of the vessel 'A' for such damage, and the quantum of recoverable damages. Use case law to support your answer.

A problem question on collision at port. Here, the students are expected to be familiar with **i)** the general principles of collision regulation and liabilities, **ii)** that a majority of collision actions give rise to liability for negligence or a negligent breach of statutory duty, and **iii)** that most cause of action would be covered under the tort of negligence.

The students were expected to carry out a detailed analysis of the scenario presented in the light of the collision regulation (COLREGS), and the principles of liability, which is to be followed by a discussion of 'recoverability' and the 'remoteness' of damages claimed 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 Dundee* (1823) 1 Hag. Ad. 109; *The Margaretha Maria* [2002] 2 Lloyd's Rep 293**. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q4. While loading a cargo of sugar, Vessel 'A' was arrested for non-payment of crew wages. A day later, another creditor of the vessel joined the legal action, claiming non-payment of charges for repairs carried out while the vessel 'A' was dry-docked a year before. Both creditors are convinced that their claims are sustainable under UK Laws, but not sure about where the liens ranked. Discuss the procedures to be followed before the English Admiralty and the ranking of the liens, supporting your answer with suitable case laws.

Another problem question touching upon the UK laws governing the arrest of sea going vessels (Arrest Convention/Merchant Shipping Act) and maritime liens/equitable liens (ranking, etc.), and the procedures involved before the UK Admiralty courts. The students were expected to be familiar with maritime liens/equitable liens (ranking, etc.), and the procedures involved before the UK Admiralty courts.

Students were to present a detailed discussion on the *in rem* procedure to be followed before the Admiralty courts to effect an arrest with reference to the facts at hand is to be presented, focussed on *maritime liens* and where the two claims (unpaid crew, and the repair dues while dry-docked) rank. Reference is to be made to Sections 20 & 21 of the Senior Courts Act 1981 with regards to arrest, together with relevant case laws. It is to be noted that the UK is a signatory to the Arrest Convention 1952, and not 1999.

Case laws and examples cited in the study material/ textbook and student's own choice. Case Laws: ***The Bold Buccleugh (1851); The Tolten [1946]***, etc. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q5. Discuss the shipowners' rights and immunities under Article IV Rule 2 of the Hague-Visby Rules, with reference to statute and case law.

An essay type question on the shipowners' rights and immunities under Article IV Rule 2 of the Hague-Visby Rules. The students were to be familiar with the relevant provisions of the Hague-Visby Rules, and how the Hague-Visby Rules grants a set of rights and immunities to the shipowner in return for a set of obligations towards the cargo interest.

Here, students were expected to present a detailed discussion on the rights and immunities conferred on the shipowners under Article IV Rule 2 of the Hague-Visby Rules, outlining the list of exceptions upon which the carrier is permitted to rely if a claim is brought against them under Article III(I); the list being *acts of god, perils of the sea, riots and civil commotions, act of war, etc.*, to name a few. Discussion should also focus on how it creates a system of 'checks and balances' by obligating the shipowner to care for the cargo carried on board the vessel.

Quality of illustrations, both case laws (***Eurasian Dream No. 1 [2002]***) and examples – the cited in the study material/ textbook and student's own choice. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

Q6. 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 examples in your discussion.

A two-part essay type question on arrest of vessel before the English Admiralty court, for a cargo claim and a salvage claim. The students were expected to be familiar with the law relating to arrest of seagoing ships, and the difference between a maritime lien and a maritime claim. The students were to carry out a detailed discussion of **a)** the law relating to maritime claim (cargo), and **b)** maritime liens (salvage), followed by a discussion of where the claims for cargo damage, salvage reward will rank. The students are 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 were to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q7. The vessel 'Sea Breeze' was chartered on a tanker voyage charter to carry fuel oil. The charterparty contained a cargo retention clause and a pumping warranty, which required the vessel to discharge its entire cargo within 24 hours. The Charterers ordered the vessel to wait in the outer port limits for a week while they fixed their letter of credit problems with the banks. Subsequently, the vessel was allowed to enter the port and the discharge of the cargo lasted 48 hours. Following discharge, a shortage of cargo was noticed, and the sailing of the vessel was delayed due to the attendance on board of various surveyors who wished to investigate the cause of the cargo shortage. Please advise the shipowners as to their rights and remedies. Use suitable case law reference in your discussion.

A problem question on voyage CP scenario where there is a pumping warranty. The students were expected to be familiar with the obligations arising under a voyage charterparty operations, cargo retention clauses, pumping warranties, *etc.* The students were to carry out a detailed analysis of scenario presented, followed by a detailed discussion of the applicable law, the remedies open to the shipowner, as a result of the delays caused in the operation. The answer should focus on voyage charterparty operations relating to discharge of cargo in the light of the cargo retention clauses and pumping warranties found in charterparty contracts.

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 Timna* [1977]; *Akt Reidar v Arcos* [1927].** Answers were to be well structured, dealing with the issues individually and critically using relevant case laws and references

Q8. 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.

An essay type question on inclusion of a “Himalaya Clause” into the bill of lading, and if they extend the defences available to the carrier to third parties to the bill of lading contract. The students were expected to be familiar with Himalaya Clauses and its legal effect when used in a bill of lading contract. The students were expected to carry out 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 work 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 were to be well structured, dealing with the issues individually and critically using relevant case laws and references.