



EXAMINER'S REPORT MAY 2023

SHIPPING LAW

Q1. The tanker vessel STAR was successfully salvaged under the LOF 2020 terms, and the salvors prevented any leakage of the cargo of crude oil on board into the sea. Environmental activists have praised the salvors' efforts in minimising any damage to the surrounding environment, as it was crucial for the salvage operation. Please advise the salvors as to the basis of their remuneration with 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.

Q2. Do you think it is necessary to have withdrawal clauses in time charter party contracts with regard to late payment of hire? Discuss critically with relevant case law reference.

An essay type question on withdrawal clauses found in time charterparty contracts. Here, the students were expected to be familiar with the use of withdrawal clauses found in time CPs where payment of hire is delayed. The students were to present a detailed analysis of **i.** payment of hire charges under time CPs, and how 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, and **iii.** if in the absence of an anti-technicality clause in the time CP contract, can the shipowner withdraw the vessel without notice. 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 were to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q3. Vessel STAR collided with the stationary vessel DIAMOND while entering port. DIAMOND suffered damages and was dry-docked for 4 months to undergo repairs. The owners of the DIAMOND claim that they have lost a lucrative time charterparty contract as a result of the collision and being dry docked for a lengthy period of time. Discuss the liability of the vessel STAR for such damage caused, and the quantum of recoverable damages. Use case law to support your answer.

A problem question on collision at port. Here, the students were 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. Discuss the advantages and disadvantages of mediation and arbitration, to that of a litigation before a court in commercial matters. Include in your answer references to the different types of dispute resolution offered in various centres of arbitration for maritime disputes.

An essay type question on arbitration and ADR, as opposed to adjudication before a court of law to resolve disputes arising in shipping business. Here, the students were expected to be familiar with mediation and arbitration, and their advantages and disadvantages over that of litigation.

The students were to present a preliminary discussion on arbitration and ADR, as opposed to adjudication before a court of law to resolve disputes arising in shipping business. Students were to carry out a detailed discussion on advantages of resorting to arbitration as opposed to adjudication, with the focus of the discussions on the **i.** benefits of using arbitration in a highly commercial environment, where time is of the essence, with no adverse publicity, *etc.* and **ii.** the different types of dispute resolution offered in London (LMAA), and in New York in maritime disputes.

Case laws and examples cited in the study material/ textbook and student's own choice. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q5. Under common law, the charterer is under an implied obligation to nominate a safe port. The English courts have held that “*what constitutes a safe port*” purely depends on the circumstances of each case. Discuss the legal principles and “circumstances” which courts will consider while deciding if a port is safe or not.

This question requires the student to be familiar with the common law obligation to nominate a safe port. The students were to present a preliminary discussion outlining the common law obligation of nominating a safe port in a contract of affreightment.

To get a pass the answers presented were to contain a detailed discussion on the common law obligation to nominate a safe port in a charterparty contract, and how the courts in England have interpreted this, *i.e.*, when should the ports be safe – prospectively or at the time of nomination of the port? Reference is to be made to the House of Lords decision in ***The Evia (No 2)* [1982]**, which to this day remains the authority on the subject.

Quality of illustrations, both case laws and examples (***The Evia (No 2)* [1982]; *The Eastern City* [1958] *The Khian Sea* [1977]**) – 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: Using suitable case laws, discuss a) laytime, and b) demurrage.

A two-part essay type question on a) laytime and b) demurrage. Here, students were expected to be familiar with the concept of an arrived ship and the acceptance of notice of readiness (NOR), the triggering of laytime, and demurrage.

The students were to carry out a detailed discussion on **a)** triggering of laytime pursuant to the acceptance of NOR, and **b)** what is demurrage, when may a ship be considered to be on demurrage, and when may it cease to be on demurrage. Students should clearly identify demurrage to be liquidated damages. Students are to clearly demonstrate their understanding of the two from a legal perspective.

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 Johanna Oldendorff (1973)***; ***The Maratha Envoy (1977)***. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q7. A passenger travelling on board an international cruise ship has been injured whilst reclining on a sun bed provided by the cruise operators, 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 shipowners. The passenger now seeks your advice on the following: a) the rights she may have against the shipowners of the cruise, and/or any other party; and b) the circumstances in which the shipowners and/or any other party may be allowed to limit their liability under the Athens Convention 1974 (Merchant Shipping Act 1995).

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.

Q8. Answer both questions with reference to relevant case laws: a) What is 'hire' in time charters, and when is it payable? b) How is 'freight' in voyage charters different from hire and when is it payable?

A two-part essay type question on **a)** 'hire' in time CP operations, and **b)** 'freight in voyage CP operations and how the two differed. The students were to be familiar with **a)** 'hire' as the payment obligation in time charterparties and when it is payable **b)** 'freight' as the primary payment obligation under voyage charters. Here, students were to carry out a detailed discussion on **a)** 'hire' in time charterparties and when it is payable – before and not later – and the consequences of late payment, and **b)** how 'freight' under voyage charters is calculated and when payable, and how no set-off is allowed. Answers are to demonstrate students' clear understanding of both **a)** and **b)**.

Quality of illustrations, both case laws and examples – the cited in the study material/ textbook and student's own choice. Case laws: *The Mihaios Xilas* [1979]; *The Laconia* [1977]; *Spar Shipping v Grand China Logistics* [2015]; *The Aries* [1977]; *Thomas v Harrowing SS Co* [1915]. General structure and quality of answers

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