



# EXAMINER'S REPORT

## NOVEMBER 2017

### SHIPPING LAW

**Q1. Why is it important to establish when a ship has arrived at her destination in the context of a voyage charterparty and how would the English courts decide whether a ship has arrived?**

This question requires the student to discuss an 'arrived ship' in relation to port and berth charterparties under a voyage charter contract. This is both a legal and practice question, with the focus more on the legal side of the practice.

The answer to the question should contain a detailed discussion on the concept of an 'arrived ship' in relation to port and berth charterparties under a voyage charterparty contract, regarding the issue of a valid NOR, leading to the triggering of laytime. Stronger students may be able to highlight the circumstances where damages for detention may be claimed by the owners. The student is expected to present any discussions with reference to case laws, those cited in the study material and the student's own choice. Case Laws: *The Johanna Oldendorff* [1974]. Bonus marks for citing the latest case, *The MV Arundel Castle* [2017].

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

**Q2. Compare the Common law obligation of a shipowner to provide a seaworthy ship to that obligation under the Hague Visby Rules.**

The student is required to discuss the Common law obligation to provide a seaworthy vessel, which is different from the scheme envisaged under the Hague-Visby Rules. The preliminary discussion is to outline the Common law duty to provide a seaworthy vessel and the duties under the Hague-Visby Rules to make the vessel seaworthy.

The answer should contain a detailed discussion on the Common law duty to provide a seaworthy vessel before and at the beginning of the voyage, and how it differs from the Hague-Visby Rules (Art III, Rule 1), which requires that the shipowner exercises *due diligence* to make the vessel seaworthy. Students are expected to demonstrate a clear understanding of the Common law duty as opposed to exercising 'due diligence' under Hague-Visby Rules.

The student is expected to present any discussions with reference to case laws those cited in the study material and the student's own choice. Case Laws: *Steel v State Line Steamship* [1877]; *The Muncaster Castle* [1961]; *The Kapitan Sakharov* [2000]

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

**Q3. Explain whether in your view the Rotterdam Rules will or will not be beneficial for the requirements of modern shipping and whether the Rules should or should not be adopted.**

The question may sound general, but in real terms requires the student to have a good understanding of the Rotterdam Rules, although it is yet to be adopted. The student is required to know the Rules' remit and relevance to carriage of goods by sea, as a door-to-door operation, and also the limitation regime provided. The student is required to present a preliminary discussions on Rotterdam Rules which came to be signed in 2009, and the broad reasons for promoting the same. Students are expected to be familiar with the Rules, as it proposes to introduce a new carriage regime, linking different modes of transport.

The student is required to present an answer with detailed discussion on the Rotterdam Rules, the aims and objectives, why it was thought necessary, and what it seeks to achieve. Students are expected to be familiar with the provisions and the shortcomings of existing sea carriage regimes, which are seen as being inadequate to meet the needs of the changing landscape of sea transport in the wake of technological advances and ever evolving global trade.

The student is not expected to use case laws in the discussions, as the Rules are yet to come into force. Additional marks were awarded for answers that were well structured, dealing with the issues individually and critically.

**Q4. The vessel 'A' was proceeding too fast in a narrow channel with an inadequate lookout on board. Vessel 'B' was proceeding in the opposite direction. Vessel 'A' failed to observe vessel 'B' until too late resulting in a collision. As a result, vessel 'B' was towed to dry-dock and required extensive repairs to its damaged hull. Advise the shipowners of the vessel 'B' of their legal rights and remedies against the shipowners of the vessel 'A', particularly in relation to the quantum of their claim.**

What is presented here is a problem scenario, set against the backdrop of a collision at sea arising out of 'inadequate' lookout. The student is expected to be familiar with the general principles of collision regulation and liabilities and is to present a preliminary discussion on the above collision scenario.

Students are expected to be aware that most maritime liabilities arise out of some form of negligence and most causes of action would be covered under the tort of negligence. The student is to present a detailed discussion on the collision regulation, and the principles of liability.

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. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

**Q5 Discuss the requirements of arresting a vessel and how this is achieved in practice under English law.**

Student is to be familiar with the relevant provisions of the Senior Courts Act 1981, and the process before the UK Admiralty court. The students are to carry out a preliminary discussion on the procedures laid out under the English law for the arrest of a vessel before Admiralty under the Senior Court Act 1981.

The student is to present a detailed answer, on the procedures laid out under the English law for the arrest of a vessel before Admiralty under the Senior Court Act 1981, focused on section 20(2), which lists 19 types of maritime claims within the admiralty jurisdiction of the High Court in respect of which a vessel may be arrested. 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 were awarded for answers that were well structured, dealing with the issues individually and critically using relevant case laws and references

**Q6. A vessel was chartered to carry a cargo to Kolkata, India pursuant to a berth charterparty containing a WIBON and 'Always Accessible Clause.' Upon the vessel's arrival, the berth was occupied and a few weeks later the vessel proceeded to berth and discharged part of her cargo. Afterwards the vessel was ordered to the anchorage because the charterers/ receivers had not paid customs dues on the remaining part of her cargo. Seven weeks later, the vessel is still at the anchorage with part of her cargo on board. The Owners are concerned, as they have not received any money from the charterers apart from freight. Advise the owners as to their legal rights and remedies.**

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, payment of freight, charterparty terms such as WIBON, 'Always Accessible Clause,' 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, with a focus on the charterparty operations relating to the part discharge of cargo in the light of the two clauses – WIBON, 'Always Accessible Clause,' – found in the charter party contract, the non-payment of port charges and the consequent delays.

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 Johanna Oldendorff* [1974]**. Additional marks were awarded for answers with good structure, critical analysis while dealing with the issues individually and critically using relevant case laws and references.

**Q7. Using case laws and illustration discuss how maritime liens arise and why it is preferred over any other type of liens.**

The student is to be familiar with liens and in particular with maritime liens, and why it is preferred over other types of liens. 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 to present a preliminary discussions outlining how the maritime liens arise and advantage of maritime lien as a privileged claim, and the distinction between common law possessory lien and an equitable lien.

The student is expected to present an answer discussing in detail how maritime liens arise (as a privileged claim) and why they are preferred over other types of liens. 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 were awarded for answers with good structure, critical analysis while dealing with the issues individually and critically using relevant case laws and references.

**Q8. In the case of *The Timna [1971]* it was said “It is a good working rule...to give Notice of Readiness and to go on giving such notices in order that, when later the lawyers are brought in, no one shall be able to say; “If only the Master had given Notice of Readiness, laytime would have begun and the Owners would now be able to claim demurrage”. Discuss when laytime starts for both port and berth charterparties and to case law and discuss what happens if the Notice of Readiness is invalid.**

The student is to be familiar with the principles laid down under ***The Timna [1971]*** in relation to the issue of NOR, and with the practice/legal requirement of issuing an NOR in a voyage CP. The student is to present a preliminary discussion on the importance of giving notice of readiness in a voyage CP contract and the general principles attached to it.

The student is expected to present a detailed discussion on the legal requirement of issuing an NOR in a voyage charter, with particular reference to the case in hand, namely ***The Timna [1971]***, and the reasons for the observation of the court as above.

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