



EXAMINER'S REPORT MAY 2021

SHIPPING LAW

Q1. Discuss with reference to relevant case law and regulation, the defences of 'inevitable accident' and 'agony of the moment' in the event of a collision incident.

An essay type question. Here, the students are expected to be familiar with defences available under Collision Regulations (COLREGS).

To get a pass, the answers presented should contain a detailed discussion on the defences of 'inevitable accident' and 'agony of the moment' available under collision regulations in the event of a collision. Students are expected to be aware that most maritime liabilities arise out of some form of negligence and most cause of action would be covered under the tort of negligence; what is 'the agony of the moment' and inevitable accident' and how may the two be used as a defence.

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: ***Bywell Castle (1879)***; ***The Winona [1944]***; ***The Highland Loch [1912]***; ***The Regina D [1992] 1 Lloyd's Rep 543***; ***Geelong Harbour Trust Commissioner v Gibbs Bright & Co (The Octavian) [1974]***. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q2. A vessel was chartered for a trip-time charter. The warranted speed was about 14 knots. While on charter, the vessel gave an ETA of 1st April, but due to a main engine breakdown she did not arrive until 10th April. The charterers had to pay a penalty to the shippers due to the vessel's late arrival. Further, loading was delayed because of continuous breakdowns of ship's cranes, and, whilst at the berth, the main engine was overhauled. The vessel then proceeded to the discharge port, but she could only achieve an average speed of 10 knots. Please advise Charterers of their legal rights.

A problem question on legal issues arising from time charterparty operations. The students were expected to be familiar with charter party operations, *i.e.*, off-hire, speed clauses, delays, late arrivals, *etc.*

Students were to carry out a critical analysis of the facts presented followed by a detailed discussion of the legal issues. Importantly students are to make a distinction that speed of the vessel is important in a time CP, but speed clauses are not a condition, as the shipowner only warrants that their vessel will perform within the parameters specified under the description which includes the speed of the vessel, and that ii) the speed warranted is 'about' 14 knots. Student were to carry out a detailed discussion of the scenario at hand and the applicable law, the remedies open to the time charterer in the given circumstances with clear and convincing legal arguments in support.

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 Al Bida* [1987]; *The Didymi* [1988]**. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references

Q3. What is the SCOPIC clause, and how did *The Nagasaki Spirit* case contribute to the development of the SCOPIC Clause? Does the SCOPIC Tariff, in your view benefit the salvors?

An essay type question on SCOPIC clause. Here, the students are expected to be familiar with the SCOPIC clause and the case law in ***The Nagasaki Spirit***, and how the opinion expressed by the House of Lords in the case contributed to the development of the SCOPIC clause.

The students were expected to carry out a detailed discussion of ***The Nagasaki Spirit*** case which involved the collision of an oil tanker with a container ship, with an estimated 12,000 tons of crude oil escaping into the sea. This case also revealed that the Salvage Convention was poorly drafted with regard to the provision on 'special compensation,'. In response to the fallout from the incident and the decision of the House of Lords, the SCOPIC clause was put together by the industry – International Salvage Union, P&I Clubs, shipowners, *etc.* The students were to carry out a detailed discussion on the objectives and salient features of the SCOPIC clause, the SCOPIC tariff, how it has been periodically increased since its introduction, and if and how it benefits the salvors in certain circumstances.

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 Nagasaki Spirit* [1997]**. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q4. Discuss the advantages and disadvantages of mediation and arbitration, to that of an adjudication before the High Court in commercial matters. Include in your answer references to the different types of dispute resolution offered in London and New York for maritime disputes.

An essay type question on the advantages and disadvantages of mediation and arbitration as opposed to adjudication. The students are expected to be familiar with the use of mediation and arbitration to resolve disputes arising from the performance of commercial (shipping) contracts.

