



EXAMINER'S REPORT

NOVEMBER 2021

SHIPPING LAW

Question 1

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

An essay type question, where the students were expected 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. To get a pass, the answers presented were to 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 subject to fulfilling their obligations 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 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.

Question 2

A time CP provides for a duration of minimum 180 days, 15 days more or less, in the charterers' option. On the 179th day of the charterparty, the charterers declared that they would exercise the option to extend the charter period by 15 days and carry out a final voyage. At the time of communicating the decision to exercise the option, it was estimated that the vessel would depart on its voyage immediately and the voyage would be completed in time for the vessel to be re-delivered at the agreed charterparty location in 16 days.

Due to the charterer's fault, the vessel could only proceed on its last voyage with a further delay of 3 days. The owners state that they have lost a valuable fixture due to the delay in re-delivery and claim the lost profit. Critically analyse with reference to case law, the options available to the owners of the vessel in respect of the charterers' voyage instructions.

A problem question on legal issues arising from time charterparty operations. The students were expected to be familiar with time charterparty obligations with regards to redelivery of the vessel. The students were to carry out a critical analysis of the scenario presented to determine if **i)** the charterers breached the terms of CP contract as regards final voyage orders and are liable to pay, **ii)** whether the charterers are liable to pay the lost profit arising from the cancellation of a subsequent fixture. Students are to be fully aware of the legal position with regards to late redelivery arising from final voyage under a time CP. With the decision of the House of Lords in *The Achilleas* [2009] it is now clear that damages for late redelivery will be assessed at the market rate for the period of overrun.

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 London Explorer* [1972]; *The Peonia* [1991]; *The Black Falcon* [1991]; *The Achilleas* [2008]; *The Paragon* [2009]**. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Question 3

Answer both questions with suitable case law reference.

a) How did the decision in *The Nagasaki Spirit* change the course of compensation to be paid for salvage services?

b) What is the legal relationship between a tug and a tow under a towage contract?

A two-part essay type question on a) decision on *The Nagasaki Spirit*, and b) relationship between a tug and a tow. Here, the students were expected to be familiar with a), b) and the Salvage Convention 1989, and carry out a detailed discussion on how the decision in *The Nagasaki Spirit*, changed the course of compensation to be paid for salvage services *i.e.*, under SCOPIC, and on the legal relationship between a tug and tow under the two types of towage contract – where one places the liability on the tow, or where the master and crew of the tug are viewed as the servants of the tow.

Quality of illustrations, both case laws and examples – the cited in the study material/ textbook and student's own choice. Case laws: *The Nagasaki Spirit* [1997]; *The Devonshire* [1912]; *The Niobe* [1888]; *The Panther and The Ericbank* [1957]. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

Question 4

A vessel was voyage chartered to carry coal with a laytime of 8 days to load and 7 days to discharge. An NOR given when the vessel berthed was accepted, and the discharge operations commenced.

After 6 days of discharging, heavy rains led to the suspension of all operations. Two days later, the discharge operation resumed but had to be suspended within hours as the runner wire on the vessel's crane snapped. While waiting for the crane to be fixed a port strike ensued and all activities were suspended.

The shipowners have now put the vessel on demurrage. The port strike was eventually called off after 6 days and the charterers were able to resume and complete the discharge and leave port. The shipowners are now claiming demurrage for 6 ½ days, and the charterers dispute the calculation. Please advise the charterer of their options.

A problem question legal issues arising from voyage charterparty operations. The students were expected to be familiar with the position of law regarding the voyage charter party operations, *i.e.*, NOR, laytime, demurrage, *etc.* Students are to carry out a detailed discussion of the scenario at hand and the applicable law to the legal issues, determine if the demurrage demanded is payable, suggesting the appropriate remedies open to the voyage charterer in the given circumstances with clear and convincing arguments (legal).

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.

Question 5

Answer both questions with reference to relevant case laws:

a) What is 'hire' in time charters, and when is it payable?

b) How is 'freight' in voyage charters different from hire and when is it payable?

