



EXAMINER'S REPORT

MAY 2024

SHIPPING LAW

Q1. Discuss the shipowners' rights and immunities under Article IV Rule 2 of the Hague-Visby Rules, with reference to statute and case law.

An essay type question on the shipowner's rights and immunities under Article IV Rule 2 of the Hague-Visby Rules. Students were expected to be familiar with the provisions of the Hague-Visby Rules and required to carry out detailed discussion on how the Hague-Visby Rules grants a set of rights and immunities to the shipowner in return for a set of obligations towards the cargo interest. The discussions presented were to cover in detail the rights and immunities conferred on the shipowners under Article IV Rule 2 of the Hague-Visby Rules, outlining the list of exceptions upon which the carrier is permitted to rely if a claim is brought against them under Article III(I); the list being *acts of god, perils of the sea, riots and civil commotions, act of war, etc.*, to name a few. Discussions were also to focus on how the Rules created a system of 'checks and balances' by obligating the shipowner to care for the cargo carried on board the vessel.

Quality of illustrations, both case laws and examples (*Eurasian Dream No. 1 [2002]*)– 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. The vessel EASTERN STAR was dry docked in early 2023 at CARIBBDOCKS in The Bahamas, for four weeks to undergo emergency repairs. The crew of the vessel EASTERN STAR was repatriated at the time of drydocking but have not been paid wages for close to 4 months. The drydocking company CARIBBDOCKS have not been paid for the repairs carried out. Both the crew and CARIBBDOCKS want to sue the shipowners for the unpaid bills. SALVE-MARINE a salvage company that rendered services to the EASTERN STAR a year ago are also keen to pursue legal action for their dues. The EASTERN STAR's sister ship RISING STAR is to call into one of the UK ports, shortly. The crew, CARIBBDOCKS, and SALVE-MARINE would like to know if it will be possible to arrest the RISING STAR before the UK

Admiralty court for their outstanding debts against the EASTERN STAR, and where their claims are ranked. Discuss critically with suitable case law reference.

A problem scenario touching upon arrest of vessels (Arrest Convention/Merchant Shipping Act) and maritime liens/equitable liens (ranking, etc.), and the procedures to be followed before the UK Admiralty courts. The students were expected to be familiar with the provisions of the Arrest Convention 1952 (which the UK is a party to); The Senior Courts Act 1981, and were to carry out a detailed discussion on the *in rem* procedure to be followed before the Admiralty courts to effect a 'sister ship arrest' with reference to the facts at hand is to be presented, focussed on *maritime liens* and where the three claims (unpaid crew, the repair dues to CARIBBDOCKS, and outstandings to SALVE-MARINE) rank. In the discussions, reference was to be made to Sections 20 & 21 of the Senior Courts Act 1981 with regards to arrest, together with relevant case law reference.

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 Bold Buccleugh* (1851); *The Tolten* [1946], *The Maersk Nimrod* [1991] 1 Lloyd's Rep 269; *The Sennar* [1983] 1 Lloyd's Rep 295; *The Indian Grace (No2)* [1998] AC 878. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.**

Q3. A vessel while on a time charter suffered engine problems and was anchored off the coast of Somalia to undertake repairs. While the vessel was being attended to, hostilities broke out between pirates and the government forces, and progress on the repairs was delayed. Eventually the vessel arrived at the discharge port 60 days behind schedule. The charterers do not wish to pay the owners any hire charges for the period covering the various delays – particularly the period when the vessel was delayed due to hostilities between the pirates and the government operatives. Advise the charterers.

Another problem scenario touching upon the position of law regarding the time charter party operations, off-hire clauses, war risk, etc. Here, the students were expected to have a good understanding of time charter party operations, off-hire clauses, war risk, etc. The students were to carry out detailed discussion of the case in hand, presenting the applicable law for the scenario at hand, suggesting the remedies open to the time charterer if any, under the given circumstances with clear and convincing legal arguments supported by case law reference. Students were also expected to discuss the issue of war risk and the consequential delays caused in the performance of the time charterparty contract.

