



EXAMINER'S REPORT

Nov 2022

SHIPPING LAW

Q1. Can a stevedore invoke Article IV *bis* (2) of the Hague-Visby Rules, which provides that if a claim is brought against the servants and agents of the carrier in relation to cargo claims, the servant and agents are entitled to the same defences as are available to the carrier himself, and that such defences are not available to independent contractors? Discuss, using suitable examples to support your answer.

A very legal question, the student is required to be familiar with Article IV *bis* (2) of the H-Visby Rules. The students are expected to be familiar with the provisions of the H-Visby Rules, and in particular Article IV *bis* (2) and the Himalaya Clause; and also, the issue of privity of contract, *i.e.*, the stevedore not being a party to the contract of carriage as contained in the B/L. The question presents a good opportunity for students to showcase their knowledge and understanding of Article IV *bis* (2) which is widely used. A good answer should contain a detailed discussion on Article IV *bis* (2) of the H-Visby Rules, which effectively incorporates the Himalaya Clause into the Rules. Discussions should include i) how Article IV *bis* introduces the entitlement of the carrier to defend themselves, or to limit their liability whether the action brought against them is founded in contract or tort – within the parameters of the Rules, and ii) the issue of privity of contract, which has seen the carriers inserting a 'sub-contracting and indemnity clause' in their B/L extending their benefits (defences, limitations of liability) to their stevedores. Discussions should refer to 'The Himalaya' case, and how the legal principles handed down in the case came to be extended and incorporated in the H-Visby Rules

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 Himalaya [1954]***; ***Midland Silicone Ltd v Scrutton Ltd [1961]***. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q2. The vessel 'Water' arrived at a loading port and tendered NOR outside of the stipulated hours contained in the Charterparty to load a part cargo of sugar. The inspectors subsequently rejected the vessel's holds, as they were not fit to receive the cargo of sugar. After the holds were cleaned the vessel loaded two separate parcels of sugar and set sail to the discharge port. Upon arrival at the discharge port, the vessel could not berth due to congestion. The Charterparty contained a WIBON Clause. Notice of Readiness was tendered and 7 days later the vessel proceeded to the berth and discharged both parcels of cargo. Using suitable case law reference in your discussions, advise the shipowners as to their right to claim demurrage for the delays arising at the load port, and at the discharge port.

A problem question giving raise to legal issues relating to the performance of a voyage charterparty contract. Here, students are expected to be familiar with the obligations arising under a voyage CP contract in relation to issue of NOR by the shipowners, the legal effect of WIBON (whether in berth or not) clause in a CP contract. The students are to carry out a detailed analysis of scenario presented, followed by a detailed discussion of the legal issues surrounding the issue of NOR in the loading and discharging process, the effect of the WIBON clause in the voyage CP contract, on the NOR, etc.

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 Peter Schmidt* [1997] 1 Lloyd's Rep 284; *The Lindaros* [1994] 1 Lloyd's Rep 28.** Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q3. Answer BOTH parts of the question with suitable case law reference a) discuss the reasons for limitation of liability and the development of the limitation Conventions, and b) discuss the conduct that will bar a person's right to limit his liability.

A two-part essay type question on the rationale and scope of shipowner's liability under the 1976 Limitation Convention and the conduct that could debar the right to limit under the Convention. The students are expected to be aware of the LLMC regime known as the 'global limitation' regime. The students are to carry out a detailed discussion on **a)** the rationale and scope of the Limitation Convention 1976, which is designed to deal with disasters in which shipowner faces claims from variety of claimants, and how the Convention seeks to create one overall maximum limit in relation to all claimants (tonnage limitation), and **b)** how if it is to be proved that the loss resulted from the claimant's personal act or omission, or such acts were committed by the claimant with an intend to cause such loss, etc., then under Article 4, the shipowner could lose the right to limit.

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 Eurysthenes* [1976] 2 Lloyd's Rep 171; *The Garden City* [1982] 2 Lloyd's Rep 382; *The Lady Gwendolen* [1965] 1 Lloyd's Rep 335.** Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q4. Answer BOTH parts of the question. Discuss with suitable case law reference: a) What is 'hire' in time charters, and when is it payable? b) How is 'freight' in voyage charters different from hire and when is it payable?

A two-part essay type question on **a)** 'hire' in time CP operations, and **b)** 'freight in voyage CP operations and how the tow differed. The students were to be familiar with **a)** 'hire' as the payment obligation in time charterparties and when it is payable **b)** 'freight' as the primary payment obligation under voyage charters. Here, students were to carry out a detailed discussion on **a)** 'hire' in time charterparties and when it is payable – before and not later – and the consequences of late payment, and **b)** how 'freight' under voyage charters is calculated and when payable, and how no set-off is allowed. Answers are to demonstrate students' clear understanding of both **a)** and **b)**.

