



EXAMINER'S REPORT

MAY 2018

SHIPPING LAW

Q1. How do the various functions of the Bill of Lading operate to facilitate the transportation of the cargo by sea; and in the transfer of its ownership from the seller to the buyer, while preserving the rights of the parties to sue?

Students were required to be familiar with the important role of bill of lading in sea transport and its major functions. The answer to the question is to contain a detailed discussion 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.

The student is to demonstrate a clear understanding of the functionalities and carry out a detailed discussion. The student is expected to present any discussions with reference to case laws and examples cited in the study material/ text book and student's own choice. Case Laws: **Lickbarrow v Mason (1794)**; **Pyrene v Scindia (1954)**, **Smith v Bedoine (receipt)**. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references. 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:

The vessel was chartered on the NYPE Form 93 for 18 months, with amendments and rider clauses. The vessel was described as having 3 cranes and 5 holds. The amended charter party contained a rider clause requiring the owners to give 36-hour notice before proceeding to withdraw the vessel in the event of non-payment of hire charges. During loading operations one of the cranes broke down and the runner wire of another one snapped which caused considerable delays to the loading operation. The charterers were constrained to use a less efficient shore crane to complete the operations. They have placed the vessel off-hire.

The charterers have delayed the payment of hire while the vessel was *en route* to the discharge port. The owners are of the view that "delayed payment is no payment" and are intending to issue the charterers with a 36-hour notice.

Advise the owners:

a) If the charterers are entitled to put the vessel off-hire

b) Whether they are entitled to issue a 36-hour notice with the intention of withdrawing the vessel from the charterer's service.

A case study question relating to time CPs, where students are expected to be familiar with the position of law regarding the time charter party operations, off-hire clauses, delayed payment of hire,

and 'anti-technicality' clauses. A legal answer was needed, with any preliminary discussion on time charterparty contracts in the carriage of goods by sea, with particular focus on payment of hire and anti-technicality clause. The students are also expected to be familiar with withdrawal of the vessel and the possible claims for damages.

The students are expected to carry out a detailed discussion of the case in hand and the applicable law. The remedies open to the time charterer if any, in the given circumstances with clear and convincing arguments (legal) for the same. The question has two parts to it, with part **a)** requiring the student to discuss if the charterers are entitled to put the vessel off-hire, and part **b)** requiring the student to discuss if the owners are entitled to issue a 36-hour notice with the intention of withdrawing the vessel from the charterer's service.

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. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references. Additional marks will be awarded for use of student's own choice of relevant case laws, and answers that are well structured, dealing with the issues individually and critically.

Q3. What are the advantages of the 'in rem' procedure as against the 'in personam' procedure? What are the aims of the 'in rem' procedure? Using suitable examples, discuss the UK statutory provisions which set out the 'in rem' procedure.

This question requires the student to be familiar with *in rem* and *in personam* procedures and in particular the UK statutory provisions relating to *in rem* proceedings before the Admiralty courts. The students are to present a preliminary discussion outlining *in rem* procedures before Admiralty courts and *in personam* claims before commercial courts.

To get a pass, it is not sufficient that the student writes about the *in rem* and *in personam* procedures but is also required to present a detailed discussion on the aims of an *in rem* action, and what is sought to be achieved. Further discussion is to be done on *in rem* procedures (ship arrest) before the admiralty courts (under English Common law) to enforce a claim arising out of salvage operations and out of a cargo claim. Students are also expected to discuss the UK statutory provisions which set out the *in rem* procedure.

The student is expected to use both case laws and examples in the discussions – the 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; and answers that are well structured, dealing with the issues individually and critically.

Q4. A cargo claim arose in relation to a vessel owned by a company. The company then sold the vessel and bought a second vessel. The second vessel had an incident and was salvaged successfully. Please advise the cargo claimants and the salvors whether they can arrest either vessels by

reference to statutory provisions.

A very legal question, the student is required to carry out a preliminary discussion of the Admiralty Court procedure in the UK, and the 1952 Arrest Convention as regards arrest of sea going ships.

The students are to carry out a detailed discussion on the Admiralty Court procedure in the UK and the 1952 Arrest Convention, for the purposes of enforcing a maritime claim against a 'sister ship'. Students are to engage in a clear analysis to establish if a 'sister ship' scenario would arise under the given circumstances. The students are to be note that the UK is not a party to the 1999 Arrest Convention.

Quality of illustrations, both case laws and examples – the 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. It is often stated that the incorporation of a Himalaya Clause into the Bill of Lading contract extends the defences that are available to the carrier to other parties. Discuss this reference to the relevant case laws.

A straightforward question on 'Himalaya Clause,' where students are expected to be familiar with the use of the clause in BoLs. To get a clear pass, the answer presented should include the case law *The Himalaya* (Adler v. Dickson) 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 answer presented should include 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.

Case laws and examples cited in the study material/ text book and student's own choice. Case Laws: *The Himalaya*; *The Eurymedon*, *The Mahkutai*, *The New York Star*. 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. Answer BOTH parts of the question:

a) Explain the rules regarding 'limitations of liability', and when can a shipowner limit his liability?

b) What conduct will bar a person's right to limit his liability?

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 when a shipowner is entitled to limit his liability under the two Conventions, and **b)** the conduct that will bar a person from limiting his liability under both the 1957 and 1976 Limitation 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.

Q7. A vessel was chartered to a company under the NYPE form for 12 months. In the middle of the time charter, the company sub-chartered the vessel to load a cargo for a voyage between New Orleans to London and the laycan was 1st-5th April. The vessel arrived at New Orleans on 6th April and the inspectors refused to pass the vessel's holds for loading. The owners wished to withdraw the vessel because of non-payment of hire by time charterers, and sub-charterers wanted to cancel the voyage charter party.

Please advise both owners and sub-charterers of their rights.

The students are expected to be familiar with the position of law regarding the time charterparty operations, off-hire clauses, sub-chartering, etc., with the answer demonstrating the same. The students are to carry out a detailed discussion of the case in hand and the applicable law in the given circumstances.

Following the analysis, the answer should identify the remedies open to the owners, head-charterer/time charterer, and the sub-charterers if any, under the given circumstances with clear and convincing legal arguments. Students are also expected to discuss the issue of laycan and the consequences of arriving beyond the laycan specified, non-payment of hire, and the rights of the sub-charterer in the given circumstances.

Case laws and examples cited in the study material/ text book and student's own choice. 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. Answer BOTH parts of the question:

- a) What is necessary in the case of a berth charter AND a port charter in order to start the running of laytime?**
- b) In what circumstances can laytime start to run if the notice of readiness (NOR) is invalid when tendered?**

A two-part question, which requires a student to have a good understanding of the concept of **a)** lay time and **b)** notice of readiness (NOR) in voyage charter operations.

To get a clear pass, the students are to carry out a detailed discussion on **a)** lay time – when laytime is triggered off, when it starts running, etc., **b)** notice of readiness (NOR) – what is a NOR, and what are the implications of an invalid notice of readiness? Here, the students are expected to be familiar with the voyage charterparty operations, and the consequences of accepting an invalid NOR.

Students are to use both case laws and examples cited in the study material/ text book and their own choice. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.