

# INSTITUTE OF CHARTERED SHIPBROKERS

APRIL 2008 EXAMINATIONS

MONDAY 21 APRIL – AFTERNOON

## LEGAL PRINCIPLES IN SHIPPING BUSINESS

**Time allowed – Three hours**

**Answer any FIVE questions – All questions carry equal marks**

1. A vessel is chartered for six months to the *Quick Silver Co. (QS)*. She arrives at the loading port, a minor British port, and moors at a berth where loading commences. Whilst loading and without any meteorological warning forecast from the port authority, a strong swell causes the vessel to suffer ranging damage, i.e. the vessel hitting the berth. As a result the vessel has to spend two weeks in dry dock undergoing repairs.

Following repairs she completes her loading and is directed to proceed to Limassol in Cyprus. Later QS (the charterers) learn that en route the vessel called at a port to allow some shore engineers who had been testing the vessel's engines to disembark, and also in order to pick up some shipowners' correspondence.

On completion of discharging, the charter has six weeks left to run. The charterers (QS) instruct the Master to proceed to a port which the Master calculates cannot be reached within this time span.

Identify and discuss the legal issues arising for the shipowner and charterer from this scenario.

2. Using appropriate examples to illustrate your answers, discuss the following:
  - (a) 'Advance freight', 'pro-rata freight', and 'dead freight'.
  - (b) Contributory negligence in the law of torts.
  - (c) Ratification in the law of agency.

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3. A vessel is chartered for the carriage of some cargo on a voyage from Southampton to Limassol in Cyprus. When she leaves port she only has one engineer on board, as her owners could not find other skilled engineers at the time. The owners are hoping to send two more engineers to join the vessel when she is near Malta. Due to her crew not ventilating the cargo holds adequately, a fire breaks out on board and she is towed to Gibraltar, where some repairs take place. A surveyor inspects the cargo and declares that most of it has been damaged by the fire.

Discuss and analyse the issues and possible claims that arise from the above scenario.

4. Explain, giving current examples, how international conventions become established. Discuss whether IMO international conventions serve a purposeful function in view of the shipping market globalisation.
5. Consider and discuss time bar and its effect in the following situations:
  - (a) A shipowner bringing a claim against a charterer for payment of freight under a charter-party.
  - (b) A consignee bringing a claim against a shipowner for damage to goods under a bill of lading.
  - (c) A consignee bringing a claim against a ship's agent for releasing goods without the production of a bill of lading.
  - (d) A salvor bringing a claim against a shipowner for salvage services rendered to his ship.
  - (e) A passenger against the shipowner of the ship carrying his luggage.
6. It is frequently said that equitable estoppel "is a shield rather than a spear". Explain, giving examples as appropriate, how this legal doctrine may in practice apply to the law of contract.
7. Critically analyse the issues pertaining to the question of when a ship is considered to be an 'arrived ship'.
8. After making the first three semi-monthly payments of time charter hire correctly and well on time, the fourth payment does not arrive in the owner's bank. Attempts to locate the time charterer are unsuccessful and the ship is now on a loaded voyage with several parcels of cargo some of which are covered by 'freight prepaid' bills of lading whilst others by 'freight collect' bills of lading. Detail the actions the shipowner should take.

# INSTITUTE OF CHARTERED SHIPBROKERS

## LEGAL PRINCIPLES IN SHIPPING BUSINESS (LPS)

2008

### EXAMINER'S REPORT

#### OVERALL COMMENT

Generally the standard displayed was fair, given the objectives of the examination. However, this is the first time that the overall standard fell when compared to previous years. A high proportion of candidates failed to prepare adequately for this examination presenting poor, unstructured answers, which fell short of the acceptable standard required.

There was nothing particularly difficult in this April's examination questions, and therefore the poor law results may only be attributed to bad preparation, rather than being construed as a clear shift in the current examination trends.

#### QUESTION 1 – SAFE PORTS/OFF-HIRE/HAGUE-VISBY RULES/RE-DELIVERY

Not very well answered, in fact, this was the worst answered question of all eight! A common error was the consideration of the issue of deviation under a time charter-party. Most answers failed to deal with safe port; a port which does not provide weather forecast and warnings neither it provides shelter to ships would be unsafe (e.g. *The Dagmar*). Quite a bit of confusion reigned in relation to the "strong swell", quite a few candidates erroneously thinking that it is an Act of God! The higher marks were gained by students who, in addition to a discussion of the issues at stake, sometimes with original points of view, were able to refer to the leading cases and sometimes to very recent case law such as the Court of Appeal's decision in *The Achilleas* (2007).

#### QUESTION 2 – TYPES OF FREIGHT/CONTRIBUTORY NEGLIGENCE/RATIFICATION

This was a popular question in this year's examination.

- (a) "Freight" is the expression used in voyage charter-parties. Even where correct examples were used to show what is advance freight, e.g. "ship lost or not lost", they failed to explain what this "shift of the burden of insurance to the charterer" means, i.e. that freight is not recoverable by the charterer. However, almost everyone candidate was aware of "deadfreight".
- (b) Some over-concentration on the general legal principles of tort and *Adler v. Dickson* was evident. However, a number of answers failed to explain the meaning of "contributory negligence". A few answers erroneously defined negligence as liability that arises where there is no contract. The correct view is that negligence arises independently of contract.

