



# EXAMINER'S REPORT NOVEMBER 2018

## SHIPPING LAW

**1. Discuss the salvor's entitlement to reward under Article 14 or SCOPIC of the Salvage Convention 1989 and his level of remuneration in comparison with a reward under Article 13. Use examples to support your answer.**

The student is required to be familiar with the key provisions of the Salvage Convention 1989, and in particular Article 13 & 14. Being a legal question, the answer is to contain a detailed discussion of the key provisions, *i.e.*, Articles 13 & 14. The discussion is to focus on the salvor's entitlement to reward under Art 14 and the level of remuneration in comparison to a reward under Art 13, and demonstrating a clear understanding of the reasons behind the introduction of the provisions. Also, the discussion is to include a coverage of the 1989 Salvage Convention, which encourage salvors to engage in saving, or minimising the damage done to environment and seek an up-lift on their salvage remuneration, and how it seeks to reward the salvors for such actions.

Reference is to be made to the landmark House of Lords decision in *The Nagasaki Spirit (1997)*, where problems in the drafting of the Convention were also identified, besides the above highlighted points of law. 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.

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

**Using suitable examples explain:**

- a) why is a maritime lien classified as a 'privileged claim'?**
- b) what advantages does a maritime lien have over other types of lien?**

Again, an essay type question requiring the student to carry out a focused discussion on the types of liens including maritime liens and their different types.

To get a pass, it is not sufficient that the student presents an answer listing the maritime liens, but it is also required to present a detailed discussion on how maritime liens attach to the property at the time of the incident, and how it remains attached even after the ship is sold; how maritime liens are preferred over other liens as 'privileged claims' in admiralty in the enforcement of maritime claims; and where the ship is treated as the wrongdoer, as opposed to the owner with the loss or damage being caused by the maritime property (*res*). The discussion should also identify how maritime liens rank above mortgages and statutory rights as contained in sections 21(2) or 21(4) of the Supreme Courts Act 1981; how maritime liens are enforceable by an action *in rem* before the Admiralty court under section 21(3) of the Supreme Courts Act 1981.

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. Case laws: ***The Bold Buccleugh* [1851]** ***The Petonia* [1917]**; ***The Halcyon Isale* [1980]**. 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.

**3. Using suitable examples to support your answer, discuss the legal principles and circumstances which courts consider in deciding whether or not a port is safe.**

This question requires the student to be familiar with the common law obligation to nominate a safe port. The students are to present a preliminary discussion outlining the common law obligation of nominating a safe port in a contract of affreightment.

To get a pass the answers presented should contain a detailed discussion on the common law obligation to nominate a safe port in a charterparty contract, and how the courts in England have interpreted this, *i.e.*, when should the ports be safe – prospectively or at the time of nomination of the port? Reference is to be made to the House of Lords decision in ***The Evia (No 2)* [1982]**, which to this day remains the authority on the subject.

Quality of illustrations, both case laws and examples (***The Evia (No 2)* [1982]**; ***The Eastern City* [1958]** ***The Khian Sea* [1977]**) – the cited in the study material/ textbook and student's own choice. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

**4. Discuss the shipowners' rights and immunities under Article IV Rule 2 of the Hague-Visby Rules, with reference to statute and case law.**

A very legal question, the student is required to be familiar with the provisions of the Hague-Visby Rules, and on how the Hague-Visby Rules grants a set of rights and immunities to the shipowner in return for a set of obligations towards the cargo interest.

The question presents a good opportunity for students to showcase their knowledge and understanding of the most widely prevalent carriage of goods by sea convention through the discussion of one of its key provisions. A good answer should contain a detailed discussion on the rights and immunities conferred on the shipowners under Article IV Rule 2 of the Hague-Visby Rules, outlining the list of exceptions upon which the carrier is permitted to rely if a claim is brought against them under Article III(I); the list being *acts of god, perils of the sea, riots and civil commotions, act of war, etc.*, to name a few. Discussion should also focus on how it creates a system of 'checks and balances' by obligating the shipowner to care for the cargo carried on board the vessel.

