



# EXAMINER'S REPORT

## MAY 2017

### SHIPPING LAW

**Q1. Answer BOTH parts of the question.**

**It is a key feature of a time charterparty that hire is paid in advance. Discuss**

**a) Late payment of hire and its consequences, and**

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

**Use suitable examples to support your answer.**

This question has two parts to it, with part **a)** requiring the student to discuss late payment of hire and the consequences flowing therefrom, and part **b)** requiring the student to discuss the reasons why a time charterer may want to include an anti-technicality clause to the CP contract. This is more a legal question, with any preliminary discussion on time charterparty contracts in the carriage of goods by sea, with particular focus on payment of hire (part a) and anti-technicality clause (part b). The students is also expected to be familiar with withdrawal of the vessel and the possible claims for damages.

The answer to the question is to contain 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. The student is to demonstrate a clear understanding of the payment obligations under a time charterparty contract, and reasons why the charterer may want to have an anti-technicality clause in their contracts. The student is expected to present any discussions with reference to case laws, as the courts in recent times have sent mixed messages on late payment of hire in a time CP. Case Laws: *The Astra* [2015], *Spar Shipping* [2015], etc. Quality of examples, both case laws and examples – the ones cited in the study material/ text book and student's own choice.

Additional marks will be awarded for use of student's own choice of relevant case laws (not identified above); and answers that are well structured, dealing with the issues individually and critically.

**Q2. Answer BOTH parts of the question.**

**a) When is a safe port warranty implied in time and voyage charter parties?**

**b) What is a lien and cesser clause intended to achieve, and how is it used in English law?**

**Use suitable examples to support your answer.**

The student is required to answer both parts of the question to qualify for a pass mark. The question requires to discuss on safe port warranty and 'lien and cesser' clause in charterparty contracts.

The student is to demonstrate a clear understanding of the above two topics and present a detailed discussion on **a)** 'safe port warranty' and how and when it is implied into a voyage charterparty contract, and **b)** 'lien and cesser clause' found in charterparty contracts, which have the effect of discharging the charterer from liability to pay freight and other charges incidental to transportation of the goods when the cargo has been shipped.

Although a student may present a more than satisfactory answer to part a) the same cannot be said about part b). The student is expected to present any discussions with reference to case laws, as the courts in recent times have sent mixed messages on late payment of hire in a time CP. Case Laws: ***The Eastern City* [1958]; *The Khian Sea* [1979]; *The Ocean Victory* [2013].**

Additional marks will be awarded for use of student's own choice of relevant case laws (not identified above); and answers that are well structured, dealing with the issues individually and critically.

**Q3. Discuss the SCOPIC clause, supplementary to any Lloyd's Form Salvage Agreement, and how it benefits the salvors?**

**Use suitable examples to support your answer.**

This question requires the student to be familiar with the SCOPIC clause and how it was introduced following the opinion expressed by the House of Lords in ***The Nagasaki Spirit* [1997]** case. To get a pass, it is not sufficient that the student writes about the SCOPIC clause, but is also required to present the events and reasons behind the introduction of SCOPIC clause.

The student is required to present a answer with detailed discussion on the salient features of the SCOPIC clause and SCOPIC tariff, which was introduced in 1999 after lengthy negotiations between ISU, the P&I Clubs, shipowners and property insurers, and how it has been periodically increased since its introduction, and if and how it benefits the salvors in certain circumstances. The question may appear to be easy on the surface, but in real terms requires one to know both the reasons for introduction of the SCOPIC Clause (legal & historical), and as well as the relevant provisions of SCOPIC.

The student is expected to use case laws in the discussions, including ***The Nagasaki Spirit* [1997]**.

Additional marks will be awarded for use of student's own choice of relevant case laws (not identified above); and answers that are well structured, dealing with the issues individually and critically.

**Q4. Answer BOTH parts of the question.**

**a) Discuss port congestion and the 'Laura Prima' (1982) ruling.**

**b) Why do 'Both to Blame' clauses exist?**

**Use suitable examples to support your answer.**

The student is required to answer both parts of the question to qualify for a pass mark. The answers presented are to demonstrate a good understanding of a) port congestion and the principle laid down under *The Laura Prima* case, and b) 'Both to Blame' clauses.

