



EXAMINER'S REPORT May 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 – Bills of Lading

- a) Transferable means a shipper without losing obligations can transfer the new contract to a consignee. The Shipper still remains responsible for obligation in relation to damage to undeclared dangerous goods, demurrage, freight and so forth. But the Consignee has in a way a new brand contract with the carrier.
- b) Negotiable means that the bill of lading in hands of consignee can be sold as a contract to a new consignee or an endorsee. *Sec 2(5) of COGSA 1992* rights and liabilities of transferor are extinguished must be discussed.
- c) Discussion as to which of following – an owner or a charterers would be the carrier under the bill of lading? What about demise clause (making owner the carrier), if present? New case of *Star Sin [2003] 1 Lloyd's Rep 571* making charterers as a carrier in the bill in spite of the fact there is a demise clause. Bill of lading should be construed constructively. All such points must be discussed

Question 2 – Time and Voyage Charterparties

- a) Off hire- concept, discussion on 'net loss of time' such as in *Clause 15 of NYPE 46*, additional marks for adding word 'whatsoever' in the clause.
- b) *Once on demurrage always on demurrage*, the issue of exceptions not valid for demurrage. A bit about concept of demurrage must also be discussed.
- c) Illegitimate Voyage – Issue of allowance to be considered to overall charter period, *Peonia [1991] 1 Lloyd's Rep 100*. Owners can choose to accept or reject the illegitimate voyage (if the voyage cannot be reasonably completed within the charter period plus allowance). If the charter market is going up, owners will usually not accept the illegitimate voyage instructions. They will ask for replacement voyage to be completed within the remaining time of the charter. If the Charterers keep on insisting, then they would be at a risk of repudiatory breach. If the Owners do accept illegitimate voyage instructions, then the charter hire is paid at charter rate and thereafter the breach would be paid at the market rate (if higher).

Question 3 – ADR and Arbitration

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.

Question 4 – Contract & Tort

- a) For a valid contract, requirement that there needs to be a consideration is important. Promise given for value is enforceable. Past consideration is not valid in English Law. Must be of some value but not adequate. Consideration must move from the promisee to be enforceable.
- b) Misleading statement - *fraudulent* or *negligent*, *Misrepresentation Act 1967* and now the person making the representation must show that they were not negligent must be discussed
- c) Vicarious Liability – defendant such as an employer becomes liable for torts

Question 5 – Voyage , Time and Demise Charterparty

Main differences can be discussed on the basis of – (1) Payment for the use of ship b) Loading or discharging is delayed, (3) Who pays for bunkers (4) who pays for loading and discharging costs , (5) who pays for port costs, (6) who pays for the canal and other incident costs, (7) Who pays for crew costs, (8) who pays for insurance costs (9) who pays for maintenance costs, (10) how the voyage instructions are given

Question 6 – Agency

- 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 7 – Problem question Time charterparty

Issues of different off-hires and how net loss of time would be calculated? Will owners be responsible for the accident in port or it can be argued on the basis of safe port warranty (discussion of safe system) (but exception of seamanship) . Good candidates can argue the question from all sides.

Question 8 – Problem Question - Bill of Lading

Loss of damage of cargo – issue of seaworthiness, pre-existing damage, issue of clean bills and Letter of Indemnity must be discussed. Can the Owners limit their liability? Does the cargo have some salved value? Issue of evidence, *ISM code* and so forth can be discussed in good answers. Answers should refer to *Hague Visby rules Art III (1) and Art III (2)* and whether any *Art IV* exceptions can assist the Owners and whether they can pass some of the claims to the Time charterers.