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 Saldanha* [2010]; *The Laconian Confidence* [1997]. Answers were to be well structured, dealing with the issues individually and critically using relevant case laws and references.**

Q4. Answer BOTH questions: i) Compare and contrast the Shipowners' duty to provide a seaworthy vessel under the common law and the Hague-Visby rules. ii) What consequences are there for a ship-owner under the Hague-Visby rules if he fails to provide a seaworthy ship and there is damage due to an accidental fire?

A two-part essay type question on i) shipowner's duty to provide a seaworthy vessel under Common law and the Hague-Visby Rules, and ii) the consequences where the shipowner fails to provide a seaworthy vessel under the Hague-Visby Rules. Students were expected to be familiar with the duty of the shipowner to provide a seaworthy vessel, both under common law and the Hague-Visby Rules, and the consequences where the shipowner fails to provide one under the Hague-Visby Rules. Students were to carry out a detailed discussion on the differing obligations of the shipowner to make the vessel seaworthy both under common law and the Hague-Visby Rules. The students were to refer to the relevant provisions of the Hague-Visby rules, viz., Article III R 1, which notes that the carrier '*shall be bound before and at the beginning of the voyage to exercise due diligence.*'

Case laws and examples cited in the study material/ textbook and student's own choice. Case Laws: ***McFadden v Blue Star Line [1905]***; ***The Eurasian Dream [2002]***; ***The Aquacharm [1982]***, etc. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q5. Discuss critically the function and purpose of MARPOL with reference to the other pollution conventions.

An essay type question on the international Convention, MARPOL. Students were expected to have a working knowledge of MARPOL, its objectives and remit and its provisions. Students were to carry out a detailed discussion on MARPOL covering the objectives of the Convention, its annexes and its key provision in relation to preventing marine pollution by oil, chemicals, harmful substances in packaged form, sewage and garbage, etc. The discussions were to include as to what further issues could be addressed by MARPOL.

Quality of illustrations, both case laws and examples – 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. The Athens Convention (Merchant Shipping Act 1995) has a significant impact on passenger claims. Discuss the carrier's right to limit liability under the convention.

Another essay type question on The Athens Convention. Students were to carry out a preliminary discussion on the origins of the Athens Convention relating to carriage of passengers and their baggage by sea, followed by a detailed discussion on the aims, objectives, and the important provisions of the Convention on the carriage of passengers

and their baggage by sea. Discussions were to include the duties, obligations, and liabilities of the carrier to the passengers and their baggage carried by sea, and how the Convention has set a high standard in terms of both compensation and limitation of liabilities.

Quality of illustrations, both case laws and examples – 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

Q7. Answer BOTH parts of the question: Discuss with suitable case law reference; a) What is necessary in the case of a berth charterparty and a port charterparty to get the laytime clock ticking? and b) in what circumstances may laytime start to run even when the NOR is invalid when tendered?

A two-part essay type question on a) the laytime clock from ticking in a berth and port charterparty, and b) the circumstances where laytime may start to run even when the NOR is invalid when tendered. Students were expected to be familiar with the concept of **a)** laytime under both berth and port CPs, and **b)** notice of readiness (NOR) in voyage charterparty operations. Students were to carry out a detailed analysis and discussion on **a)** lay time – when laytime is triggered off, when it starts running, with regards to berth and port charterparties **b)** and the circumstances where laytime may start to run even where the NOR is invalid. The students were expected to have a good working knowledge and the law behind the voyage charterparty operations.

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] 2 Lloyd's Rep 285; *The Maratha Envoy* [1977] 2 Lloyd's Rep 301; *The Arundel Castle* [2017] 1 Lloyd's Rep 370. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q8. Discuss the salvor's entitlement to reward under Article 14 of the Salvage Convention 1989 and his level of remuneration in comparison with a reward under Article 13. Use examples to support your answer.

An essay type question on the Salvage Convention 1989. This question requires the student to be familiar with the purpose and remit of the Salvage Convention 1989, and in particular, Articles 13 and 14 of the Convention. The 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 was 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.

Quality of illustrations, both case laws and examples – the cited in the study material/ textbook and student's own choice. Case Law: ***The Nagasaki Spirit* [1997]**. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.