



# EXAMINER'S REPORT

## Nov 2020

### SHIPPING LAW

**Q1. Company A owned vessel A, which was the subject of a cargo claim. Prior to the initiation of any legal proceedings by the cargo interests, Company A sold their vessel, and later purchased vessel B. During her first voyage, vessel B was involved in an accident and was salvaged successfully. Both the cargo claimants of vessel A, and the salvors of vessel B would like to know if they could arrest either vessel A or B to enforce their claims. Critically discuss rights of the cargo claimants and the salvors.**

A problem question on maritime claims, where students are expected to be familiar with the assets that are available to secure a claim and enforce against.

To get a pass, it was essential that the student presents a critical analysis of the scenario, followed by a detailed discussion of the assets (ship) that are available to secure a claim and to enforce against. The students were expected to be aware of arrest of seagoing ships, and the difference between a maritime lien and a maritime claim. Students were to carry out a detailed analysis of the law relating to maritime claim (cargo), and maritime liens (salvage), followed by a discussion of where the claims for cargo damage, salvage reward will rank. The students were expected to include in the discussion what could be brought before the Admiralty court in the England & Wales, and the laws, *i.e.*, Section 20, Senior Courts Act 1981, Arrest Convention 1952.

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] 7 Moo PC 267; *The Maersk Nimrod* [1991] 1 Lloyd's Rep 269; *The Sennar* [1983] 1 Lloyd's Rep 295.** Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

**Q2. Can a stevedore invoke Article IV *bis* (2) of the Hague-Visby Rules, which provides that if a claim is brought against the servants and agents of the carrier in relation to cargo claims, the servant and agents are entitled to the same defences as are available to the carrier himself, and that such defences are not available to independent contractors? Use suitable examples to support your answer.**

A very legal question, the student is required to be familiar with Article IV *bis* (2) of the H-Visby Rules. The students are expected to be familiar with the provisions of the H-Visby Rules, and in particular Article IV *bis* (2) and the Himalaya Clause; and also, the issue of privity of contract, *i.e.*, the stevedore not being a party to the contract of carriage as contained in the B/L. The question presents a good opportunity for students to showcase their knowledge and understanding of Article IV *bis* (2) which is widely used. A good answer should contain a detailed discussion on Article IV *bis* (2) of the H-Visby Rules, which effectively incorporates the Himalaya Clause into the Rules. Discussions should include i) how Article IV *bis* introduces the entitlement of the carrier to defend themselves, or to limit their liability whether the action brought against them is founded in contract or tort – within the parameters of the Rules, and ii) the issue of privity of contract, which has seen the carriers inserting a ‘sub-contracting and indemnity clause’ in their B/L extending their benefits (defences, limitations of liability) to their stevedores. Discussions should refer to ‘The Himalaya’ case, and how the legal principles handed down in the case came to be extended and incorporated in the H-Visby Rules

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 Himalaya* [1954]; *Midland Silicone Ltd v Scrutton Ltd* [1961]**. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references

**Q3. Answer BOTH part of the questions a) and b): In the case of the ‘Timna’ it was said “It is a good working rule...to give Notice of Readiness and to go on giving such notices in order that, when later the lawyers are brought in, no one shall be able to say; “If only the Master had given Notice of Readiness, laytime would have begun and the Owners would now be able to claim demurrage”. Discuss the following: a) when laytime starts for both port and berth charterparties and to case law, and b) what happens if the Notice of Readiness is invalid. Answers a) and b) carry equal marks.**

A two-part essay type question on laytime and NOR in voyage charters. The students were expected to be familiar with *voyage charterparties*, *NOR*, *laytime*, *demurrage etc.*, and expected to present a detailed discussion on when and how laytime will start in relation to both port and berth charterparties; and what happens if the NOR were to be invalid. Students were expected to have a good understanding of the above practice and the answer was to demonstrate a clear grasp of the legal principles behind the practice.

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 Timna* [1971]**. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

**Q4.** A vessel was chartered to company B under the NYPE form of time charter for 12 months. During the period of the time charter, company B sub-voyage chartered the vessel to company C to carry cargo with a laycan of 1-5 April. The vessel arrived at the load port on 6 April and the inspectors refused to pass the vessel's holds as fit 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 time charterparty. Advise the owners of their rights.

A problem question on time CPs and payment of hire. Students were expected to be aware familiar with the time charterparty contract. Students were to carry out a preliminary discussion of facts of the problem namely non-payment of hire, the vessel not being fit, *etc.*, leading up to the shipowner's decision to withdraw the vessel. This was to be followed by a detailed discussion on the legal issues involved under the facts and circumstances of the case and suggest legal remedies, if any, to to both time charterers and sub charterers with clear reasoning.

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. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references

**Q5.** Discuss the salvor's entitlement to reward under Article 14 of the Salvage Convention 1989 and his level of remuneration in comparison with a reward under Article 13. Use 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.

**Q6.** Vessel 'A' was proceeding too fast in a narrow channel and had an inadequate lookout on board. Vessel 'A' failed to observe vessel 'B' until it was too late, resulting in a collision. Vessel 'B' was towed to dry-dock where extensive repairs were carried out. Advise the Owners of the vessel 'B' of their legal rights and remedies against the owners of the vessel 'A', particularly with reference to the quantum of their claim.

In this essay type question, the students were expected to have a good understanding of the general principles of Collision Regulation (COLREGS), and the liabilities arising therefrom. To get a pass, the students were to carry out detailed discussion on the collision regulation – Rule 5 lookout; Rule 6 Safe Speed; Rule 15 Crossing Rule, and the principles of liability. Most importantly, students are expected to be aware that most maritime liabilities arise out of some form of negligence and that most cause of action would be covered under the tort of negligence.

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 Leverington (1886)***; ***Alexandra 1 [2018]***. Answers were to be well structured, dealing with the issues individually and critically using relevant case laws and references

**Q7.** Answer **BOTH** questions. Discuss with reference to relevant case law:

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

A two-part essay type question on berth and port CPs and when laytime will start where NOR is invalid. To get a pass, the students were expected to be familiar with the concept of **a)** lay time and **b)** notice of readiness (NOR) in voyage charter operations. Students were to carry out a detailed analysis and discussion on **a)** lay time – when laytime is triggered off, when it starts running, with regards to berth and port charterparties **b)** what is an NOR, and what are the implications of an NOR? The students are expected to be familiar with the voyage charterparty operations.

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 Johanna Oldendorff [1973] 2 Lloyd's Rep 285***; ***The Maratha Envoy [1977] 2 Lloyd's Rep 301***; ***The Arundel Castle [2017] 1 Lloyd's Rep 370***. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references

**Q8.** On Friday, a vessel was arrested for non-payment of crew wages, while loading her cargo in Southampton, UK. On Monday another creditor of the vessel joined the action, claiming non-payment for repairs carried out while the vessel was dry-docked a year before. The creditors are convinced that their claims are sustainable under UK Laws, but not sure about where the liens ranked. Discuss the procedures to be followed before the English Admiralty and the ranking of the liens, supporting your answer with suitable case laws.

A problem question with a scenario on ship arrest for non-payment of crew wages, and for non-payment for repairs carried out. Students were 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, students were to carry out 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]***. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.