



EXAMINER'S REPORT NOVEMBER 2019

SHIPPING LAW

Q1. While discharging a cargo in London, a vessel is arrested for non-payment of bunkers. The action is later on joined by other claimants, namely, a dockyard for non-payment for repairs carried out a year earlier, and also by the members of a repatriated crew from the year before for unpaid crew-wages.

Discuss the ranking of the claims and liens brought before the Admiralty court by the various claimants, supporting your answer with suitable case laws.

A problem question where students are expected to be familiar with UK laws with regards to arrest of vessels (Arrest Convention/Merchant Shipping Act) and maritime liens/equitable liens (ranking, etc.), and the procedures involved before the UK Admiralty courts.

To get a pass, it is essential that the student presents a detailed discussion on the *in rem* procedure to be followed before the Admiralty courts to effect an arrest with reference to the facts at hand is to be presented, focussed on maritime liens and where the two claims (unpaid crew, and the repair dues while dry-docked) rank. Reference is to be made to Sections 20 & 21 of the Senior Courts Act 1981 with regards to arrest, together with relevant case laws. It is to be noted that the UK is a signatory to the Arrest Convention 1952, and not 1999.

The students were expected to use both case laws and examples in their discussions – those cited in the study material/ textbook and student's own choice. Case laws: ***The Bold Buccleugh [1851]*** ***The Tolten [1946]***, etc. Additional marks were in for student's own choice of relevant case laws; and answers that were well structured, dealing with the issues individually and critically.

Q2. A vessel while on a time charter suffered engine problems, and was anchored off the coast of Somalia to undertake repairs. While the vessel was being attended to, hostilities broke out between pirates and the government operatives. Progress on the repairs were difficult, as there was the constant danger of destruction. Eventually the vessel arrived at the discharge port 60 days behind schedule. The charterers do not wish to pay the owners any hire charges for the period covering the various delays – particularly the period when the vessel was delayed due to hostilities between the pirates and the government operatives.

Please advise the charterers.

A problem question on legal issues arising from time charterparty operations. Here the students were expected to be familiar with the position of law regarding the time charterparty operations, with regards to off-hire clauses, war risks, etc.

The problem question presented requires the students to carry out a detailed analysis of the time charterparty scenario and discuss the applicable law to the facts and circumstances. The students were to suggest the remedies open to the time charterer if any, in the given circumstances with clear and convincing legal arguments, well supported by case law reference. Students were also expected to discuss the issue of war risk and the consequential delays caused in the performance of the time charterparty contract.

Answers were to be well structured, dealing with the issues individually and critically using relevant case laws and references. Case laws and examples cited in the study material/textbook and student's own choice. *The Saldanha* [2010]; *The Laconian Confidence* [1997].

Q3. The Athens Convention (Merchant Shipping Act 1995) has a significant impact on passenger claims. Discuss the carrier's right to limit liability under the convention.

The question relates to the Athens Convention on the carriage of passengers by sea. Here, the students were required to discuss the carrier's right to limit their liability under the Athens Convention relating to the carriage of passengers.

Here the students were required to have a good knowledge of the scheme of the Convention and carry out 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. Answers presented were to include the duties, obligations and liabilities of the carrier to the passengers and their baggage carried by sea, and how the Convention had set a high standard in terms of both compensation and limitation of liabilities in comparison to the carriage of goods by sea.

Answers were to be well structured, dealing with the issues individually and critically using relevant case laws and references. General structure and quality of answers - dealing with the issues individually and critically.

Q4. When is a salvor entitled to reward under the Salvage Convention 1989, for saving or minimising damage to the environment? Discuss with suitable examples to support your answer.

A straightforward legal question on the salvor's entitlement for reward under the Salvage Convention 1989 for saving or minimising damage to the environment. The students were to be familiar with the provisions and the remit of the Convention, and especially on the salvor's entitlement to reward for saving or minimising damage to environment.

To get a pass mark, the students were to engage in a detailed discussion on the salvor's entitlement to reward under the Convention and the level of remuneration in comparison to a reward for saving or minimising damage to the environment. The discussions were to include coverage of the 1989 Salvage Convention, which encourage salvors to engage in saving, or minimising the damage done to environment and seek an uplift on their salvage remuneration, and how it seeks to reward the salvors for such actions. Reference was to be

made to the landmark House of Lords decision in *The Nagasaki Spirit* [1997], where problems in the drafting of the Convention were identified.

Quality of illustrations, both case laws and examples – the cited in the study material/ textbook and student's own choice. Case Law: *The Nagasaki Spirit* (1997). General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

Q5. Using examples of case law to support your arguments, discuss how the Himalaya Clause extends defences that are available to carriers to third parties.

