



LEGAL PRINCIPLES IN SHIPPING BUSINESS

INTRODUCTORY REMARKS

This year saw a high number of passes for this subject. Most candidates showed a reasonable level of understanding across the board. The usage of examples and illustrations was quite satisfactory. Some excellent structures and logical flows in candidates' answers were seen.

1. Discuss the various ways in which a person describing himself as an agent may be held personally liable for a contract into which he has entered.

This question was quite reasonably answered overall. It was generally not favoured by many candidates and no cases were cited. Numerous answers dwelled only on the issue of the agent exceeding his authority and implied warranty of authority. Very few answers were comprehensive so as to also include other circumstances, such as failure to declare their role as an agent, or where the principal is unnamed, or undisclosed, or non-existent at the time.

2. At Common Law there is an implied absolute obligation on the shipowner to provide a seaworthy ship. Where the Hague-Visby Rules apply, it is the duty of the shipowner/carrier to exercise due diligence to make the ship seaworthy. Discuss to what extent these two terms could be contractually excluded.

This question was quite reasonably answered. Inexplicably, numerous answers seemed to address a different question, namely, 'is seaworthiness necessary in a contract of affreightment' or 'should seaworthiness be excluded from contracts of affreightment'.

Many candidates were not clear that under common law the absolute warranty of seaworthiness may be excluded, whereas the exercise of due diligence to make the ship seaworthy, under Hague-Visby Rules, may not.

3. X Ltd. chartered their vessel Grim Reality to Y Ltd. for 12 months on a standard NYPE form. The charter party provides, among other things, that payment of hire is to be made in cash, without discount every 30 days in advance, and in default of payment the shipowners (X Ltd.) have the right to withdraw the vessel from the charterer's (Y Ltd.) service.

The 'Off-hire' clause also provides, among other things, that the ship would be off-hire in relation to: '... loss of time from default and/or deficiency of men, ... fire, breakdown or damages to hull, machinery or equipment, grounding, or by any other cause preventing the full working of the vessel...'

Critically discuss the issues arising in each of the following situations, clearly indicating the potential rights and liabilities of the parties by the use of case examples:

(a) A payment arrived at the owners' bank two days later than agreed. The charterers claim that this was because the payment day was a bank holiday at the shipowner's bank.

(b) A payment was 5% less (under payment) than the agreed hire, but was made to the owners' account five days earlier than agreed.

(c) Whilst the ship was sailing laden off the West coast of Africa, she was seized by pirates, and was released two months later. During the period of capture, charterers did not pay any contractual hire.

This was the least successfully answered question. The first two sub-questions related to timely payment of hire and owner's entitlement of the ship's withdrawal. Considering that the facts indicated a NYPE charter form, it was not unreasonable to mention the anti-technicality clause. However, the larger number of candidates omitted to consider elements of the off-hire clause's abstract provided in the main question's scenario, e.g. "without discount", "in cash". No cases were cited.

Part (c) was rather superficially treated, most answers omitting to consider the question at hand, i.e. whether on the facts the vessel would be on or off-hire. Hence, there was some digression, e.g. insurance cover claims, or anti-piracy precaution, or that charterers will make owners liable and owners will recover from their insurers. It was encouraging however, to note some awareness of BIMCO's Piracy Clause for Time Charter Parties.

There was a tendency to read the off-hire clause incorrectly, choosing only the last few words 'or any other cause preventing the full working of the vessel' out of context. This would not cover the situation, on the basis of the *ejusdem generis* rule; where general words such as "any other cause" follow two or more particular words such as "deficiency of men" or "grounding", they must be confined to a meaning of the same kind as the particular words. The delay/loss of time on the facts did not arise out of the condition or efficiency of the *Grim Reality*, her crew, or cargo, but rather as the result of a matter that was of a materially different kind to those set out in the off-hire clause. *The Saldanha*, [2010] EWHC 1340 Comm., was a similar case.

4. Does vicarious liability transfer liability from the tortfeasor? Discuss, using your own examples.

A popular essay-type question and a well answered one overall. The short answer to the question is that the doctrine of vicarious liability does not transfer liability but rather provides an injured party/claimant with an additional defendant. *Adler v. Dickson (The Himalaya)* was generally used to illustrate the point of vicarious liability.