Quality of illustrations, both case laws and examples – the cited in the study material/ textbook and student's own choice. Case laws: *The Mihaios Xilas* [1979]; *The Laconia* [1977]; *Spar Shipping v Grand China Logistics* [2015]; *The Aries* [1977]; *Thomas v Harrowing SS Co* [1915]. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

Q5. A time charterparty provides for a duration of minimum 18 months plus/ minus 15 days in charterers' option. On the last day of the 18th month of the charterparty, the charterers declared that they were exercising the option to extend the charter period by 15 days and carry out a final voyage, which it was estimated in good faith (at the time the order was given), to last for not more than 8 days. Although the vessel departed on its voyage immediately, the voyage could not be completed in such time to be properly re-delivered at the agreed charterparty location in 15 days. Analyse the options available to the owners of the vessel in respect of the charterers' voyage instructions with reference to suitable case law.

A problem question on legal issues arising from time charterparty operations. The students were expected to be familiar with time charterparty obligations with regards to redelivery of the vessel. The students are to carry out a critical analysis of the scenario presented to determine if **i)** the charterers breached the terms of CP contract as regards final voyage orders and are liable to pay, **ii)** whether the charterers are liable to pay the lost profit arising from the cancellation of a subsequent fixture. Students are to be fully aware of the legal position with regards to late redelivery arising from final voyage under a time CP. With the decision of the House of Lords in *The Achilleas* [2009] it is now clear that damages for late redelivery will be assessed at the market rate for the period of overrun.

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 London Explorer* [1972]; *The Peonia* [1991]; *The Black Falcon* [1991]; *The Achilleas* [2008]; *The Paragon* [2009]**. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q6. Answer BOTH parts of the question: In the case of the 'Timna' it was said "It is a good working rule...to give Notice of Readiness and to go on giving such notices in order that, when later the lawyers are brought in, no one shall be able to say; "If only the Master had given Notice of Readiness, laytime would have begun and the Owners would now be able to claim demurrage". Discuss the above statement, with particular reference to a) when laytime starts for both port and berth charterparties; b) what happens if the Notice of Readiness is invalid.

A two-part essay type question on laytime and NOR in voyage charters. The students were expected to be familiar with *voyage charterparties*, *NOR*, *laytime*, *demurrage etc.*, and expected to present a detailed discussion on when and how laytime will start in relation to both port and berth charterparties; and what happens if the NOR were to be invalid. Students were expected to have a good understanding of the above practice and the answer was to demonstrate a clear grasp of the legal principles behind the practice.

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 Timna* [1971]**. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q7. Company X owned vessel A, which was the subject of a cargo claim. Prior to the initiation of any legal proceedings by the cargo interests, Company X sold their vessel, and later purchased vessel B. During her first voyage, vessel B was involved in an accident and was salvaged successfully. Both the cargo claimants of vessel A, and the salvors of vessel B would like to know if they could arrest either vessel A or B to enforce their claims.

A problem question on maritime claims, where students are expected to be familiar with the assets that are available to secure a claim and enforce against.

To get a pass, it was essential that the student presents a critical analysis of the scenario, followed by a detailed discussion of the assets (ship) that are available to secure a claim and to enforce against. The students were expected to be aware of arrest of seagoing ships, and the difference between a maritime lien and a maritime claim. Students were to carry out a detailed analysis of the law relating to maritime claim (cargo), and maritime liens (salvage), followed by a discussion of where the claims for cargo damage, salvage reward will rank. The students were expected to include in the discussion what could be brought before the Admiralty court in the England & Wales, and the laws, *i.e.*, Section 20, Senior Courts Act 1981, Arrest Convention 1952.

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 Bold Buccleugh* [1851] 7 Moo PC 267; *The Maersk Nimrod* [1991] 1 Lloyd's Rep 269; *The Sennar* [1983] 1 Lloyd's Rep 295**. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q8. Discuss the salvor's entitlement to reward under Article 14 of the Salvage Convention 1989 and his level of remuneration in comparison with a reward under Article 13. Use case law to support your answer.

A straightforward legal question on the salvor's entitlement for reward under the Salvage Convention 1989 for saving or minimising damage to the environment. The students are to be familiar with the provisions and the remit of the Convention, and especially on the salvor's entitlement to reward for saving or minimising damage to environment. To get a pass mark, the students were to engage in a detailed discussion on the salvor's entitlement to reward under the Convention and the level of remuneration in comparison to a reward for saving or minimising damage to the environment. The discussions were to include coverage of the 1989 Salvage Convention, which encourage salvors to engage in saving, or minimising the damage done to environment and seek an uplift on their salvage remuneration, and how it seeks to reward the salvors for such actions. Reference was to be made to the landmark House of Lords decision in *The Nagasaki Spirit* [1997], where problems in the drafting of the Convention were identified.

Quality of illustrations, both case laws and examples – the cited in the study material/ textbook and student's own choice. Case Law: *The Nagasaki Spirit* (1997). General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.