

Examiners' Report

November 2016

Shipping Law

Question 1

Answer BOTH parts of the question. Discuss using examples of the relevant case law. a) What defines an arrived ship in relation to port and berth charter parties? b) How do damages for detention differ from demurrage and the circumstances in which damages for detention can be claimed by a shipowner?

Students were expected to be familiar with a) the concept of an arrived ship in relation to port and berth charters, b) the circumstances under which damages could be claimed for detention of the ship by the owners and how it differs from a claim arising under demurrage. A detailed discussion was to be carried out on the concept of an "arrived" ship in relation to port and berth charters, the circumstances under which damages could be claimed for detention of the ship by the owners and how it differed from a demurrage claim. Also the students were to demonstrate clearly their understanding of the differences between the two from the operational and legal perspective.

Question 2

Discuss the main functions of a bill of lading using examples of the relevant case law to support your answer.

Students were expected to be familiar with the important role of bill of lading in sea transport and its major functions. Students were to carry out a detailed discussion is to be done on the three important functions of the bill of lading, namely, that of **i.** being a receipt for the goods received, **ii.** being the best evidence of contract of carriage and **iii.** being a document of title for the goods carried.

Question 3

A vessel while on a time charter suffered engine problems. It was anchored in sheltered waters off the coast of Somalia to undertake repairs. Whilst there, the vessel was hijacked by pirates. The owners paid the pirates the ransom and the vessel proceeded to the discharge port. The vessel arrived at the discharge port 20 days behind schedule. The charterers do not wish to pay the owners any hire during the various delays. Please advise the charterers.

Students were expected to be familiar with the position of law regarding the time charter party operations, off-hire clauses, etc. Students were to carry out a detailed discussion of the case in hand and the applicable law. Students were to suggest the remedies open to the time charterer if any, in the given circumstances with clear and convincing arguments (legal) for the same, and also discuss the issue of piracy and the consequential delays caused in the performance of the time charterparty contract.

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Question 4

Does the inclusion of a Himalaya Clause into the bill of lading contract extend the defences that are available to the carrier to other parties? Use examples of relevant case law to support your answer.

The students were expected to be familiar with Himalaya Clauses and the answer was to include the case law *The Himalaya* and how such clauses are incorporated into bills of lading contracts to extend the defences available under the bill of lading contract to third party contractors. The students were expected to carry out a detailed discussion on Himalaya Clauses and how it worked in extending the same set of defences/ protection available to a carrier under the contract to that of a third party sub-contractor, how the same worked when cargo claims are brought directly against in the sub-contractor.

Question 5

A vessel on a voyage charter carries fuel oil. The charter party contained a cargo retention clause and a pumping warranty, which required the vessel to discharge its entire cargo within 24 hours. The charterers ordered the vessel to wait outside the port of discharge for a week while they resolved their Letter of Credit problems.

Subsequently, the vessel was allowed to enter the port and the discharge of the cargo lasted 48 hours. Following discharge, a shortage of cargo was found and the sailing of the vessel was delayed as a result of the attendance on board of various surveyors who wished to investigate the cause of the cargo shortage.

Advise the owners as to their rights and remedies.

Students were expected to be familiar with the position of law regarding the voyage charterparty operations, cargo retention clause, pumping warranty, etc. Students were to carry out a detailed discussion of the scenario in hand, the applicable law, the remedies open to the shipowner—as a result of the delays caused in the operation, while focusing on voyage charterparty operations relating to discharge of cargo in the light of the cargo retention clauses and pumping warranties found in charterparty contracts.

Question 6

Explain the English Admiralty Court procedure and practice for obtaining a freezing injunction. Use examples of relevant case law to support your answer.

Students were expected to be familiar with the grant of freezing injunctions and the English Admiralty Court practice (*in rem* jurisdiction/ proceedings). A detailed discussion on **i)** granting of “freezing injunctions” as security in certain actions before the Admiralty Courts, and **ii)** the practice of bringing an

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action *in rem* against the *res* as opposed to the person was to be carried out.

Question 7

Discuss the legal principles and circumstances which courts take into account in deciding whether or not a port is a safe port.

The students were expected to be familiar with 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. The overall performance of the students could be summarised as being satisfactory.

Question 8

Both the common law and the Hague-Visby rules require a shipowner to make the vessel seaworthy. Compare and contrast seaworthiness under common law and the Hague-Visby rules. Use examples to support your answer.

The students were expected to be familiar with the obligations arising under both common law and H-Visby Rules to make the vessel sea worthy. The students were expected to carry out a detailed discussion on the requirement of the shipowner to make the vessel seaworthy under both common law and H-Visby Rules. The answer was to demonstrate a clear understanding of the obligation to make the vessel seaworthy and also contain the relevant provisions of the H-Visby Rules.