Examiner's Report
NOVEMBER 2015
Legal Principles in Shipping Business

General comment

Overall the standard displayed was fair, given the objectives of the examination, with over half of the candidates displaying competence in identifying legal problems.

Both the essay and problem type questions were answered reasonably well by a large number of candidates, with a clear and well-informed presentation from a significant number of candidates. Legibility and tidiness were fair in the majority.

The trend in so far as candidates' overall examination performance is concerned continues to improve.

Questions 1, 2 and 6 were the most popular ones, whilst questions 2, 1 and 7 were the most successfully answered ones.

Comments on individual questions are as follows:

Examiner's Report
NOVEMBER 2015
Legal Principles in Shipping Business

Question 1

Bills of Lading

A reasonably well answered question overall. Some students had difficulty in understanding the meaning of "contract of carriage of goods……evidenced by a Bill of Lading…".

A bill of lading is evidence of the contract of carriage of goods, not evidence of the charter-party contract (unless the charter-party states so).

A contract for the carriage of goods by sea can only refer to a pure contract of carriage of goods, as opposed to a contract for the lease of a ship, either on a voyage basis or on a time basis (a charter-party).

A simpler way of looking at this, is to say that a contract of carriage of goods by sea is not, strictly, a charter-party. In time charters, a ship is leased over a period of time; whether the charterer carries any goods or not is irrelevant to the agreed payment of hire.

In voyage charters, similarly the charterer leases the ship and pays "rental" on a tonnage/cargo basis. The shipowner will, of course, be happy to receive dead-freight.

Question 2

Tort and Vicarious Liability

A well answered question, with most students understanding the purpose of damages in tort. A common omission was to consider/highlight "expectation loss" under contractual claims as compared to tortuous claims.
A large number of answers were able to expand on issues pertaining the topic of vicarious liability, and to highlight that the doctrine of vicarious liability does not transfer liability but rather provides an injured party/claimant with an additional defendant. *Adler* v. *Dickson (The Himalaya)* was used by most students in illustrating the point of vicarious liability.

Examiner's Report
NOVEMBER 2015
Legal Principles in Shipping Business

Question 3

Article III (rule 8) - Hague-Visby Rules

Not a very well answered question overall. Most answers did not go beyond the identification of time bars under the Hague-Visby Rules, with a great number wrongly concluding that since the proposed terms did not "match", such terms were null and void. Article III rule 8, nullifies/voids any terms that lessen the liabilities of the parties (carrier/shipper) from those prescribed by the Rules. So, for example, increasing the time bars, or indeed the limitation of liability figures, are allowed provisions. On the other hand, attempting to apply the Hague Rules would mean that the limitation of liability figures would be lower than those applicable to Hague-Visby Rules, and therefore lessening carrier's maximum liability, rendering such term null and void.

Question 4

Quite reasonably answered overall. Apart from the shipowner's conduct being unethical in refusing to pay the shipbroker's commission, the difficulty of the question was on which principal/party the broker would be claiming his commission rather than whether he would be entitled to it. Would it claim against the shipowner or against the shipping company? If a person concludes a contract on behalf of a non-existent principal, then the contract/fixture is a personal one, i.e. on the facts between the shipowner and the charterer. So, the shipowner will have to fulfil the fixture himself, and he, rather than the shipping company, would be personally liable to pay the broker's commission.

Ratification by the shipping company after it was incorporated is not possible, as ratification relates back to the time when the contract/fixture was concluded; at that time the principal (shipping company) did not exist, so it cannot ratify.

There are different considerations for a shipbroker being denied (in the past) his commission due to lack of privity of contract, i.e. that he is not a party to the contract between shipowner and charterer, and the facts where the shipbroker is denied his commission due to the non-existence of a principal (shipowning company) at the time the shipbroker was instructed to act.

Examiner's Report
NOVEMBER 2015
Legal Principles in Shipping Business

Question 5

Hague-Visby Rules and General Average

Quite reasonable answers overall. A general omission was that general average also includes loss/damage to the ship itself, therefore carrier may have a claim against the cargo owners. Furthermore, general average is not applicable exclusively to jettison of goods; it also applies to extraordinary expenditure incurred.

Some students were unclear on the difference of seaworthiness warranty under common law (charter-party) and the exercise of due diligence under the Hague-Visby Rules. In the latter, the carrier does not have an absolute duty to provide a shipworthy ship, but rather a duty to exercise due diligence (reasonable efforts) to make the ship seaworthy. If the ship is not seaworthy, it does not mean necessarily mean that the carrier will be liable if he exercised due diligence towards making her seaworthy before and at the beginning of the voyage, but the ship became unseaworthy during the voyage. On the facts, there was no mention of a charter-party, therefore the answer was straightforward.

A great deal of confusion over deviation. Deviation occurs where a ship, without lawful excuse (e.g. necessary repairs, avoiding a danger, etc.), deviates from the voyage route contemplated. It is immaterial that the ship may have regained her route before any loss occurs. So, in effect, it may be said that "once on deviation, always on deviation"!

As far as the route is concerned, there is an unjustifiable deviation:

(a) Where the course of the voyage is specifically designated/agreed, when/at the moment the ship departs from that course/route; or

(b) Where the course of the voyage is not specifically designated/agreed, when/at the moment the ship departs from the usual and customary course.

Therefore, if a ship calls at a port of refuge to effect necessary repairs caused by, e.g. unseaworthiness/want of due diligence, error in navigation, breakdown of machinery, insufficiency of crew/men, cargo shifting, etc., deviation does not come into play.

Question 6

Hague-Visby Rules – Due Diligence – Agency of Necessity

Reasonably answered overall. Common errors included the fact that it is not necessary in every carriage of goods agreement between a carrier/shipowner and a shipper that a charter-party exists, and the facts did not mention any

charter-party.

In the case of an agency of necessity, ratification of the master's actions by the shipper(s) is not applicable nor required.

Also, a common omission was that any claim by the shipper would be subject to limitation of liability provision of the Hague-Visby Rules.

As with question 5, there was some confusion over deviation. Deviation occurs where a ship, without lawful excuse (e.g. necessary repairs, avoiding a danger, etc.), deviates from the voyage route contemplated. It is immaterial that the ship may have regained her route before any loss occurs. So, in effect, it may be said that "once on deviation, always on deviation"!

As far as the route is concerned, there is an unjustifiable deviation:

(a) Where the course of the voyage is specifically designated/agreed, when/at the moment the ship departs from that course/route; or

(b) Where the course of the voyage is not specifically designated/agreed, when/at the moment the ship departs from the usual and customary course.

Therefore, if a ship calls at a port of refuge to effect necessary repairs caused by, e.g. unseaworthiness/want of due diligence, error in navigation, breakdown of machinery, insufficiency of crew/men, cargo shifting, etc., deviation does not come into play.

Question 7

IMO Conventions

A reasonably well answered question overall. Most were able to identify and outline an IMO convention, although a few seem to "ad lib" using as example non-IMO conventions, e.g. Hague-Visby, Hamburg, or Rotterdam.

Examiner's Report
NOVEMBER 2015
Legal Principles in Shipping Business

Question 8

Frustration

A reasonably well answered question. A number of students identified *The Super Servant Two* (1990) case on the facts and were quick to hold that there was no frustration of the charter-party. Most answers however, missed obtaining the full mark as they omitted to introduce an outline of the main elements of frustration.