

# Examiners' Report November 2016

## Legal Principles in Shipping Business

### General Comments

#### Overall Comments

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 fair in the majority.

The trend in so far as students' examination performance is concerned continues at the same level as in previous years.

A general criticism of the answers is the lack of inclusion of authorities (i.e. cases and statutes), and the sometimes unstructured line of thought followed.

Questions 8, 6 and 7 were the most popular ones, whilst questions 2, 3 and 6 were the most successfully answered.

Comments on individual questions are as follows:

#### Question 1

**A cargo of wheat is transported from the UK under a bill of lading incorporating the Hague-Visby Rules. Other similar cargoes were also loaded on the same vessel. On arriving at the port of discharge, an infestation was discovered. Following unsuccessful fumigation, all the cargo had to be destroyed. The vessel then had to undergo fumigation that caused a one month delay. The carriers claimed damages against the shippers for the loss caused by the delay and the fumigation expenses. Advise the carriers.**

This was the least successfully answered question overall. It was a question requiring a consideration of dangerous goods under common law (implied term) and under Article IV, r.6 of the Hague-Visby Rules. Under the former notice of the cargo's characteristics is required. Under Article IV the shipper must bear all damages and expenses that arise directly out of the shipment of dangerous goods to which the carrier has not knowingly consented.

Despite the question clearly pointing out the Hague-Visby Rules, numerous candidates were not aware of *The Giannis NK* case and dangerous goods provisions contained in Article IV. In simple terms the word "dangerous" includes cargoes that are liable to cause direct physical damage to the ship or other cargo.

The relevant part of rule 6 provides that if 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 the cargo's nature. Therefore, the cargo of wheat of the scenario may "...in like manner be destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any".

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### Question 2

**Explain what is an in rem action and its purpose.**

A well answered question, albeit not favoured by the majority of students. Numerous answers gave an outline of the possible claims that fall within its scope (collision, salvage, crew wages, etc.), and how it is different to an "ordinary" *in personam* claim/action.

Most students were able to expand on any advantage/disadvantage a ship's arrest may have in practice, e.g. threat of arrest may lead owner to provide security for the claim.

### Question 3

**Answer BOTH parts of the question. Explain and discuss the legal and practical implications of: a) contributory negligence; and b) vicarious liability. Use examples to support your answer.**

A well answered question overall. A straightforward essay type question, where students were expected to indicate their understanding of the two important topics. Some confusion seemed to reign in examples given, particularly over "mitigation of loss" principle. This applies to contractual damages, whereas "contributory negligence" is relevant to (tortious) negligence damages. Similarly, it is the breach of the charter-party that gives rise to deadfreight, hence it is expected that where the charterer did not load the agreed cargo quantity the shipowner is under a duty to mitigate his loss arising from the charterer's breach of contract (e.g. by trying to find other cargo to utilise the empty space).

### Question 4

**The doctrine of frustration is often confused with the concept of force majeure.  
Discuss this statement.**

A reasonably answered question overall.

*Force majeure* would excuse a party for non-performance of a particular list of obligations but the contract will continue, whereas frustration would excuse both parties for further performing/continuing with the contract. Some answers confused force majeure clauses - thinking that they are liquidated damages clauses, i.e. if a party is in breach due to an unforeseeable event, then damages are payable to the other party.

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### Question 5

**Describe and discuss the international conventions and USA legislation dealing with oil pollution.**

A quite reasonably answered question overall, and the least favoured one by students. It was expected for answers to outline the scope of MARPOL, Civil Liability Convention, and the Fund Convention, as well as a brief account of USA's Oil Pollution Act. No particular difficulty to comment on was identified in candidates' answers, except to observe that a large number omitted to mention the two voluntary agreements (STOPIA 2006 and TOPIA 2006) relating to compensation for oil pollution.

### Question 6

**Discuss the various ways in which a person describing themselves as an agent may be held personally liable for a contract into which they have entered.**

Reasonably answered overall. No particular difficulty to comment on was identified in the answers. Not all answers dealt with implied warranty of authority. Some confusion evident over agency of necessity and ratification; no ratification is needed where agency of necessity arises.

### Question 7

**Answer BOTH parts of the question.**

**a) A bill of lading is evidence of the contract of carriage of goods. Discuss any circumstances when a bill of lading may be/become the actual contract of carriage.**

**b) A bill of lading is evidence of receipt of the cargo by the carrier. Discuss that significance of this function under the Hague-Visby Rules.**

A popular question reasonably answered overall. A few candidates erroneously thought that once the bill of lading is transferred to a third party endorsee it becomes the contract between the shipper and such third party endorsee. In the second part (receipt function) many could not identify that the statement that the goods are "shipped on board in apparent good order and condition" would be *prima facie* evidence between the carrier and the shipper that the goods were so loaded, but once such bill of lading is transferred/endorsed to a third party the statement would be conclusive (i.e. undisputable by the carrier).

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### Question 8

**Answer BOTH parts of the question.**

**Under a voyage 'port' charter party, a ship arrives at the port of loading and is directed by port authorities to wait at an anchorage. The ship's master sends a Notice of Readiness that states the ship will be ready to load within the next 24 hours. A few hours later a berth becomes available and the ship is directed to dock. Loading operations start and the ship is loaded within a day.**

- a) Analyse the issues relating to when the ship was considered to be an arrived ship.**
- b) Consider at what point the laytime clock started.**

The most favoured question and reasonably answered overall. Many answers omitted to express the principle that the vessel must be ready at the time the notice of readiness is tendered, and not at a time in the future. On the facts, the notice given referred to the ship's readiness in the following (future) 24 hours, and therefore was not a valid one. Be that as it may, the fact remained in the scenario that the ship berthed and loading/unloading commenced. Upon an invalid or no NOR, laytime commences when actual loading/discharging commences; e.g. *Kawasaki Kisen v. Bantham* [1938] 1 K.B.805, *The Mexico 1* [1990] 1 Lloyd's Rep.507 (CA), *The Happy Day* [2002] 2 Lloyd's Rep.487 (CA), *The Front Commander* [2006] EWCA Civ.944.