Students were expected to have a good understanding of the use of Himalaya clause in carriage contracts. The answers presented were to include the case law *The Himalaya*, 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.

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. The discussions should also refer to how the legal principles handed down in *The Himalaya* case came to be extended and incorporated in the H-Visby Rules in Article IV *bis* (2).

Case laws and examples cited in the study material/ textbook and student's own choice. Case Laws: *The Himalaya; The Eurymedon, The Mahkutai, The New York Star*. Answers were to be well structured, dealing with the issues individually and critically using relevant case laws references.

Q6. Both the common law and The Hague-Visby rules require a shipowner to make the vessel seaworthy.

Compare and contrast seaworthiness under common law and the Hague-Visby rules. Use examples to support your answer. What consequences are there for a ship-owner under the Hague-Visby rules if he fails to provide a seaworthy ship?

An essay type question on the obligation of the shipowner to make the vessel seaworthy under both Common law and the Hague-Visby Rules. The students were expected to be familiar, in the first instance, with the duty of the shipowner to provide a seaworthy vessel, both at Common law and The Hague-Visby Rules.

To secure good marks the students were to carry out a detailed discussion on the differing obligations of the shipowner to make the vessel seaworthy both under common law and the H-Visby Rules - *the difference being under the Rules the obligation is one of 'due diligence'*. The students were to refer to the relevant provisions of the H-V rules, *viz.*, Article 3 R 1, which notes that the carrier *'shall be bound before and at the beginning of the voyage to exercise due diligence.'*

Case laws and examples cited in the study material/ textbook and student's own choice. Answers were to be well structured, dealing with the issues individually and critically, using relevant case laws and references. Case Laws: ***McFadden v Blue Star Line* [1905]; *The Eurasian Dream* [2002]; *The Aquacharm* [1982]; *The Muncaster Castle* [1961]; *Hong Kong Fir* [1962].**

Q7. Payment of hire is viewed as the primary obligation under a time charterparty contract, and commercial shipping practice imposes the rule 'delayed payment is no payment'.

The courts have taken differing views on the subject, with one expressing the view that payment of hire is a 'condition' and another describing the term as 'innominate'.

Analyse critically the above observation, with reference to case laws.

An essay type question dealing with a more recent problem of the interpretation of payment obligation under the time CP as a condition by one of the English Courts. Not stopping there, yet another English court expressed a contrary view, leading to a fair bit of confusion.

The students were expected to be familiar with primary obligation of payment of hire charges under time CPs, and how payment is to be made promptly. Here, the students were to carry out a detailed discussion on **i)** payment of hire charges under time CPs, where late payment is considered as 'no payment' in practice, and **ii.** how in recent years the discussion of payment of hire before the UK courts had focussed on the term – *a condition or an innominate term*, leading to differing rulings being handed down. References is to be made to judgements from 1976, 2013 and 2015 in the legal discussions.

Case laws and examples cited in the study material/ textbook and student's own choice. Answers were to be well structured, dealing with the issues individually and critically using relevant case laws and references. Case Laws: ***The Laconia* [1976] 1 Lloyd's Rep 395; *The Astra* [2013] 2 Lloyd's Rep 69; *Spar Shipping v Grand China Logistics Holding (Group) Co Ltd* [2015] EWHC 718.**

Q8. Answer BOTH parts of the question.

When the NOR is accepted, laytime commences obliging the charterer to either commence loading or discharging at the port. Discuss, with particular reference to case law, the following:

- a) when laytime starts for both port and berth charterparties, and**
- b) what happens if the Notice of Readiness is invalid.**

A two-part essay type question where the students were expected to be familiar with NORs, commencement of laytime, and invalid NORs. Students were to carry out a preliminary discussion on laytime in voyage charterparties with particular reference to port and berth charterparties, and invalid NORs.

The students were required to carry out a detailed discussion on **a)** when and how laytime will commence in relation to both port and berth charterparties, and **b)** what happens when the NOR tendered is invalid. Students were expected to have a very good understanding of the above practices, and the answers presented were to demonstrate a clear grasp of the legal principles behind the practice, as it is of high commercial value.

General structure and quality of answers – dealing with the issues individually and critically using relevant case laws and references. Quality of illustrations, both case laws and examples – the cited in the study material/ textbook and student's own choice. (Case Laws: ***The Timna* [1971]; *The Johanna Oldendorff* [1973]; *The Maratha Envoy* [1977]**). Also, bonus marks for citing ***The Arundel Castle Envoy* [2017]**.