

Examiner's Report

April 2016

Shipping Law

General comment

Question 3 was the most popular one this year, followed by question 7. The least popular one was question 6.

Overall, the standard of answers this year was above average demonstrating a better understanding of the legal principles taken up for discussion.

Question 1

Answer BOTH parts of the question with suitable examples.

a) Define and explain an *in rem* action. Are there any advantages to an *in rem* action to that of an *in personam* action?

b) Discuss the restrictions on the use of the *in rem* procedure and the development of the sister ship arrest in the admiralty jurisdiction.

This was a popular question. The students were expected to show their knowledge of *in rem* procedures before Admiralty courts and *in personam* claims before commercial courts. The students were expected to present a detailed discussion on the aims of an *in rem* action and what is sought to be achieved, followed by discussions ship arrest before the admiralty courts in the UK to enforce a claim arising out of salvage operations and cargo claims, and the development of sister ship arrest. Students were also expected to include in their answers the relevant statutory provisions which set out the *in rem* procedure in the UK. The overall performance of the students could be summarised as being above average.

Question 2

The charterers have engaged a weather routing service, which provided them with a report stating that the ship lost time on the voyage. The charterers then proceeded to deduct the amount stated in the report from the next month's hire payment. The shipowners argue that they were unaware of the existence of the weather routing service for the charter party contract and have refused to accept the deductions.

Advise the shipowners on the legal arguments to defend their position against deductions from hire.

Students were expected to show their knowledge of speed claims, and over-consumption (as opposed to the one mentioned in the contract) that arises under a time charterparty contract. Students were to carry out a detailed discussion on both claims, namely speed claims, and over-consumption, and how it may not be possible to deduct from the following month's hire charges merely on the basis of weather routing service's report. Students are to demonstrate a clear understanding of speed claims, and over-consumption which are to be primarily determined through the logs maintained on board the vessel and not through a weather routing system. Any advice to be given to the shipowner should be based on the above.

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Question 3

Under common law, the charterer is under an implied obligation to nominate a safe port. The English courts have held that 'what constitutes a safe port' purely depends on the circumstances of each case. Discuss the legal principles and circumstances which courts take into account in deciding whether or not a port is safe.

Students were expected to show their knowledge of the common law obligation to nominate a safe port under a charterparty contract. Students were to carry out a detailed discussion on the common law obligation to nominate a safe port, and how the courts in England have interpreted this. The discussions are to demonstrate a good understanding of the obligation to nominate a safe port. This was the most popular questions in this year's exam.

Question 4

What is the SCOPIC clause and how does the SCOPIC tariff benefit the salvors?

Here, the students were expected to show their knowledge of the SCOPIC clause. The students were to present a detailed discussion on SCOPIC clause and how it was introduced following the opinion expressed by the House of Lords in *The Nagasaki Spirit* case. Students were to carry out a detailed discussion on the salient features of the SCOPIC clause, SCOPIC tariff, how it has been periodically increased since its introduction, and if and how it benefits the salvors in certain circumstances.

This was one of the popular questions in this year's exam.

Question 5

Answer BOTH parts of the question

a) What is deadfreight, and how is it calculated?

b) Under what circumstances can the shipowner claim damages for detention, and how does this differ from the demurrage regime?

Use suitable examples to support your answer.

The students were expected to show their knowledge of **(a)** deadfreight and **(b)** the circumstances under which damages for detention can be claimed by owners.

Students were to present a detailed discussion on **(a)** deadfreight, and how is it calculated in the performance of a voyage charterparty, and **(b)** the circumstances under which damages for detention may be claimed by the owners, and how this differs from the demurrage regime.

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Question 6

Article IV bis (2) of the Hague-Visby Rules provides that if a claim is brought against the servants and agents of the carrier in relation to cargo claims the servant and agent is entitled to the same defences as are available to the carrier himself. However, Article IV bis (2) makes it clear that such defences are not available to independent contractors, such as stevedores. Discuss with suitable examples.

Students were expected to show their knowledge of provisions of the Hague-Visby Rules, and in particular Article IV bis (2) and the Himalaya Clause. Students were to present a detailed discussion of Article IV bis (2) of the Hague-Visby Rules which effectively incorporates the Himalaya Clause into the Rules. Students were to include 'The Himalaya' case in their discussion and how the legal principles came to be extended and incorporated in the Hague-Visby Rules.

This was the least popular questions in this year's exam.

Question 7

It is a key feature of the time charter party that hire is paid in advance. Discuss the following with suitable case law.

a) Late payment of hire and its consequences, and

b) The reasons a time charterer may want to include an anti-technicality clause into the contract.

Students were expected to show their knowledge of the payment of hire and anti-technicality clauses in time charterparty contracts.

Students were to carry out a detailed discussion on **a.** late payment of hire and its consequences, and **b.** the reasons a time charterer may want to include an anti-technicality clause into the contract, to demonstrate a clear understanding of the payment obligations under time charterparty contracts, and the reasons why parties may want to have an anti-technicality clause in their contracts.

This was the second most popular questions in this year's exam.

Question 8

Describe the function and purpose of MARPOL with reference to the other pollution conventions. What further pollution issues do you think may be addressed by MARPOL in the future?

Students were expected to be able to show their knowledge of the provisions of MARPOL. Students were expected to carry out a detailed discussion on MARPOL with regard to other pollution conventions. The discussions were also to include as to what further issues should be addressed by MARPOL in the larger interest of marine pollution and the shipping industry.

This was not a very popular question in this year's exam.