



EXAMINER'S REPORT

LEGAL PRINCIPLES IN SHIPPING BUSINESS

Overall Comments

Overall, 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.

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 based their answers 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.

Question 1 – Public International Law

- a) *International Ship and Port Facilities Security Code ("ISPS Code")* – It is part of SOLAS convention. It came into existence due to concerns over security and terrorism. It is applicable for ships above 500 GT and ports. Recognised Security Organisations need to be appointed. Three stage security alert system is applicable to both ships and ports and accordingly the level of precaution is required.
- b) *MARPOL Convention* – Conventions with many Annexes in relation to any kind of pollution at sea such as oil, sewage, garbage, air and so forth.
- c) *Civil Liability Convention 1992 ("CLC 1992")* – originally introduced in 60s and 70s, and now updated in 1992 along with Fund Convention 192 with 2003 Protocol. Under it, the Owners of vessels are entitled to limit their liability in relation to oil pollution and this amount is linked to the tonnage of the vessel. There are exemptions available to Owners.

Question 2 – Bills of Lading

- a) *Letters of Indemnity* – LOI for issuance of clean B/L and LOI for delivery without original B/L? I suppose this will be clarified in the marking scheme.
- b) *Sea waybills* – They are non-negotiable bill of lading to a named consignee. Letters of credit are not involved, and buyers do not intend to resell the goods.
- c) *Examples of documents* that sellers must present to the bank for obtaining payment pursuant to Letter of Credits – Examples of documents are – marine insurance policy, invoice for goods that are shipped, any relevant export licences, consular documents, bill of lading that is clean, certificates of origin, inspection certification, cargo surveyor's report.

Question 3 – Time & Voyage Charterparties

- a) *Anti-technicality Clause* – It is a provision included in a time charter party to protect the charterers from the consequences of minor breaches such as delay by a bank. The intention of the clause is to avoid a situation where owners may withdraw the vessel due to a late payment of hire that may be minimal or inconsequential. The clause requires the owners to send charterers an anti-technicality notice containing additional days to remedy the issue of payment. If it were not to be remedied, the Owners can withdraw the vessel.
- b) *Hire* - Hire is payable as per the clause in the Time charterparty and payment must be punctual.
- c) *Freight* - Freight is paid in voyage charterparty by the charterers to the Owners on delivery of goods at the agreed destination. There are variations on types of freight
- d) *Justifiable Deviation* – At common law, deviation is permissible if justifiable to save common

Question 4 – Contract & Tort

- a) Arbitration clause is sacrosanct and cannot be bypassed.
- b) Cheaper, less formal, enforcement, support from arbitral institutions, widely adopted NY Convention, specialist non-lawyers.
- c) Many arbitral organisations have non-lawyers as arbitrators and are even preferred in many arbitrations such as speed and performance claims, cases involving very technical issues.

Question 5 – Contract & Tort

- a) *Remoteness of Damage under law of tort – Wagon Mound (No. 2)* [1963] – whether the defendant could have reasonably foreseen the kind of damage for which the claimants were suing.
- b) *Exclusion Clauses in contract* – Clauses in contract that attempts to limit the liability of a party or exclude it altogether. There are a few rules in relation to it such as that it must be properly incorporated, it should not be misrepresented, clause must not be ambiguous, clause must not be repugnant to the main purpose of the contract
- c) *Misrepresentation* – misleading statement of fact (not opinion or intention) that induced the recipient to enter into a contract. It can make contract voidable. Two types – fraudulent and negligent misrepresentation. *Misrepresentation Act 1967* reverses the common law burden of proof and now is on the person making the representation to show that they were not negligent.

Question 6 – Notice of Readiness

- a) There are three requirements to be met in order to tender a valid NOR: i) the vessel must have reached the agreed place (being an “arrived ship”); ii) the vessel must be “physically ready”; and iii) the vessel must be legally ready.
- b) Berth charter is converted into the port charter and can impact the calculation of laytime.
- c) An invalid NOR will never become valid. The ship owners, therefore, must serve a new NOR when the three conditions are met in order not to have the charter cancelled or run the risk that time does not count. If there is any doubt, it is recommended to serve fresh NORs without prejudice to the previous NORs.

Question 7 – General Average

- Common maritime adventure, General Average v Particular Average
- Stakeholders, including leasing companies who have containers on board, time charters for bunkers, cargo owners and ship owners
- General average contribution can be claimed - if there is common danger, not due to the default of anyone claiming contribution, danger must be real one, sacrifice or expense is voluntary and reasonable
- Expenditure like temporary repairs must be extraordinary
- A Bit about York Antwerp Rules, Rule Paramount about reasonable, wages and maintenance of crew to put in port of refuge or port for repairs
- Temporary repairs v permanent repairs, not to seek advantage by this route
- Security in form of average bonds and average guarantees before cargo is discharged
- Cost of port agents increased by additional work can be included in GA sheet

Question 8 – Laytime & Demurrage

Demurrage will continue unless comes within exception (then only Demurrage cease)-

- Owners were direct cause of the time lost,
- through default or by denying Charterers full use of the vessel or express provisions of the charterparty,