



INSTITUTE OF CHARTERED SHIPBROKERS

APRIL 2011 EXAMINATIONS

TUESDAY 12 APRIL – MORNING

LEGAL PRINCIPLES OF SHIPPING BUSINESS

Time allowed – Three hours

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

1. Bloggs in London agrees to sell 100 widgets to Clarke Kent in New York. Bloggs books cargo space on the vessel *Disaster* of Bert Shipping (London) Ltd. The widgets are shipped on board the vessel in London, in “apparent good order and condition”. The bills of lading also contain in clause number one a provision as follows :

“1. The carrier shall not in any event be or become liable for any loss or damage to the goods in an amount exceeding 666.67 units of account in total”.

According to the contract of carriage, evidenced by the bills of lading, the *Disaster* is to proceed directly to New York, with no intermediate ports of call. Following *Disaster*’s sailing from London, the Master decides to call at Hopeless Point in Cornwall to pick up some post the Shipowners (Bert Shipping (London) Ltd.) wish to deliver to New York. Consequently, the vessel moors at Hopeless Point for an hour to pick up these items. A day before arriving at New York, the *Disaster* collides with a small tanker due to the bad weather prevailing at the time, and both vessels sink, with total loss of their cargoes. Bloggs claims from Bert Shipping (London) Ltd. for the loss of the cargo, and Bert Shipping (London) Ltd. reply that under Article IV rule 2(c) (Hague-Visby Rules) they are not responsible for any loss arising/resulting from “perils, dangers and accidents of the sea”.

Advise Bert Shipping (London) Ltd. :

- (i) whether the contract for the carriage of Blogg’s cargo, evidenced by the bills of lading, was subject to the Hague-Visby Rules,
- (ii) as to their liability for the loss of Blogg’s cargo, and
- (iii) the effectiveness of the clause (number 1 above) under English Law.

please turn over

2. The vessel *Fudge* is time chartered to Quick Shipping Co. (QS). The *Fudge* arrives in a British port to load, and moors at a berth, where loading commences.

On completion of loading the Master of the *Fudge* signs the bills of lading. He insists on clauising the bill of lading for a particular cargo with remarks about damage to the packaging. The bills of lading have a demise clause on the back but the Charterer's logo appears on the front.

The vessel leaves the port and is directed to proceed to Limassol in Cyprus.

When the *Fudge* arrives in Limassol, and her hatches are opened, it is apparent that some of the cargo has been damaged. A Surveyor inspects the cargo and declares that the cargo has been damaged by seawater.

On completion of discharging the charter has four 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 the legal issues arising from this scenario from the point of view of:

(a) The Shipowner

(b) The Charterer

3. Jerry Ltd. are sea carriers and have contracted with Shipper Ltd. for the carriage of some goods from London to Rory Ltd. in Singapore. Bills of lading were appropriately issued by the carrier (Jerry Ltd.), and Shipper Ltd. sent one of the bills of lading to Rory Ltd. in Singapore so that collection of the goods can be made at destination. Upon arrival at Singapore, Rory Ltd. tell you that they have not received a bill of lading (probably mislaid/lost by one of their employees).

(i) Advise, and explain to the carrier (Jerry Ltd.) whether they should deliver the goods to Rory Ltd.

(ii) Irrespectively of your advice, Jerry Ltd. decide not to let Rory Ltd. take delivery. Can you suggest any way that Jerry Ltd. could let Rory Ltd. take delivery of the goods?

4. Fully explain what you understand by **THREE** of the following:

(a) A 'Mareva' Injunction.

(b) An action *in rem*.

(c) *Ratio decidendi*.

(d) An 'innominate term'.

5. The vessel *Lucky Lady* is time chartered by Chartering Company Ltd. ("CC"). She arrives at the loading port ready to load her cargo, and is instructed to anchor and await for a berth. Critically analyse the issues arising in the following scenarios:
- (a) Whilst at anchor a strong gale causes the vessel to start dragging her anchor and she is at risk of running aground. The Master calls the port authority on the VHF to request that tugs are sent to tow the *Lucky Lady* clear of danger. He is informed that no tugs are available and the vessel subsequently runs aground causing damage to her rudder that will require dry docking for repairs. Following this, the *Lucky Lady* effected repairs and loaded.
- (b) The vessel arrived at the discharge port nominated by the Charterer, after a two week voyage. During the voyage, Hurricane Kelly swept in without warning due to freak weather conditions and it caught *Lucky Lady* unawares. Given the very rough seas, the Master of the ship considered appropriate to cast overboard some 5 containers to save the ship, its cargo and the crew in the 50 foot waves.
6. Fully explain **ALL** of the following:
- (a) Notice of Readiness, and its effect.
- (b) Laytime.
- (c) Demurrage.
7. Answer the following questions:
- (a) Can a Charterer deduct from freight payment by way of equitable set-off?
- (b) Discuss the use of the so-called 'anti-technicality clause' in time charter-parties.

please turn over

8. Under a voyage charter-party the tanker *Dimple* is chartered to load a cargo of 200,000 tons of oil from West Africa to Europe. The laycan or 'laydays' agreed in the charter-party were 9/10 January 2011, the charter-party, among other things, provided that:

"The vessel shall not tender Notice of Readiness prior to the earliest layday date of 9 January 2011 and laytime shall not commence before 06:00 hours local time on the earliest layday unless Charterer consents in writing.

If Charterer permits vessel to tender N.O.R. and berth prior to commencement of laydays, all time from berthing until commencement of laydays to be credited to Charterer against laytime and/or time on demurrage. Saved time to be split 50/50 Owners/Charterers."

On 6 January 2011, the Charterers write instructing that N.O.R. be tendered by the *Dimple* on arrival to Lagos (Nigeria), i.e. 7 January 2011, and berth/commence loading on 7 January 2011. Indeed, the vessel berthed at 00:30. She completed loading on 10 January 2011.

A dispute has now arisen with the Charterers contending that they never gave their consent to laytime commencing prior to 9 January 2011, and therefore, under the clause, the time between 00:30 7 January 2011 and 00:01 9 January 2011 is saved time. Owners, on the other hand, contend that such consent was given expressly or impliedly, by the Charterers' request or alternatively by the loading commencing with the knowledge and consent of the Charterers at 00:30 7 January 2011.

Without considering any specific laytime/demurrage possible calculations, advise on the likely outcome of the dispute.