

# LEGAL PRINCIPLES IN SHIPPING BUSINESS (LPS) NOVEMBER 2025 EXAMINATIONS

## OVERALL COMMENTS

The 'legal content' (cases, statutory law, international conventions, ...) of answers tends to be rather low. However, the questions and expected answers were pretty much in line with those from previous years.

Quite a few students lost marks when answering only parts of questions with various parts, such as questions 1, 2 and 4, even though these questions were prompted to answer ALL parts of the question and to explain EACH term, with ALL and EACH capitalised and in bold in the question. Points were also lost when it was specifically asked to illustrate with examples or to use cases.

The legibility of handwriting should remain a focal point.

## Question 1 – Charter parties and Bills of lading

- a) Anti-technicality Clause: It is a provision included in a time charter party to protect charterers from the consequences of minor breaches of their obligation to pay hire, such as delay by the bank. The clause obliges owners to send to charterers a notification called an anti-technicality notice, granting them extra time (hours or days) to pay hire. It is only upon default of timely payment, after notice has been given, that owners have the right to withdraw the vessel.
- b) Deductions from freight payment by way of equitable set-off: a charterer may not set off counterclaims—whether legal, equitable, or contractual—against freight unless the charterparty expressly permits deductions,
- c) New Jason Clause: A New Jason Clause is a standard protective clause in bills of lading and charterparties, mainly used in US-related shipping. Its core purpose is to ensure that cargo interests must contribute to General Average (GA) even when the casualty was caused by the carrier's negligence.

## Question 2 – Terminology

- a) Action in rem: action against the thing (res) – in shipping: against the vessel. Rather than in personam or against a person. Used in admiralty law to enforce maritime liens or statutory claims, such as damage, salvage, or collision, by arresting the vessel to secure a judgment. Reference to the Senior Courts Courts Act (1981).

- b) Innominate term: to be distinguished from conditions on the one hand and warranties on the other. Explain the differences in terms of legal consequences, e.g. by reference to the Hong Kong Fir case.
- c) Ratio decidendi: the rule of law in a court decision. To be distinguished from the so-called obiter dicta.

### **Question 3 – Hague-Visby Rules and Hamburg Rules**

#### Question 3 – Hague-Visby Rules and Hamburg Rules

The crux of this question is the identification of the similarities and differences between the two carriage of goods conventions, highlighting the advantages and disadvantages of each from a carrier's and from a cargo interest's point of view. Points of attention include the historical background and coming into being; international acceptance of each convention; liability, exclusions, and limitations of liability; time bar and jurisdiction.

### **Question 4 – Law of Tort**

- a) Contributory Negligence: shared liability between plaintiff and defendant because of the plaintiff's own carelessness that contributed to the loss that was partly caused by the defendant's breach of duty.
- b) Tort of Conversion: where a person treats someone else's property in a way that is inconsistent with their ownership of that property. Shipping example: delivery of cargo without production of the original bill of lading.
- c) Himalaya Clause: a bill of lading or charter party clause that aims to extend the carrier's defences, immunities and limitations of liability to third parties such as servants and agents, stevedores and the like. Its purpose is to ensure that those parties benefit from the same protections as the carrier, preventing cargo interests from suing them directly in tort. Cf. case *Adler v Dixon (The Himalaya)*.

### **Question 5 – Duty to provide a Seaworthy Vessel**

The carrier's duty under the Hague-Visby Rules to exercise due diligence to provide a seaworthy vessel before and at the beginning of the voyage is to be contrasted with its absolute duty under common law to provide a seaworthy vessel throughout the voyage. A proper discussion is warranted. Use of case law is recommended.

## **Question 6 – Voyage Charter**

This problem-type question prompts a brief identification and outlines several topics arising from this voyage charter-party scenario. The following points should be addressed:

- What type of charter is being discussed, and giving reasons for the significance
- vessel not ready to load; whose fault, significance for validity of Notice of Readiness, and more importantly, commencement of laytime
- vessel loads 2,000 tons short dead freight.
- vessel unable to enter port, is the port unsafe? If so, who is liable?
- vessel diverted, who bears the cost?
- laytime and demurrage have both been exhausted, damages for detention?

Bonus marks for querying/considering whether stopping for bunkers en route amounts to deviation/seaworthiness.

## **Question 7 – Time Charter**

Illegitimate last voyage is a voyage that cannot be reasonably expected to be completed on or before the final redelivery date of the ship back to owners at the end of the time charter period. The crux in the present case is whether the clause is a penalty clause and therefore not enforceable. The legal test is whether the relevant clause constitutes a genuine pre-estimate of owners' losses (cf. case law *Dunlop Tyre*). Owners could have elected to perform the charterers' illegitimate voyage order, or they could have treated the order as repudiatory and terminated the charter.

In this case, the owners accepted the charterers' orders; therefore, they are entitled to damages in the form of hire at the market rate for the excess period. If the clause is considered penal, it will, however, be unenforceable (cf. *The Paragon*).

## **Question 8 – Law of Agency & Apparent Authority**

The notions of apparent or ostensible authority in the law of agency, as opposed to actual authority, are distilled from the facts of the question and explained.

It should be noted that the instructions given by shipowners to the shipbroker allow some discretion to use reasonable skill and diligence to make the fixture "at any price up to USD 175 per tonne".

Implied Warranty of Authority: Irrespectively of whether the shipbroker knew or not that his authority was withdrawn by the shipbroking firm, such shipbroker would, nevertheless, be liable for impliedly warranting that his/her authority existed at the time; *Yonge v. Toynbee* [1910] 1 K.B.215. If the ship owning company or its director did not know of the shipbroker's lack or withdrawal of authority, the contract still binds the shipbroker's firm.