The students are expected to be familiar with port congestions through practice, but may not be aware of the legal issues that arose for consideration in *The Laura Prima* case. The student is expected to carry out a detailed discussion on a) port congestion and the principles developed and laid down in *The Laura Prima [1982]*; notion of an arrived ship and the commencement of laytime, and b) how 'Both to Blame' collision clauses came to be developed by the US courts and the reasons for the same being included in CP contracts.

The student is expected to present any discussions with reference to case laws, both cited in the study material/ text book and student's own choice. Case Law: *Laura Prima' [1982]*. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

**Q5 Answer BOTH parts of the question.**

**a) the reasons for limitation of liability and the development of the limitation rules, as contained in the 1957 and the 1976 Limitation Convention, and**

**b) conduct that will bar a person's right to limit his liability.**

**Use suitable examples to support your answer.**

Again a two part question, which requires a student to be familiar with the provisions of the two Limitation Conventions (1957 and 1976), and conduct that may bar a person's right to limit his liability. The students are to carry out a preliminary discussion of the two conventions and its objectives, before engaging in a detailed discussion of the two parts.

The student is to present a detailed answer, discussing under part a) the reasons for limitation of liability and the development of the rules relating to limitations of liability under the Conventions, and under part b) the conduct that will bar a person from limiting his liability under the two Conventions. Case laws and examples cited in the study material/ text book and student's own choice are to be used in the discussions.

Additional marks are awarded for answers that are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

**Q6. A vessel on a voyage charter carries fuel oil. The cargo retention clause and a pumping warranty found in the Charterparty required the vessel to discharge its entire cargo within 24 hours of berthing. At the port of discharge the charterers ordered the vessel to wait outside the port limits while they resolved problems with their Letter of Credit.**

**After one week the vessel was allowed to enter the port and the discharge of the cargo took 42 hours. Following discharge, a shortage of cargo was found. Further, 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. Use suitable examples to support your answer.**

What is presented here is a problem scenario, set against the backdrop of a voyage charterparty operations. The student is expected to be familiar with voyage charterparty operations, cargo retention clause, pumping warranty, etc., and the position of law with regard to the above.

The students are expected to carry out a proper analysis of the scenario presented/ case in hand, the applicable law, the remedies open to the shipowner, as a result of the delays caused in the operation. The answer should focus on voyage charterparty operations relating to discharge of cargo in the light of the cargo retention clauses and pumping warranties found in charterparty contracts. The student is expected to support legal arguments used in the analysis with relevant case laws.

Case laws – examples cited in the study material/ text book and student's own choice. ***The Timna [1977]; Akt Reidar v Arcos [1927]***. Additional marks are awarded for answers with good structure, critical analysis while dealing with the issues individually and critically using relevant case laws and references.

**Q7. Answer both parts of the question.**

**a) the advantages a maritime claim may have over other types of lien.**

**b) the distinction between a common law possessory lien and an equitable lien.**

**Use suitable examples to support your answer.**

The question has two parts, requiring both parts to be answered for a pass. The student is expected to be familiar with the notion of liens, the different types, and in particular of maritime lien, common law possessory lien and an equitable lien.

The student is expected to present an answer discussing in detail **a)** the advantage of maritime lien as a privileged claim, and **b)** the distinction between common law possessory lien and an equitable lien. The students are to demonstrate a clear understanding of different types of liens and the advantage of a maritime lien over the others as a privileged claim, using relevant case laws to support their arguments. Case Laws: ***The Bold Buccleugh (1852)*** – maritime lien is a right that travels with the ship; ***The Ruta (2000)*** – the priority of maritime liens.

Additional marks are awarded for answers with good structure, critical analysis while dealing with the issues individually and critically using relevant case laws and references.

**Q8. The Athens Convention (Merchant Shipping Act 1995) has a significant impact on passenger claims. Discuss, with particular reference to the carrier's liability and right to limit liability.**

The question may sound general, in real terms requires the student to have a good understanding of the Athens Convention, its remit and relevance to carriage of passengers and their baggage by sea, and the limitation regime provided.

The student is expected to present a detailed discussion on the aims objectives and the important provisions of the Athens Convention on the carriage of passengers and their baggage by sea. The discussion presented is to include the duties, obligations and liabilities of the carrier to the passengers and their baggage by sea, how the Convention has set a high standard; and reference is to be made to the key provisions of the Convention.

Additional marks are awarded for answers with good structure, critical analysis while dealing with the issues individually and critically using relevant case laws and references.