



# EXAMINER'S REPORT NOVEMBER 2024

## SHIPPING LAW

**Q1. The charterer's right to nominate a port is subject to an express warranty as to the safety of the nominated port. By implication, the warranty will also extend to the berths within the port. Discuss critically with suitable case law reference the parameters applied by an English court while determining if a nominated port were safe or was in violation of 'safe port warranty'.**

An essay type question on the common law implied obligation of 'safe port warranty' in charterparty contracts, *i.e.*, to nominate a safe port. Students were expected to be familiar with the common law implied obligation of 'safe port warranty' and required to carry out detailed discussion on the obligation, how and when it is implied into a charterparty contract, and how the courts in England have interpreted this. Students were to also distinguish the obligations arising under the safe port warranty between voyage and time charters with the discussions demonstrating a good understanding of the obligation to nominate a safe port.

Quality of illustrations, both case laws and examples (*The Eastern City* [1958]; *The Evia (No 2)* [1983]; *The Hermine* [1979]; *The Kanchenjunga* [1990]; *The Aegean Sea* [1998]; *The Livanita* [2007]; *The Archimidis* [2008]; *The Reborn* [2009]; *The Ocean Victory* [2014]) – 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 DIAMOND, which was time chartered for a period of 18 months suffered damages and was dry-docked for 4 months to undergo repairs. Earlier, it was found on inspection that DIAMOND had an incompetent engine room crew, necessitating repatriation, and time was lost as a result. The time charterers have now threatened the shipowners that they will be seeking legal advice to establish if it would be advisable to terminate the time charterparty contract as this was the second time in 6 months that the DIAMOND had encountered problems resulting in delays. The time charterers are now worried that the DIAMOND may be unseaworthy. Critically discuss with suitable case laws,**

**if under the given circumstances, the time charterers can terminate the charterparty contract.**

A problem scenario touching upon time charterparty operations and potential unseaworthiness of the vessel. The students were expected to be familiar with **i)** the obligation of the shipowner to provide a seaworthy vessel under the Hague-Visby Rules, and **ii)** what constitutes seaworthiness – the various components, *i.e.*, the physical condition of the vessel, competent crew on board, ‘cargo-worthiness’ of the vessel, and to have on board the relevant documentation. The students were to carry out a detailed analysis of the scenario presented in the light of the above obligations under the Hague-Visby Rules, and how seaworthiness is a ‘warranty’ and not a ‘condition’ of the contract. This was to be followed by a discussion if under the circumstances, the charterer can terminate the CP contract, especially given the fact seaworthiness is a warranty.

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: ***Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd (The Hong Kong Fir) [1962]2 QB 26.*** Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

**Q3. Discuss the advantages and disadvantages of mediation and arbitration, to that of a litigation before a court in commercial matters. Include in your answer references to the different types of dispute resolution offered in various centres of arbitration for maritime disputes.**

An essay type question on the advantages and disadvantages of mediation and arbitration. The students were to present a preliminary discussion on arbitration and ADR, as opposed to adjudication before a court of law to resolve disputes arising in shipping business, followed by a detailed discussion on advantages of resorting to arbitration as opposed to adjudication. Here, the students were to focus the discussion on **i.** benefits of using arbitration in a highly commercial environment, where time is of the essence, with no adverse publicity, *etc.* **ii.** the disadvantages/shortcomings of arbitration/ mediation and **iii.** the different types of dispute resolution offered by the LMAA, BIMCO Dispute Resolution Clause, and the New York associations.

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 Eagle [1991].*** Answers were to be well structured, dealing with the issues individually and critically using relevant case laws and references.

**Q4. The vessel *Crystal Palace* was voyage chartered to carry coal. The charterparty required the tender of NOR ‘on vessels arrival at load/discharge ports within port limits’. When the vessel arrived at the load port, she was unable to proceed directly to berth due to port**

congestion. Instead, she anchored at a location directed by the port authorities, and tendered an NOR. The charterers have proceeded to reject the NOR as being invalid as the vessel was not an 'arrived ship' as she was outside the port limits. The shipowners on the other hand contend that the NOR was valid as the vessel was an 'arrived ship' as the vessel was anchored in the location where she was directed to by the port authorities. Discuss critically, with reference to suitable case laws, if the NOR issued can be considered valid.

A problem scenario touching upon laytime in voyage charterparties with particular reference to port and berth charterparties. Here, students were expected to be familiar with *voyage charterparties, arrived ship, NOR, laytime, demurrage etc.* Students were to carry out a detailed discussion on when and how laytime will start in relation to both port and berth charterparties, and what happens if the NOR is invalid. Students were expected to have a good understanding of the above practice, and the answer should demonstrate a clear grasp of the legal principles behind the practice.

