



EXAMINER'S REPORT NOVEMBER 2019

LEGAL PRINCIPLES IN SHIPPING BUSINESS

General Comments:

Both the essay and problem type questions required a clear and well-informed presentation. Answers must be legible and well presented.

Q1. There are exceptions to 'once on demurrage, always on demurrage'. Explain these exceptions, use examples to support your answer.

"Once on demurrage always on demurrage" exceptions

The main criticism on most answers is that lack of any cases to either support the situation where delay is caused by default on the part of the shipowner, e.g. *The Stolt Spur* [2002] 1 Lloyd's Rep.786, *The Forum Craftsman* [1991] 1 Lloyd's Law Rep.81, *Ropner Shipping Co. Ltd. v. Clevees Western Valleys Anthracite Collieries* [1927] 1 KB 879, or examples of any standard charter-party demurrage reduction/interruption/suspension provisions, e.g. BPVOY4, SHELLVOY 6, *Lilly & Co. v. D.M. Stevenson & Co.* (1895) 22 R.278 (strike), *Rederiaktiebolaget Transatlantic v. La Compagnie des Phosphates de L'Océanie* (1926) 17 Asp.M.L.C.216 (bad weather).

Q2. A vessel is time chartered and arrives to a British port to load. On completion of loading the vessel's Master signs the bills of lading, but insists on clausing the bill of lading of a particular cargo with remarks about damage to its packaging. The bills of lading have a demise clause on the back but the charterer's logo appears on the front. When the vessel arrives to the next discharging port it is found that some of the cargo has been damaged by seawater.

Identify and discuss the legal issues arising from this scenario.

Hague-Visby Rules

Most answers concentrated on the part of the question relating to the effect of claused and clean bills of lading.

Almost all answers concluded that as there was damage by seawater to the cargo, the ship was unseaworthy, without considering what happened earlier in the scenario; the Master inserted remarks on the bill of lading relating to damage to the cargo's packaging; a hint perhaps to the possibility of goods having been insufficiently packaged? (Art.IV, r.2(n)). The

few answers which considered such possibility, i.e. provided carrier had exercised due diligence, such carrier may be exempted from liability if damage to the cargo was caused by "insufficiency of packaging" under Article IV, rule 2(n), got top marks.

Q3. Under what circumstances can a vessel be declared off-hire during a time charter? Use examples to support your answer.

Time charter-parties/off-hire

Off-hire clauses are construed rather restrictively against the charterer by the Courts, as it is for the charterer to show that he is entitled to put the ship off-hire; *Royal Greek Government v. Minister of Transport* (1948).

Although there were numerous examples of such clauses put forward in the answers, most omitted to discuss the conflicting interests in using such clauses; charterers want off-hire to begin as soon as the triggering event happens, whereas owners would like to have a period during which they will have an opportunity to solve the problem, before the ship goes off-hire. Very few answers discussed the different types of clauses found in charter-parties; "period clauses" and "net loss of time clauses".

Q4. A shipbroker has been fixing exclusively a principal's tankers over the last five years. The tanker owner recently ceased to engage with this broker.

How should the principal minimise their exposure to any possible apparent authority the broker may possess through his previous course of dealing with charterers

Agency

This was a practical question. Numerous answers thought that an announcement through shipping publications would be a reasonable measure to be taken by the broker's principal, thereby indicating lack of understanding of apparent/ostensible authority. Such broker would hold apparent authority only in the eyes of people who have dealt with him in the past - not the public at large. The "risk" of the principal after withdrawing broker's authority is based on the previous course of dealings that the broker had with particular charterers/brokers, not with people who have never dealt with the broker in the past.

In addition, the principal would have to require the broker to hand back and/or destroy any seals/office documents which give the impression to a third party that the principal has authorised (holds out) the broker to act on his behalf. A few answers confused apparent/ostensible authority of an agent and ratification; if an agent concludes a contract under apparent authority, then there is nothing for his principal to ratify - the contract between the principal and the third party as concluded by such agent is binding and the principal cannot avoid the contract alleging lack of agent's authority.

Q5. Answer BOTH parts of the question.

Explain, using examples to support your answers, and discuss the legal and practical implications of

- a) contributory negligence**
- b) vicarious liability.**

Contributory Negligence & Vicarious Liability

In establishing contributory negligence by Claimant, Defendant does not have to show that Claimant breached any duty of care, but simply that there was some negligence by Claimant which contributed to Claimant's loss.

Vicarious liability is applicable in instances where a person may be liable for the tortious behaviour of another person, not for criminal acts of another person.

Q6. The Hague-Visby Rules apply to the carriage of the goods onboard the ship. The Master, in order to get the ship off the rocks, jettisons some of the cargo. At the same time the ship's engines are used excessively resulting to some damage to ship's engines. Eventually, the ship is freed and using her own power enters a nearby port. The ship's Master declares a general average.

On the above facts, discuss whether there is a general average act, and how the ship's damage caused by (a) the grounding, (b) excessive use of her engines, and (c) loss of jettisoned cargo, may be recoverable.

General Average

Some treated the question as if it was a multiple-choice question, suggesting that grounding damage to ship not a general average but a particular average, and engine damage and jettison of cargo were general average, without more. With law papers it is very important that the reasons are put forward.

A common error was to conclude that ship's damage due to the grounding (caused by negligent navigation) was general average. Such error could have been avoided by simply answering the questions; (a) how could such (grounding) damage benefit cargo and freight, and (b) was the grounding done intentionally/voluntarily? The answers would then lead one to conclude that this was certainly not a general average act, but rather a particular average, and the loss/damage fell on the particular interest, i.e. ship.

A few answers treated the shipowner's fault (negligent navigation) rather superficially, concluding that as the danger was caused by him, no general average contribution can be claimed.

The shipowner clearly brought about the common danger by his fault (negligent navigation). However, negligent navigation is exempted under the Hague-Visby Rules (Article IV r.2(a)). Therefore, provided the shipowner/carrier exercised due diligence before and at the beginning of the voyage to make the ship seaworthy, he can rely on this exemption. This would mean that the shipowner is entitled to claim general average contribution from the other interests (cargo and freight).

Excessive use of engines and jettison are both general average acts; are extraordinary expenditure/sacrifice voluntarily made for the benefit of all properties/interests involved.

Therefore, provided the shipowner/carrier shows that he exercised due diligence, he can claim general average contribution from cargo and freight for the engine damage.

The jettisoned cargo's owner can claim general average contribution from the other interests, ship and freight.

Q7. What are the common law remedies for a breach of contract, and how are such remedies determined?

Common Law remedies for breach of contract

The only remedy recognised by Common Law is damages. The other remedies mentioned by some, e.g. specific performance, injunctions, etc., are equitable remedies, i.e. discretionary

remedies granted by the Courts under their Equitable Jurisdiction.

Some students read the question as asking for alternatives to litigation, and digressed into arbitration, mediation, etc. These are not common law remedies however. Some answers over-concentrated on explaining classification of contractual terms (conditions, warranties, and intermediate/innominate), without considering liquidated damages v. penalty clauses, and unliquidated damages v. remoteness.

Q8. Using appropriate case law discuss whether, in the absence of a valid Notice of Readiness, laytime cannot start and shipowners could not therefore be in a position to earn any demurrage.

Notice of Readiness

Some answers digressed into "arrived ship", rather than how laytime (and demurrage) may count where an invalid, or no NOR is issued by the Master. Answer should be supported by reference to relevant case law.