



EXAMINER'S REPORT

Nov 2024

LEGAL PRINCIPLES IN SHIPPING BUSINESS

Question 1 – Bill of Lading

- a) *Clean Bill of lading* – Due to remarks in mates' receipt, shippers demand bill of lading that is clean. P and I Club cover may be prejudiced and it is even considered a fraud.
- b) *Lien Clause* – Shipowners have contractual lien over cargo over non-payment of freight.
- c) *House Bill of lading* – Freight Forwarders /NVOCC issues their own bill of lading to shippers under its own set of rules.

Question 2 – Voyage Charterparty

- a) *Safe port Warranty* – Unlike time charterparty, if there is a named port, there is no safe port warranty, unless the word 'safe' has been added before the names of port or in any clause related to the port.
- b) *Arrived Ship* – It decides when the laytime will commence. It could be port or berth charter, and other express terms will govern this issue.
- c) *Dead Freight* – When the charterer failed to load the full cargo on the vessel. They would still be liable to pay for such shortfall in loading as it is a breach of voyage charterparty.

Question 3 – Court Structure & Sources of Law

- a) Court Structure (Civil) – County Courts, **High Court** (King's Bench) - Commercial Court, Admiralty court, **Family Division** and **Chancery Division**.
- b) *Sources of law* – *Common law* and *Case law*, *Precedents (stare decisis)* with discussion on *ratio decidendi* and *obiter dictum*, *Statutory Legislations*, *Equity*.

Question 4 – Difference between Time, Voyage and Demise

A brief description of each type of charterparty.

Differences such as hire/freight, responsibility to bunker in time charter, responsibility to take insurances and man the vessel in Demise charter. The key issues from all types of charterparty can also be discussed.

Question 5 – Contract & Tort

- a) *Policy Issue regarding 'Pure Economic Loss' in Tort* – It's a public policy that if economic loss is not accompanied by damage, then it is near impossible to claim unless there is a strong proximity between tortfeasor and claimant.
- b) *Tort of Defamation* – Saying or publishing untrue statements about a person verbally (slander) and written (libel).
- c) *Innominate Terms in Law of Contract* – It is a classification of terms of a contract that can fit into the category as both conditions and warranties. It will be condition if it "deprive the innocent party of substantially the whole benefit of the contract". Discussion of case of *The Hong Kong Fir Shipping Co v Kawasaki Kisen Kaisha* [1962] should be referred.

Question 6 – Time Charterparty and Bill of Lading

There are following legal issues

- a) *Offhire* due to break down of machinery.
- b) *Deviation* for repair at Mumbai. Deviation under bill of lading and *Hague Visby Rules* are applicable due to the inclusion of *Clause Paramount* in Bill of Lading. Will it be considered as '*reasonable deviation*'?
- c) Possible *Illegitimate last voyage* and sub issue can the repair period be added to charter period. If it is indeed a breach of contract and options available to the Owner and *damages for breach of this contract* must be discussed.

Question 7 – Law of Agency

Express terms of agency agreement primarily determine obligation of parties. However, the agent stands in the position of trust and there exists *fiduciary duty*. Therefore, the other duties are implied in the agency agreement. Such duties are – *Obedience* and *not to exceed authority*. Agent can be *liable* if fails to perform his duty. Even the gratuitous agent has such a duty. Other duty would be *care and skill, personal performance of duty* unless allowed to delegate, no conflict of interests, *not to make secret profit* or *take bribe*, and *must keep separate account* and is considered as *trustee in equity* for the property of the principal.

Question 8 – General Average

A brief discussion on *the requirements for general average* is required in a good answer.

Ship's collision damage is a *particular average loss*, but anything after like jettison and expenses to save common adventure could be General Average.

The *working of General Average in practice* must also be discussed in the answer for better marks.