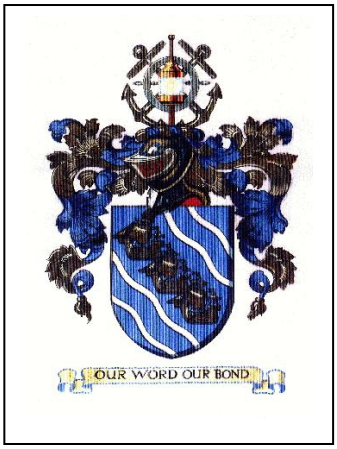

MAY 2018 - ICS Examiners Report

LEGAL PRINCIPLES IN SHIPPING BUSINESS (LPSB)

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Overall Comments

Overall the standard displayed was fair, given the objectives of the examination, with 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. A preference towards essay-type questions was noted. Legibility and tidiness were fair in the majority.
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.
Compared to previous years' results, this May's results do not indicate any clear shift in the current examination trends.

Comments on individual questions are as follows:

Q1. A ship carrying various cargoes under bills of lading subject to the Hague-Visby Rules is grounded due to negligent navigation, suffering some damage to her hull. In order for the ship to get off, the Master uses the ship's engines excessively, thereby causing some damage. The operation is successful, and the ship proceeds to the port of destination.

Discuss whether the carrier/shipowner would be able to claim a general average contribution from cargo owners for damages suffered by the ship.

A tendency was noted to define general average only in relation to sacrificing property, thereby omitting to include extraordinary expenditure. Numerous answers erroneously considered that saving of life was a factor in establishing general average.
The requirement of "fault" by any party (ship, cargo, freight) of the maritime adventure claiming contribution seems not to have been grasped by a large number of students. Fault in the context of carriage of goods means actionable fault. So, if carrier's liability for loss/damage caused by negligent navigation is exempted by the terms of the carriage of goods contract (Hague-Visby Rules), the carrier can claim general average contribution.
A few good answers differentiated between the grounding damage suffered by the ship (particular average), and damage suffered in the effort to re-float the ship (general average).

Q2. A tanker is chartered for the carriage of oil from "one safe port Antwerp" to Limassol in Cyprus. The charter party provides among other things for:

- **a minimum quantity of 90,000 tonnes to be loaded, and**
- **Charterers to have an option to load/discharge via lightering/ship-to-ship transfer.**

The ship is only able to load approximately two thirds of her intended cargo because a severe storm shortly before her arrival silted up the channel/port, thus imposing a draught restriction. The master therefore serves a Notice of Readiness stating that he does not expect to load a full cargo, but rather a maximum of approximately 67,000 tonnes. Therefore, although the charterers were able to tender for loading 90,000 tonnes of oil, the vessel loads only 67,000 tonnes.

Identify and discuss any potential claims the ship's owners may have in the above scenario.

Reasonably answered, albeit not a very popular question overall.

The scenario of this problem type question was based on the *Archimidis* case.
On the facts safe port was an issue to be considered; "one safe port Antwerp" meant that charterers gave a warranty that the port was safe. The obstacle, silting up, would not seem to be a permanent nature of the port.
Charterers were put on notice that the minimum quantity (90,000 tonnes) could not be loaded, but they nevertheless chose not to exercise the option given by the clause (to load/discharge via lightering/ship-to-ship transfer). Therefore, deadfreight was due to owners.

Q3. Discuss and use your own examples in answering the following questions:

a) **What are the legal implications of contributory negligence?**
b) **What is the Himalaya clause?**

A well answered question overall.

In a claim for negligence, contributory negligence is a defence, albeit not a complete defence. Therefore, it was expected that students would identify that contributory negligence could *only* reduce the amount of damages claimed by the claimant.
In the second part of the question, a couple of answers were awarded extra marks for identifying how different carriage regimes (Hague-Visby, Hamburg, Rotterdam) deal with this. Rotterdam Rules, for example, extend the carrier's exemption/limitation of liability beyond carrier's employees/servants/agents/sub-contractors.

Q4. Discuss giving appropriate examples, (i) ratification, and (ii) ostensible authority, in the law of agency.

Only criticism with some answers was the inclusion of agency of necessity in the examples where ratification by principal was required.