Quality of illustrations, both case laws (***Eurasian Dream No. 1* [2002]**) and examples – the cited in the study material/ text book and student's own choice. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

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**5. Describe and comment on the relationship between a tug and a tow under a towage contract.**

The students are to be aware of the legal relationship between a tug and a tow arising from a 'towage' contract. An often-overlooked area of law, which has a wide application in the day-to-day affairs of shipping operation. Under this form of contract, the employment of one vessel to expedite the voyage of another is required to accelerate the ship's progress.

With an increase in the use of towage services in modern shipping, it is important for students to understand the legal relationship between a tug and a tow. Answers are to contain a detailed discussion on the relationship between a tug and a tow. Tugs are employed to speed up the voyage of larger vessels; for the purposes of manoeuvring within and departure from ports; for towing ships with no motive power or unmanned barges; salvage assistance; etc. The answers are to include a discussion on the contractual relationship between the tug and the tow (TOWCON, TOWHIRE), and the tug and tow's liability to third parties in collision or pollution cases.

Quality of illustrations, both case laws (*The Marechal Suchet* [1911]; *The Julia* [1861]; *The Apollon* [1971]) and examples – the cited in the study material/ text book and student's own choice. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

**6. Using suitable examples to support your answer, discuss carrier's liability and right to limit liability under the Athens Convention (Merchant Shipping Act 1995).**

The students are to be aware of the remit of the Athens Convention, which relates to carriage of passengers and their baggage by sea; its origins; and the limitation regime therein contained.

The answers presented should contain, without being descriptive, 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. Discussion should also include the basis of liability; the time bar; limits of liability; jurisdictional arrangements; the distinction between international and domestic carriage of passengers; duties of the carriers, the obligations and liabilities of the carrier to the passengers and their baggage by sea; and how the Convention has set a high standard. Reference is to be made to the relevant provisions of the convention, and as well as relevant case laws.

Quality of illustrations, both case laws (*The Lion* [1990]; *Higham v Stena Sealink Ltd* [1996]) and examples – the cited in the study material/ textbook and student's own choice. General structure and quality of answers – dealing with the issues individually and critically using relevant case laws and references.

**7. With suitable examples discuss what is meant by the term a 'single/one ship' company and the advantages and disadvantages of these to the shipping company?**

The students are expected to be familiar with the position of law regarding the practice of "single/one ship" companies in shipping business. The students are to carry out a detailed discussion on the practice of "single/one ship" companies in shipping business, and discuss the merits and demerits of the practice to the industry. The discussion is to contain how this practice enables the shipowner to limit their liability; how this is part of general corporate law which leads to the inference that the company is the legal and beneficial owner of all the shares in the ship.

Quality of illustrations, both case laws (*The Land Gwendolene* [1965]; *The Ert Stefanie* [1989]; *The Tien Sheng No 8* [2000]) and examples – the cited in the study material/ textbook and student's own choice. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

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

- a) what is necessary in the case of**  
**(i) a berth charter**  
**(ii) 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 **a)** when laytime starts running in a berth and port CP and **b)** under what circumstance would laytime starts running if the NOR is invalid.

Students are to carry out a detailed discussion on **a)** when laytime starts running in a berth and port charterparty; how in a berth charterparty the owner may insert WIBON (whether in berth or not) to give him the right to tender NOR on arrival rather than have to wait until in berth; and similarly with port CPs how the owner may insert WIPON (whether in port or not), etc.; and **b)** lay time – when laytime is triggered off, when it starts running, etc., notice of readiness (NOR) – what is an NOR, and what are the implications of an invalid notice of readiness? The students are to be familiar with the voyage charterparty operations, and the consequences of accepting an invalid NOR. Reference is to be made to case laws to demonstrate a good, clear understanding of both **a)** and **b)**.

Case laws (*The Kyzikos* [1989]; *The Darrah* [1977]; *The Laura Prima* [1982]; *The Johanna Oldendorff* [1974]; *The Mexico* [1990]; *Petr Schmidt* [1997]) and examples cited in the study material/ textbook and student's own choice. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.