

# Examiner's Report

## April 2016

### Legal Principles in Shipping Business

#### General comment

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

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

The trend in students' examination performance continues to improve. Although there was nothing particularly different in this April's paper to previous years, overall performance was exceptionally encouraging, representing an improvement over last five years' overall results.

Questions 1, 4 and 8 were the most popular ones, whilst questions 5, 7 and 8 were the most successfully answered ones.

#### Question 1

**Discuss why parties to a charter party would agree to resolve their disputes by arbitration.**

This was a well answered question overall. This was an essay type, open question which gave the opportunity to candidates to show their grasp of the important role of arbitration in shipping disputes.

An outline of main advantages, both legal and practical, over court proceedings was provided by most students. The answers generally showed a clear understanding of the main advantages of reference to arbitration such as finality of award, arbitrator's knowledge and experience in charter-party disputes, etc.

#### Question 2

**What are the common law remedies for a breach of contract, and how are such remedies determined?**

Numerous answers concentrated on whether the broken term was a condition/a warranty/an innominate term, which is the correct angle for an introduction. However, as far as Common Law (not Equity) is concerned the main remedy is damages.

Of course, there is the self-help remedy of repudiation, but it is not strictly a Common Law remedy sought by an injured/innocent party before a Court. It is correct to put it forward nevertheless for the sake of completeness.

Injunctions, specific performance, freezing orders, etc., are equitable remedies, all depending on the discretion of the Court, i.e. not Common Law remedies.

# Examiner's Report

## April 2016

### Legal Principles in Shipping Business

#### Question 3

**Answer BOTH parts of the question.**

**Fourteen months ago, a shipper in London, UK loaded the following cargo on board a particular vessel:**

**20 containers, having agreed with the carrier/shipowner to be carried on deck;**

**20 pallets of flammable painting materials.**

**The goods were shipped in apparent good order and condition. However, due to bad maintenance of the ship's fuel line, a fire broke out on board the vessel and it was lost with all cargo on board.**

**a) Identify and briefly discuss the legal issues that arise from the above situation;**

**b) Would your answers be different if the UK had ratified the Hamburg Rules 1978?**

Not a commonly answered question by students. Many answers considered general average on the facts. It must be understood that general average is based on the values of properties (ship, cargo, freight) that arrived at destination/end of the voyage (net arrived values). Obviously, if nothing arrived/saved, there is no fund, and therefore, there can be no contribution.

Article I(c) of Hague-Visby Rules contains the definition of goods to which they apply; 'Goods' includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried..

On the facts, the 20 containers would not fall within the scope of the Hague-Visby Rules, since they are not goods. Therefore, applicable time bar on claiming for the loss of the 20 containers could not be determined with certainty, except perhaps saying that if English law applies this may be six years (unless agreed otherwise).

The expression before and at the beginning of the voyage seemed to confuse some students who suggested that this means the ship should be seaworthy upon the start of the voyage, and wondered whether the fuel pipe fuel line broke before or after the vessel set sail. The word used by the Rules is the voyage, i.e. the particular voyage. As case law has shown over the years, the degree of due diligence before the ship sets sail must be adequate for the voyage, i.e. the particular voyage. So, it is erroneous to consider that as soon as the vessel sets sail in a seaworthy state, carrier has exercised due diligence at the beginning of the voyage. If carrier has not maintained the particular fuel line adequately for the particular voyage, then there is lack of due diligence, with all the consequences that derive there from.

Article IV rule 6, (dangerous goods) also seemed to have caused some confusion. In the scenario the carrier consented with knowledge of their nature, i.e. knowingly that the cargo consisted of 20 pallets of flammable painting materials, therefore, it fell within the scope of the third part of rule 6 provision. This means that if such cargo becomes a danger to the ship or its cargo the carrier has similar rights to those where the carrier has not consented with knowledge of their nature. The relevant part of rule 6 provides The flammable painting materials of the scenario may ...in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.. On the facts, the carrier did not exercise any such rights, nor is there any information on whether the flammable painting materials had become a danger to the ship or cargo. In all likelihood therefore it was the bad maintenance of the fuel line that caused the danger. This points towards lack of exercising due diligence, with all the consequences that derive there from.

# Examiner's Report

## April 2016

### Legal Principles in Shipping Business

#### Question 4

**Discuss the shipowner's/carrier's duty to provide a seaworthy ship under common law and under the Hague-Visby Rules.**

A quite reasonably answered question overall.

A number of answers were not clear of the difference between (a) absolute duty to provide a seaworthy ship, and (b) exercise of due diligence before and at the beginning of the voyage to make the ship seaworthy. The former is clearly a stricter continuous obligation, whereas the latter is a lighter test; as long as due diligence (reasonable effort/endeavours) has been exercised before ship sails, all exceptions provided by the Rules are available to the carrier.

Some answers omitted to consider that under Common Law the absolute duty of seaworthiness could be excluded, whereas under Hague-Visby Rules the requirement of exercising due diligence could not be even reduced/lessened.

The meaning of before and at the beginning of the voyage mentioned in question 3 are also applicable here for some marks.

#### Question 5

**Answer ALL parts of the question.**

**Using appropriate examples to support your answers, explain the following:**

- i) deadfreight;**
- ii) lumpsum freight;**
- iii) ship 'lost or not lost';**
- iv) freight prepaid bill of lading.**

This was a well answered question overall. Most students provided descriptive answers of the different types of freight and payment methods and their effect, such as freight payable proportionately to the part of the voyage accomplished or the part of the cargo delivered, or where shipowner has obtained other cargo due to charterer's failure to provide a full and complete cargo. Better answers included examples of variations of such freights.

#### Question 6

**Discuss the consequences of 'illegitimate last voyage' in time charter parties.**

Quite reasonably answered overall. Most students described the various possibilities here, for example, where the charter-party includes a "more or less" provision, or indeed where the charter-party is silent on the matter (*The Peania*).

Students also outlined the position where an illegitimate last voyage is ordered and insisted upon by the charterer (market rates rise/decline).

Students achieved better marks where they considered the possibility of repudiatory breach.

# Examiner's Report

## April 2016

### Legal Principles in Shipping Business

#### Question 7

**It has been stated by courts that the Contract (Rights of Third Parties) Act 1999 'had dealt a long overdue body blow to the doctrine of privity of contract'.**

**Explain this statement and discuss how it affects shipbrokers.**

This was the least popular question and at the same time the most successfully answered by those attempting it. Most students explained the legal doctrine of *privity of contract*, together with the difficulties it caused shipbrokers in claiming their commission. Students discussed how the statement relates to the 1999 Act. Extra marks were given to students who identified and outlined the *Nisshin Shipping Co. v. Cleaves & Co. Ltd.* case.

#### Question 8

**Explain the term 'once on demurrage always on demurrage' when compared to laytime.**

The most favoured question and reasonably well answered overall.

Most answers easily dealt with NOR, laytime and its exceptions, as well as demurrage. One slight criticism here is that many answers omitted to add that although all time lost after the expiry of laytime is payable as demurrage, did not mention that this is subject to contrary agreement by the parties, i.e. there can be demurrage exceptions in a charter-party.

Students were awarded marks where they demonstrated a clear understanding of laytime as an introduction to discussing this term. Generally, all time lost after the expiry of laytime, including Sundays, holidays, or strikes, would count and be payable as demurrage. This is, of course, subject to contrary agreement by the parties.