Students were to present a preliminary discussion on arbitration and ADR, as opposed to adjudication before a court of law to resolve disputes arising in shipping business. Students were to carry out a detailed discussion on advantages of resorting to arbitration as opposed to adjudication, with the focus of the discussions on the i. benefits of using arbitration in a highly commercial environment, where time is of the essence, with no adverse publicity, *etc.* and ii. the different types of dispute resolution offered in London (LMAA), and in New York in maritime disputes.

Case laws 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.

Q5. The *in rem* claim form can only be served on the wrongdoing vessel if it belongs at the time of arrest to the person who is liable *in personam*, and if it were within the admiralty court jurisdiction. Discuss, with reference to relevant case laws, the restrictions on the use of the *in rem* procedure and the development of the 'sister ship' arrest in the admiralty jurisdiction to counter the above restrictions.

Another essay type question on *in rem* procedures. The students were to be aware of procedures to be followed when action is brought *in rem* against a vessel.

Here, students were expected to outline the *in rem* procedures before Admiralty courts and the restrictions on their use, and on sister ship arrest, followed by a detailed discussion of the aims of an *in rem* action and the use of 'sister ship' arrest in the admiralty jurisdiction to counter the identified restrictions. Students are expected to discuss the UK statutory provisions (Supreme Court Act 1981 – Section 21), and relevant case laws with regards to arrest of 'sister ship' in the *in rem* procedure.

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 Evpo Agnic* [1980]; *The Mawan* [1988]; *The Nazym Khikmet* [1996]**. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Q6. The two popular forms of charterparty contracts in the carriage of goods by sea are, voyage charters and time charters. Discuss with suitable case laws: a) difference between a voyage charter and a time charter contract, and b) the legal obligations of the parties to the two different contracts.

The students were expected to be familiar with the different types of charterparty, and in particular have a good understanding of the two charterparty contracts, *i.e.*, voyage charters and time charters, in the carriage of goods by sea. The answer presented was to include a detailed discussion on **a)** the differences between a voyage charter party and a time charterparty contract, *i.e.*, defined by period and number of voyages, obligation to bear the expenses for bunkering, *etc.* and **b)** the legal obligations of the parties to the different contracts, *i.e.*, payment obligation of hire in time CP, and freight in voyage CP; and how they differ in character, *etc.* The answer should demonstrate a clear understanding of the differences and the legal obligations and well supported by relevant case laws.

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 Aries* [1977]; *The Tarva* [1973]; *The Afavos* [1983]; *The Mihaios Xilos* [1979]**. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

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*; *The Eurymedon*, *The Mahkutai*, *The New York Star***. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references

Q7. Explain the English Admiralty Court procedure and practice for obtaining a freezing injunction. Use examples of relevant case law to support your answer.

An essay type question, where the discussion is focused on the English Admiralty Court procedure. The students were expected to be familiar with the grant of freezing injunctions and the English Admiralty Court practice (*in rem* jurisdiction/ proceedings). The students were to carry out a detailed discussion on **i.** granting of “freezing injunctions” as security in certain actions before the Admiralty Courts, and **ii.** the practice of bringing an action *in rem* against the *res* as opposed to the person.

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 Mareva* (1980); *Nippon Yusen Kaisha v Karageorgis* (1975)**. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references

Q8. Discuss BOTH parts of the questions a) the advantages a maritime claim may have over other types of lien, and b) the distinction between a common law possessory lien and an equitable lien.

A two-part essay type question on **a)** the advantage of maritime lien as a privileged claim, and **b)** the distinction between common law possessory lien and an equitable lien. The students are expected to be familiar with the different types of liens, in particular maritime liens. The students are expected to carry out a detailed discussion on **a)** the advantage of maritime lien as a privileged claim, and **b)** the distinction between common law possessory lien and an equitable lien. The answers were expected to demonstrate a clear understanding of different types of liens and the advantage of a maritime lien over the others as a privileged claim.

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 (1852)***; ***The Ruta [2000]***. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.