



EXAMINER'S REPORT

LEGAL PRINCIPLES IN SHIPPING BUSINESS

Overall Comments

Overall, upon analysing the results, the standard displayed by the candidates was reasonable. Over half of the students have demonstrated rigorous preparation for the examination by showing competence in identifying issues in questions and subsequently elaborating on them in accordance with the relevant law. Candidates must have realized, by analyzing the pattern of exam questions, that they need to prepare all topics from the syllabus thoroughly and cannot selectively study topics to attain higher marks.

The question paper consisted of both essay and problem-type questions. It was observed that the candidates clearly drew attention to issues accurately and thereafter elaborated on them properly. A few candidates who have secured higher marks have analysed such questions in great depth and answered them reasonably well, basing their answers on facts and relevant law. Even higher marks can be achieved by incorporating relevant cases and statutes. Another way to secure higher marks is to avoid including irrelevant issues or answering what is not asked for in the question paper.

Comments on individual questions are as follows:

Question 1 – Public International Law

- a) *MARPOL Convention* – Conventions with many Annexes in relation to any kind of pollution at sea, such as oil, sewage, garbage, air, and so forth.
- b) *Port State Control* – Inspection of vessels in foreign ports to verify the condition of the vessels and that these vessels are manned and operated in compliance with the rules.
- c) *International Maritime Organization* – one of the specialized agencies of the United Nations for safety and security of vessels, preventing different kinds of pollution, regulating new technologies, and so forth

Question 2 – Bills of Lading

- a) *Letter of Indemnity for clean bills* – when shipper request bills with no remarks in spite of the fact mate's receipt has remarks. Letter of Indemnity is issued but is considered as fraud in such cases.
- b) *Clause Paramount* – It's a clause incorporated in the bill of lading and brings in cargo liability regime of Hague-Visby Rules.
- c) *Straight Bill of Lading* – This bill of lading is non-negotiable and has name of the person/organization to which the cargo must be delivered.

Question 3 – Voyage Charterparties

- a) *Notice of Readiness* – starts laytime, a few requirements – arrived ship, ready to load cargo, satisfy other charterparty and legal requirements
- b) *Despatch* – predetermined sum paid by the owners to the charterer for expediting loading or discharging before laytime expires. Tanker voyage charterparties do not have such clauses
- c) *Deadfreight* – payment made by the charterer or shipper to owners for not loading the full cargo as agreed between them.

Question 4 – General Average

Discussion of facts and how GA is different from PA. Is fire on board a GA event?
Towage is a GA event, and the following conditions must be satisfied.

- Common maritime adventure
- Stakeholders, including leasing companies that have containers on board, time charters for bunkers, cargo owners, and ship owners
- General average contribution can be claimed – if there is a common danger, not due to the default of anyone claiming contribution, the danger must be a real one, the sacrifice or expense is voluntary and reasonable
- Expenditure like temporary repairs must be extraordinary
- A Bit about York Antwerp Rules, Rule Paramount about reasonable wages and maintenance of crew to put in port of refuge or port for repairs
- Temporary repairs v permanent repairs, not to seek advantage by this route
- Security in the form of average bonds and average guarantees before cargo is discharged
- Cost of port agents increased by additional work can be included in the GA sheet

Question 5 – Problem question concerning Bills of Lading

- Clause paramount and Hague Visby Rules
- Issue of charterer's or owner's bill of lading
- Art III (a) – seaworthiness, issue with possible hatch covers, due diligence issues
- Art III (b) – properly equip, and issue of faulty bilges
- Art III (c) – care of cargo as cargo is found damaged at the discharge port
- Maintenance issue on ships and relate it to the above issues
- Art IV – peril of sea exception, heavy weather

Question 6 – ADR & Arbitration

- a) Arbitration awards can be enforced in many jurisdictions that are signatories to the *New York Convention of 1958*. This is the main advantage of arbitration over other modes of dispute resolution.
- b) Concept of ADR, litigation, mediation, etc., needs to be discussed along with the advantages and disadvantages. Advantages include a lack of formality and procedures, as costs can be saved to some extent in ADR compared to litigation. Parties are at the centre of the process in ADR, and so forth.
- c) Mediation can be pursued even when arbitration is ongoing.

Question 7 – Problem Question regarding Time Charter Trip

- The issue needs to be analysed from the time charterparty.
- Safe port issues and charterers' responsibility, but if the issue is of negligent navigation and seamanship of the master, it is the Owner's responsibility.
- Off hire as the vessel is not available for the next operation desired by the charterers.
- Responsibility of loading and discharging on charterers and stevedores are appointed by them. Any damage to the vessel, charterers are responsible to the owners.
- Delay is a breach and the charterers are liable for hire at the charterparty rate until the contractual redelivery date and thereafter at the market rate to the actual date of redelivery (where the market rate is higher than the charter rate).

Question 8 – Time & Voyage Charter party

- (a) *Safe port warranty* – Warranty of port given by the charterers with two exceptions only
- (b) *Anti-technicality Clause* – It is a provision included in a time charter party to protect the charterers from the consequences of minor breaches, such as delay by a bank. The clause intends. The clause requires the owners to send charterers an anti-technicality notice containing additional days to remedy the issue of payment. If it is not remedied, the Owners can withdraw the vessel.
- (c) *Off-hire* – concept, discussion on '*net loss of time*' such as in *Clause 15 of NYPE 46*, additional marks for adding word '*whatsoever*' in the clause.