



EXAMINER'S REPORT

NOVEMBER 2023

SHIPPING LAW

Q1. Answer BOTH parts of the question with reference to case laws: In 'The Timna' it was observed that "It is a good working rule...to give Notice of Readiness and to go on giving such notices in order that, when later the lawyers are brought in, no one shall be able to say; "If only the Master had given Notice of Readiness, laytime would have begun and the Owners would now be able to claim demurrage". a. Discuss when laytime starts for both port and berth charterparties, and b. What happens if the Notice of Readiness is invalid.

A two-part essay type question on laytime and NOR. Students were to carry out detailed discussions on laytime in voyage charterparties with particular reference to port and berth charterparties, and on invalid NORs. Students were expected to be familiar with *voyage charterparties, NOR, laytime, demurrage etc.* Discussions were to include when and how laytime will start in relation to both port and berth charterparties, and what happens if the NOR is invalid. Students were expected to have a good understanding of the above practice and the answer should demonstrate a clear grasp of the legal principles behind the practice.

Quality of illustrations, both case laws and examples (*The Timna*)– 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.

Q2. Article IV *bis* (2) of the Hague-Visby Rules provides that if a claim is brought against the servants and agents of the carrier in relation to cargo claims, the servant and agents are entitled to the same defences as are available to the carrier himself, and that such defences are not available to independent contractors. A claim has been brought against a stevedore for negligent handling of cargo resulting in severe damage to cargo. The stevedore would like to know if they could invoke Article IV *bis* (2) of the Hague-Visby Rules to defend the claim. Advise the stevedore, using suitable case law reference to support your arguments.

A very legal question, the student is required to be familiar with Article IV *bis* (2) of the H-Visby Rules. The students are expected to be familiar with the provisions of the H-Visby Rules, and in particular

Article IV bis (2) and the Himalaya Clause; and also, the issue of privity of contract, *i.e.*, the stevedore not being a party to the contract of carriage as contained in the B/L. The question presents a good opportunity for students to showcase their knowledge and understanding of Article IV bis (2) which is widely used. A good answer should contain a detailed discussion on Article IV bis (2) of the H-Visby Rules, which effectively incorporates the Himalaya Clause into the Rules. Discussions should include i) how Article IV bis introduces the entitlement of the carrier to defend themselves, or to limit their liability whether the action brought against them is founded in contract or tort – within the parameters of the Rules, and ii) the issue of privity of contract, which has seen the carriers inserting a ‘sub-contracting and indemnity clause’ in their B/L extending their benefits (defences, limitations of liability) to their stevedores. Discussions should refer to ‘The Himalaya’ case, and how the legal principles handed down in the case came to be extended and incorporated in the H-Visby Rules

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 [1954]***; ***Midland Silicone Ltd v Scrutton Ltd [1961]***. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q3. Vessel SKY was proceeding too fast in a narrow channel and had an inadequate lookout on board. She failed to observe the vessel PRIDE until it was too late, resulting in a collision. Vessel PRIDE was towed to dry-dock where extensive repairs were carried out. Advise the Owners of the vessel PRIDE of their legal rights and remedies against the owners of the vessel SKY, particularly with reference to the quantum of their claim under international law.

A problem question on collision. Here, the students were expected to have a good understanding of the general principles of Collision Regulation (COLREGS), and the liabilities arising therefrom. To get a pass, the students were to carry out detailed discussion on the collision regulation – Rule 5 lookout; Rule 6 Safe Speed; Rule 15 Crossing Rule, and the principles of liability. Most importantly, students are expected to be aware that most maritime liabilities arise out of some form of negligence and that most cause of action would be covered under the tort of negligence.

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 Leverington (1886)***; ***Alexandra 1 [2018]***. Answers were to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q4. On Friday, while discharging a cargo in London, a vessel was arrested for non-payment of crew wages. The following Monday, a salvage company has joined the action for outstanding salvage reward for services rendered to the vessel. The next day, Tuesday, upon hearing the arrest of the vessel in London, an alarmed mortgagee bank has joined the action. On Wednesday another creditor of the vessel too has joined the action, claiming non-payment for repairs carried out while the vessel was dry-docked a year before. The creditors are convinced that their claims are sustainable under UK Laws, but are not sure about how the liens and claims are 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 scenario 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. A 24-month time CP states that the hire is due on 16th of each month. There is no anti-technicality clause contained in the CP. While the charterers were prompt in making the hire payments before the due date, they delayed the hire payment for the 9th month by one day. The shipowners have 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 14th month however, the charterers have failed to make the hire payment on time 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.

Q6. Vessel WAVE collided with the stationary vessel STAR while entering port to discharge her cargo of coal. STAR suffered damages and was dry-docked for 3 months to undergo repairs. The owners of the STAR claim that they have lost a lucrative time charterparty contract because of lengthy period of time being dry docked to undergo repairs arising from the damages sustained in the collision. They are of the firm opinion that they are to be compensated for both the damages sustained and the lucrative time CP contract that did not materialise. Discuss the liability of the vessel WAVE for such damage caused, and the quantum of recoverable damages. Use case law to support your answer.

A problem question on quantum of damages that could be claimed arising from a collision scenario. 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 to carry out a detailed analysis of the scenario presented in the light of the collision regulation, and the principles of liability, which is to be followed by a discussion of 'recoverability' and the 'remoteness' of damages claimed under the circumstances. It should be noted that students may be tempted to argue that the owners of the STAR could claim for the lucrative time CP contract lost based on the case of the *Hadley v Baxendale* and *The Achilleas*.

The students were expected to use case laws and examples 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.

Q7. Answer BOTH parts of the question: a) The rationale and scope of limitation of Shipowners' liability under the 1976 Limitation Convention; b) 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.

Q8. 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.