- (c) A number of candidates erroneously thought that ratification means "confirmation" of the agent's act in the ordinary course of business, thus confusing apparent/ostensible authority with ratification. If an unauthorised person (as opposed to an "agent") contracts as an agent, the (supposed) principal for whom he intended to contract may afterwards expressly ratify or adopt the contract, and thus be bound by it. Such ratification is retrospective. Some confusion was also noted in relation to agency of necessity and ratification; an agent of necessity is "clothed" with authority by the law and does not need the principals' ratification.

### **QUESTION 3 – SEAWORTHINESS/DEVIATION/CREW NEGLIGENCE**

Not very well answered .First, not providing a sufficient crew would amount to unseaworthiness (e.g. *The Farrandoc*). Very few candidates seemed to be aware of the continuing duty of seaworthiness in the case of voyage charter-parties, as opposed to exercising due diligence to make the ship seaworthy "before and at the beginning of the voyage" under the Hague-Visby Rules. As this was a voyage charter-party, why was it assumed that the shipowner will be able to limit liability under the Hague-Visby rules? This would only occur if the charter-party expressly incorporated the Hague-Visby Rules. Although a mention of declaring a General Average was made by a few candidates, its relationship with unseaworthiness was not considered. The possibility of the shipowner unjustifiably deviating in Malta was omitted by most.

### **QUESTION 4 – I.M.O. CONVENTIONS**

Well answered overall. The part about purposefulness of international conventions was hardly mentioned by many candidates who largely concentrated on discussing examples. S.O.L.A.S. was one of the more popular choices, with MARPOL being the other favourite. The phasing out of single-hull tankers, the I.S.M. Code, and S.T.C.W., were also mentioned in the better answers.

### **QUESTION 5 – TIME BARS**

Not well answered overall. A straightforward question examining whether candidates have a grasp of the various time bars applicable to a variety of claims. No one answer considered "the effect" of time-bars on the claims. In simple words, what happens to the contractual/tortious actions affected by time-bars; are they "enforceable", "invalid", "void", "cancelled", "frustrated", "unenforceable", "voidable"? For example, under English law, where there is a contract (e.g. a charter-party) and a breach of one of its terms occurred more than six years ago (The Limitation Act 1980 provides for a six year time-bar), the contract would be rendered unenforceable in a Court of law. This means that if the defendant does not plead the Limitation Act 1980, the Court will enforce the contract against the defendant.

When the expression "charterer" is used it implies a charter-party contract, and therefore the question asks the time bar under this contract.

One of the major problems that came through the answers is that candidates are unclear as to the difference between time bars for breach of a carriage of goods contract, and time limits for giving notice for loss/damage under the various carriage conventions, e.g. Hague-Visby Rules.

Those students who were familiar with the Limitation Act 1980, Maritime Conventions Act 1911, Hague-Visby and Hamburg Rules, the 1974 Athens Convention and the applicable time bar provisions could easily score 14/20 and higher.

## **QUESTION 6 – EQUITABLE ESTOPPEL**

Although this is a question which is re-occurring quite regularly in the examinations of the previous years, not many students attempted to answer it. Perhaps this question is just somewhat 'too legal' while especially this year there were quite a few alternative questions available which could to a certain extent be answered on basis of general knowledge of shipping and without too much intensive legal study.

However, this was the best answered question overall. A common error was that there was too much concentration on rights of third parties, without a simple explanation of why it is called a "shield".

## **QUESTION 7 – ARRIVED SHIP**

The most popular question, and a well answered overall. This was a straightforward open question requiring candidates to give a comprehensive account of arrived ship issues. As expected most candidates fully expanded on issues pertaining the topic, and were able to contrast the Parker test with the later Reid test and to refer to the respective court decisions in *The Aello* (1961) and *The Johanna Oldendorff* (1974). A majority of students did not fail to discuss the relevance of the arrived ship in the light of laytime calculations.

## **QUESTION 8 – TIME CHARTER-PARTY PROBLEM**

A popular question with most candidates, and a fairly well answered one. Almost everyone mentioned the effect that an "anti-technicality" clause would have on charterer's non-payment of hire, with some digressing more than necessary into the areas of withdrawal and *the Laconia*, and *the Afvos*. There were quite good results in relation to the cargo. Because of the prepaid bills of lading the point must be made that the cargo has to be delivered but the "freight collect" bills of lading enables the shipowner to collect at least some money. The better answers covered the various situations of being able to place a lien on the cargo if it belonged to the time charterer. Extra marks were awarded to candidates who mentioned that recourse to the International Maritime Bureau could be sought.

## **CONCLUSION**

Both the essay and problem type questions were answered reasonably well by a large number of candidates. Legibility and tidiness were fair in the majority.

As with last year's general criticism of the answers, the lack of inclusion of authorities (i.e. cases and statutes) still remains.