Q5. A time charter-party contains the following clause relating to re-delivery of the vessel:

> ***"Charterers are to ensure that the last voyage will not exceed the maximum period of six months. If, however, the vessel is sent on a last voyage in excess of the maximum period of six months; and the market rate rises above the Charter Party rate during this excess period, then hire will be payable on the prevailing market rates from the 30th day prior to the maximum period date until actual re-delivery of the vessel to the Owners."***
>
> **Charterers gave a last order for a voyage, which would bring the re-delivery date beyond the maximum period of six months, and owners accepted the order. The vessel was redelivered some six days in excess of the six-month maximum period. During these six days the prevailing market rate had risen above the Charter Party rate.**
>
> **Advise the parties as to the basis on which hire will be payable in the circumstances.**

The scenario was based on the case of *The Paragon.* A few students had difficulty to understand that the clause effectively was re-adjusting agreed (and already paid) hire, "eating" 30 days into the agreed last voyage's "maximum period" of six months. Owners were entitled to claim damages for hire for the period beyond the six month last voyage, i.e. for the six days. However, the clause extended this higher market rate back into the agreed "maximum period" of six months. Therefore, answers should have queried whether the clause was a penalty clause and therefore unenforceable.

Q6. There are instances where an agreement may be enforceable even though there is no consideration.

Using your own examples, discuss the above statement.

Although most answers included as an example of promissory estoppels *The Vistafjord* case, very few were able to define and explain contractual consideration, with only a couple of answers mentioning *The High Trees* case.

Q7. A shipowner agrees with a shipper for the carriage of some goods from London to Piraeus. A bill of lading is issued to the shipper in London. After loading the goods, the shipper sells the goods to a third-party buyer by endorsing the bill of lading accordingly. Although not mentioned in the bill of lading, the goods were actually carried on the ship's deck, and on the voyage to Piraeus the ship encountered heavy weather and some of the goods suffered damage.

Discuss and consider the position of the shipowner, shipper and bill of lading endorsee.

Some thought that as carriage from the U.K., English law applied. The regime/international Rules should not be confused with applicable law of the carriage contract. The contract of carriage may well be subject to Greek or French law, since carrier and shipper are free to choose the law that applies to the contract of carriage. What the two parties cannot choose is the regime/international Rules (Hague-Visby) applicable to the carriage, since carriage is from a contracting country (U.K.).
Hague-Visby Rules exclude from their application "cargo which by the contract of carriage is stated as being carried on deck and is so carried" - Art.I(c). So, if the contract of carriage contained in the bill of lading did not state the goods as being carried on deck, then the Rules apply.
Simply, cargo which is carried on deck without being expressly stated as such in the bill of lading will be subject to the Rules, as will cargo which is stated as being carried on deck but which is, in fact, carried below deck.

Q8. A bill of lading is said to be evidence of the contract of carriage of goods and a receipt for the cargo.

Explain and discuss the two functions.

Some answers omitted to mention how a bill of lading may become the contract of carriage itself.
More importantly perhaps, very few students seemed aware of the legal consequences of the statement "shipped in apparent good order and condition"; under rule 4, Article III, of the Hague-Visby Rules, the statement/bills of lading in the hands of the shipper/consignee is *prima facie* evidence of the condition of the goods, but in the hands of an endorsee/third party transferee the statement becomes conclusive evidence of the goods' condition when shipped. In simple words, the statement gives the maximum potential protection (as against the carrier/shipowner) to a third party who had the bill of lading transferred, e.g. a final buyer of the goods, since the carrier/shipowner would not be in a position to dispute the goods' condition when were shipped.
Quite a few erroneously attempted to interpret "document of title", most showing a superficial understanding of the bill of lading holder's entitlement to the goods. A bill of lading is a document of title, as opposed to a document of ownership of the goods. Ownership or more appropriately property in the goods passes when the seller and buyer intend it to pass. As far as a bill of lading is concerned, the holder of the bill of lading has (at minimum) a possessory title; hence, it is a document of title. With this document at hand a person can take/is entitled to possession of the goods described therein. Whether such person is the owner or otherwise of the goods is irrelevant to this bill of lading function. Under current English law, ownership does not prejudice a holder of the bill of lading in pursuing a claim for loss/damage against the carrier. In previous legislation (Bills of Lading Act 1855) ownership was relevant in the right to sue the carrier, but since 1992, any legitimate holder of the bill of lading can sue the carrier.
This means, that candidates should refrain from discussing ownership of the goods, unless they feel that the question asks matters relating to sales of goods English legislation - which is not within the LPSB syllabus.
In a nutshell, a bill of lading is a document of title, entitling the holder to demand possession/delivery of the goods from the carrier. Such possessory title is what is described in the various textbooks. Title does not necessarily mean owner.