Some confusion was noted in some answers on the differentiation between employer-employee relationship with that of principal-agent. As a general rule, vicarious liability only arises in the case of the former.



LEGAL PRINCIPLES IN SHIPPING BUSINESS

5. Answer both of the following:

- (a) Explain the use of the anti-technicality clause in time charter parties.
- (b) Explain the term 'once on demurrage, always on demurrage' as compared to laytime.

A very popular question and reasonably well answered overall.

(a) As expected most candidates dealt with such clauses, explaining that they allow the charterer a period of grace to rectify any non-payment of hire before the ship is withdrawn by the owners. However, only a couple of answers used any authorities.

(b) Well answered. Generally, all time lost after the expiry of laytime, including Sundays, holidays, or strikes, would count and be payable as demurrage. This is, of course, subject to contrary agreement by the parties.

6 Some confusion was noted in some answers on the differentiation between employer-employee relationship with that of principal-agent. As a general rule, vicarious liability only arises in the case of the former.

6. Fully explain what you understand by all of the following:

- (a) Advance freight
- (b) Pro-rata freight
- (c) Lumpsum freight
- (d) Deadfreight

This was quite reasonably answered. Any criticism towards answers here relates to the fact that they did not include a consideration of the effect for each of the four types of freight. Advance freight was confused for just a method of payment – ignoring its effect on whether it is refundable for non-delivery and where risk lies; payment of advance freight does not depend on delivery. Pro-rata relates to payment on the basis of quantity of cargo either loaded but more usually delivered. In such cases it is usual that dead freight may not be payable.

7. X Shipping Ltd. charter their vessel to Y Chartering Ltd. The vessel is to load 20,000 tons of steel plates from Piraeus, Greece and to proceed to the U.S. East coast where the cargo will be discharged. She arrives at the loading port and her Master tenders a notice of readiness. A few hours later the vessel berths and it is found that her cargo holds need cleaning before loading can commence.

The vessel eventually loads 18,000 tons of steel plates and sails for the U.S., the Master having signed a clean bill of lading. The bill of lading was backdated to the day the vessel berthed at the request of the shipper who offered a letter of indemnity to the shipowner.

The vessel proceeds to Bilbao, in Spain, where she loads more cargo and takes on bunkers.

On arrival at the port nominated by the charterer in the East U.S., the hatches are opened to commence discharge but it becomes apparent that the steel was over-stowed by some vehicles loaded in Bilbao. This does not allow Y to have access to the steel, and a delay occurs as a result of removing the vehicles.

Identify and critically discuss the legal issues arising from this scenario from the point of view of the shipowner and the charterer.

Overall this was quite reasonably answered. Most thought that 'due dispatch' was the more serious breach, only a few identifying a potential deviation. Even answers that did identify a potential deviation, failed to put forward its effect on, e.g. contractual freight, or loss/damage to goods following deviation, or exception clauses or general average. Interestingly, a couple of candidates mentioned that Spain had ratified the Rotterdam Rules, which is correct. However, the rules are not yet in force as they have not been ratified by the required number of countries, nor was there an indication that Y Chartering Ltd., Piraeus' cargo would be subject to any other carriage regime. Only a couple of answers hinted to possible unseaworthiness of the vessel in stopping to take bunkers.

8. Explain the advantages associated with arbitration outside the Court system. Why would a party not wish to resolve a dispute through arbitration?

This was a well-answered question overall. Numerous answers mentioned as a disadvantage of arbitration that 'there is no jury'; at least in the English civil law Court system it is not expected to have a jury (except in cases of defamation). A frequent point put forward in answers was that arbitrations are more 'flexible' as arbitrators are not bound to follow Court's previous decisions; this is not true – arbitrators are bound by Courts' previous decisions (precedent) as much as Courts themselves are bound by them.

Some candidates suggested that a reason for a party not wishing arbitration but instead to proceed before Courts is if the party has a very strong case; this is not a very tenable view.