A two-part essay type question on a) 'hire' in time CP operations, and b) 'freight in voyage CP operations and how the two differed. The students were to be familiar with a) 'hire' as the payment obligation in time charterparties and when it is payable b) 'freight' as the primary payment obligation under voyage charters. Here, students were to carry out a detailed discussion on a) 'hire' in time charterparties and when it is payable – before and not later – and the consequences of late payment, and b) how 'freight' under voyage charters is calculated and when payable, and how no set-off is allowed. Answers are to demonstrate students' clear understanding of both a) and b).

Quality of illustrations, both case laws and examples – the cited in the study material/ textbook and student's own choice. Case laws: *The Mihaios Xilas* [1979]; *The Laconia* [1977]; *Spar Shipping v Grand China Logistics* [2015]; *The Aries* [1977]; *Thomas v Harrowing SS Co* [1915]. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

Question 6

Answer both questions with reference to relevant case laws:

a) In what circumstances is a safe port warranty implied in time and voyage charter parties?

b) to what extent is the element of danger relevant for the assessment of a salvage claim?

A two-part essay type question on **a)** safe port warranty, and **b)** element of danger in the assessment of a salvage claim. The students were expected to be familiar with **a)** the 'safe port warranty' and **b)** element of danger in salvage claims. Students were to carry out a detailed discussion on **a.** 'safe port warranty' and how and when it is implied into a voyage charterparty contract and **b.** the key element of danger in salvage laws and when it is no longer sufficient. The discussions presented were to demonstrate a clear understanding of both **a)** and **b)**.

Quality of illustrations, both case laws and examples – the cited in the study material/ textbook and student's own choice. Case laws: *The Ocean Victory* [2014]; *The Evia (No 2)* [1983]; *The Kanchenjunga* [1990]; *The Greetje K* [1971]; *The Aldora* [1975]. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.

Question 7

Answer BOTH parts of the question with suitable case law reference.

- a) What defines an arrived ship in relation to port and berth charterparties?
 - b) How do damages for detention differ from demurrage and the circumstances in which damages for detention can be claimed by a shipowner?
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An essay type question in two parts, *i.e.*, **a)** an arrived ship in relation to port and berth CPs, and **b)** difference between damages for detention and demurrage. The students were expected to be familiar with the concept of an arrived ship in relation to port and berth charters, the circumstances under which damages could be claimed for detention of the ship by the owners and how it differs from a claim arising under demurrage. Students were to carry out a detailed discussion on the concept of an “arrived” ship in relation to port and berth charters, the circumstances under which damages could be claimed for detention of the ship by the owners and how it differed from a demurrage claim.

Case laws and examples cited in the study material/ textbook and student’s own choice.

Case Laws: ***The Johanna Oldendorff (1973)***; ***The Maratha Envoy (1977)***. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Question 8

Compare and contrast seaworthiness under common law and The Hague-Visby rules. Use case law examples to support your answer.

An essay type question on making the vessel seaworthy under Common law and The Hague-Visby Rules. Students were to carry out a preliminary discussion on the requirement of the shipowner to make the vessel seaworthy. Students were expected to be familiar with the obligations arising under both common law and Hague-Visby Rules to make the vessel seaworthy, and were to carry out a detailed discussion on the requirement of the shipowner to make the vessel seaworthy under both common law and Hague-Visby Rules. The answer should demonstrate a clear understanding of the obligation to make the vessel seaworthy and also contain the relevant provisions of the Hague-Visby Rules.

Quality of illustrations, both case laws and examples – the cited in the study material/ textbook and student's own choice. Case Laws: ***McFaden v Blue Star Line (1905)*** ***The Muncaster Castle (1961)***; ***Hong Kong Fir (1962)***; ***The Amstelsot [1963]***. General structure and quality of answers - dealing with the issues individually and critically using relevant case laws and references.