Case laws and examples cited in the study material/ textbook and student's own choice. Case Laws: ***The Arundel Castle* [2017] 1 Lloyd's Rep. 370; *The Johanna Oldendorff* [1973] 2 Lloyd's Rep. 285; *The Maratha Envoy* [1977] 2 Lloyd's Rep. 301**, etc. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

**Q5. A cargo of grapefruit was shipped on board the vessel *Safe Ship* to be carried to London. The carriers guaranteed that the ship would proceed directly to England. Unknown to the shipper, *Safe Ship* called into an intermediary port, causing it to be delayed in its arrival in England, during which period an additional import duty on citrus fruits were imposed. The shipper has now brought a claim for damages for the increased duty payable on the cargo of grapefruit. The shipowners are contending that the bill of lading contained a liberty clause allowing the vessel to call at a port *en route* to London. Discuss critically, with reference to suitable case laws, the rights of the cargo interests to bring a claim.**

A problem scenario on the obligations of a sea carrier under Common law/ Hague-Visby Rules. Students were expected to be familiar with a sea carrier's obligations under both Common law and Hague-Visby Rules, and the key functions of the bills of lading. In the scenario presented there is an oral agreement that the vessel will proceed directly to England, but has deviated, resulting in delays. Students were to the second function of the bills of lading, *i.e.*, 'the best evidence of the contract'. While the carrier is relying on the paramount clause it is arguable that the bill of lading is only the 'best evidence of the contract' and is not the contract *per se*. Students should note that the undertaking given (albeit, orally) was that the vessel shall proceed directly should prevail, as opposed to the paramount clause.

Quality of illustrations, both case laws and examples cited in the study material/ textbook and student's own choice. Case Laws: ***The Ardennes* [1951] 1 KB 55; *Pyrene v Scindia Navigation Co* [1954] 2 QB 402; *Sewell v Burdick* [1884] 10 App Cas 74; *Glynn v Margetson & Co* (1893).**

Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

**Q6. Critically discuss with reference to relevant case laws, the defences of 'inevitable accident' and 'agony of the moment' in the event of a collision incident.**

Another essay type question on the Collision Regulations (COLREGS). Students were to carry out a preliminary the COLREGS, followed by a detailed discussion on the defences of 'inevitable accident' and 'agony of the moment' available under collision regulations in the event of a collision. Students were expected to be aware that most maritime liabilities arise out of some form of negligence and most cause of action would be covered under the tort of negligence; what is 'the agony of the moment' and inevitable accident' and how may the two be used as a defence.

Quality of illustrations, both case laws and examples – the cited in the study material/ textbook and student's own choice. Case Laws: (*Bywell Castle* (1879); *The Yorkshire* [1865]; *The Marpesia* [1872]; *The Merchant Prince* [1892]; *The Europe* [1907]; *The Winona* [1944]; *The Dundee* [1930]; *The Oregon* (1895); *The Regina D* [1992] *The Highland Loch* [1912]; *The Hawke* [1993]; *The Veritas* [1904]; *The Eagle* [1991]; *The Prestige* [2008]; *The City of Chicago v MV Morgan* [2004]) General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

**Q7. Answer both questions with suitable case law reference. a) How did the decision in *The Nagasaki Spirit* change the course of compensation to be paid for salvage services? b) What is the legal relationship between a tug and a tow under a towage contract?**

A two-part essay type question on **a)** decision of *The Nagasaki Spirit* and **b)** the relationship between a tug and a tow under a towage contract. Students were expected to be familiar with **a), b)** and the Salvage Convention 1989, and carry out a detailed discussion on how the decision in *The Nagasaki Spirit*, changed the course of compensation to be paid for salvage services *i.e.*, under SCOPIC, and on the legal relationship between a tug and tow under the two types of towage contract – where one places the liability on the tow, or where the master and crew of the tug are viewed as the servants of the tow.

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 Christopher* [1874]; *The Englishman* [1876]; *The Niobe* [1887]; *The Nagasaki Spirit* [1997]; *The Devonshire* [1912]; *The Niobe* [1888]; *The Panther and The Ericbank* [1957]. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

**Q8. A vessel was chartered for a trip-time charter. The warranted speed was about 14 knots. While on charter, the vessel gave an ETA of 1st April, but due to a main engine breakdown she did not arrive until 10th April. The charterers had to pay a penalty to the shippers due to the vessel's late arrival. Further, loading was delayed because of continuous breakdowns of ship's cranes, and, whilst at the berth, the main engine was overhauled. The vessel then proceeded to the discharge port, but she could only achieve an average speed of 10 knots. Please advise Charterers of their legal rights.**

A problem scenario on the legal principles relating to time charter party operations, off-hire, speed clauses, delays, late arrivals, etc. It is to be noted that i) speed of the vessel is important in a time CP, but ii) speed clauses are not a condition, as the shipowner only warrants that their vessel will perform within the parameters specified under the description which includes the speed of the vessel, and iii) the speed warranted is 'about' 14 knots. Here the vessel has obviously underperformed, through breakdown of her cranes, and engines. Students are to carry out a detailed discussion of the scenario at hand and the applicable law, the remedies open to the time charterer in the given circumstances with clear and convincing legal arguments in support.

Quality of illustrations, both case laws and examples – the cited in the study material/textbook and student's own choice. Case Law: ***The Al Bida [1987]***; ***The Didymi [1988]***. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.