



# EXAMINER'S REPORT

## Nov 2023

### LEGAL PRINCIPLES IN SHIPPING BUSINESS

#### Overall Comments

Overall, on analyzing results, the standard displayed by candidates was reasonable. Over half of the students have displayed rigorous preparation for examination by displaying competence in identifying issues in questions, and thereafter elaborating them pursuant to the relevant law. Candidates must have realized by analyzing the pattern of exam questions that they have to prepare all topics from the syllabus well and cannot selectively study topics to attain higher marks.

The question paper comprised of both the essay and problem type questions. It was observed that the candidates clearly drew attention to issues accurately and thereafter elaborated on them properly. A few candidates, who have secured higher marks have analysed such questions in great depth and were answered fairly well, and were based on facts and relevant law. Even higher marks can be secured by including pertinent cases and statutes. Another way to secure higher marks is not to include irrelevant issues or answering what is not asked for in the question paper.

Comments on individual questions are as follows:

#### Question 1 – Public International Law

- a) Port State Control relates to concerns as to as safety of vessel, health and safety of crew on visiting ships. Inspections as per global MOU's or like Coast Guard. Important MOUs can be discussed. Publications of non-conformities are carried by PSC. It can result in the vessel/owners affected due to commercial implications arising from negative publicity/detention by ensuring reduced charter hire or unattractive to good charterers.
- b) Maritime claims are global in nature, and difficult to arrest person . Distinction between *in rem* and *in personam* claims must be discussed. In rem claims can be maritime lien or statutory lien. 1952 Convention recognises various kinds of maritime claims and 1999 Convention recognises further maritime claims. Once the vessel is arrested, P and I Club's LOU is provided to the court to get the vessel released from arrest.
- c) Registration is required as per *UNCLOS, Part VII, Article 9(1)* – every ship must fly a flag and genuine link between state and the ship. It serves two purposes – grants protection to the vessel in the event of dispute as to ownership & public record and confers nationality of the flag state that brings rights and privileges.

### Question 2 – Bills of Lading

- a) Paramount Clause – The Hague-Visby Rules are automatically included if port of shipment is in the member state of Hague-Visby Rules. So if it included in the bill of lading, then usually Owners would like it to be incorporated in charterparty as well, pursuant to which the bill of lading were issued. Thus the same clause then would be likely included in the charterparty. It is important to note that the charterparty does incorporate Hague or Hague-Visby Regulations automatically.
- b) Lien Clause – what is contractual lien and for example lien on cargo if freight pursuant to the bill is not paid to the Owners.
- c) Dirty Bill of Lading where remarks as to the condition and state of cargo is included in the bill of lading.

### Question 3 – Arbitration

1.1 Sanctity of the arbitration clause before litigation. (4 marks)

1.2 Discussion negotiation , mediation and other types of ADR

Concept of ADR, litigation, mediation, etc. needs to be discussed along with advantages or disadvantages. Advantages include lack of formality and procedures, costs, to some extent, can be saved in ADR as compared to litigation, parties are at the centre of the process in ADR and so forth. Discussion on *ad hoc* versus institutional arbitration has earned some extra marks for the candidates. The discussion of popular forums for arbitration such as *London and other centres* and why it is popular for conducting arbitration was also discussed by a few candidates. (12 marks)

1.3 Other ADR process can continue even if arbitration has been commenced (4

### Question 4 – Contract & Tort

- d) Certain terms are implied into a contract to give business efficacy to the contracts. Some terms can be implied by action of law for example *Sales of Goods Act 1979* will bring its own implied terms in contracts.
- b) Innominate terms are between conditions and warranties. Discussion on *Hong Kong Fir Shipping Ltd v Kawasaki Kisen Kaisah Ltd* [1961] 2 Lloyd's Rep 478
- f) *Donogue v Stevenson* [1932] AC 562, and elements – duty of care, breach of that duty of care, that breach has caused the loss and the loss is not too remote.

### Question 5 – Time Charterparty

- a) Duties of agent – to act according to instructions, duty of loyalty, not to make secret profits, confidentiality, duty to account, not to delegate.
- b) Undisclosed principal - rights of undisclosed principal to intervene as a principal (rights but also can be sued once he becomes disclosed), but the third party even after discovering there is a principal can choose to sue principal or the agent. The third party cannot alter their choice of suing one of them later, after they have made up their mind. The issues will also be governed by the terms of contract
- c) Agency of necessity – example of master acting on behalf of cargo owners if they cannot be contacted in time after an accident on board the vessel and so forth.

### Question 6 – Agency

- a) Principal's actions or written words can create impression about appearance of some person to be agent. If then the agent finalise a contract with the third party, the principal would be bound.
- b) Ratification – principal can ratify actions of agent if the agent as no authority from him or the agent has acted beyond the authority provided
- c) Duties of agent are follow instructions, loyalty, not to make secret profits, confidentiality, duty to account,

### Question 7 – Time charterparty

Issues of offhire (Issues of different off-hires and how net loss of time would be calculated?),  
Speed and performance warranty – discussion on good weather period extrapolated etc can earn better marks  
condition of vessel at the time of delivery of the vessel to the charterers,  
maintenance obligations of the owners,  
issue of delivering the vessel beyond the as the vessel was delivered late.  
A good candidate would also discuss the issue of indirect losses and whether they are recoverable in such disputes.

### Question 8 – Applied Knowledge of Time charterparty and Cargo Claim

Concepts such as seaworthiness, inquiry as to why only hold 3 had ingress of water? May be issue with seaworthiness?

Cargo claim pursuant to the bill of lading, *Art III (1) and Art II (2)* duty of Hague Visby Rules, exceptions for heavy weather and management of vessel *Art (IV)* of Hague Visby Rules.

Once on demurrage and always on demurrage – issues of fault of owners to suspend this aspect can be discussed.

