



EXAMINER'S REPORT

MAY 2019

SHIPPING LAW

Question 1.

On a Friday, a vessel while loading her cargo of grain was arrested for non-payment of crew wages. By Monday another creditor of the vessel had joined the action, claiming non-payment for repairs carried out while the vessel was dry-docked a year before. The creditors are convinced that their claims are sustainable under UK Laws, but not sure about where the liens ranked. Discuss the procedures to be followed before the admiralty and the ranking of the liens, supporting your answer with suitable case law examples.

A problem question where students are expected to be familiar with UK laws with regards to arrest of vessels (Arrest Convention/Merchant Shipping Act) and maritime liens/equitable liens (ranking, etc.), and the procedures involved before the UK Admiralty courts.

To get a pass, it is essential that the student presents a detailed discussion on the *in rem* procedure to be followed before the Admiralty courts to effect an arrest with reference to the facts at hand is to be presented, focussed on maritime liens and where the two claims (unpaid crew, and the repair dues while dry-docked) rank. Reference is to be made to Sections 20 & 21 of the Senior Courts Act 1981 with regards to arrest, together with relevant case laws. It is to be noted that the UK is a signatory to the Arrest Convention 1952, and not 1999.

The student is expected to use both case laws and examples in the discussions – as cited in the study material/ text book and student's own choice. Case laws: ***The Bold Buccleugh [1851]*** ***The Tolten [1946]***, etc. Additional marks will be awarded for use of student's own choice of relevant case laws and answers that are well structured, dealing with the issues individually and critically.

Question 2.

Discuss the main functions of a bill of lading using examples of the relevant case law to support your answer.

This question requires the student to be familiar with the important role of the bill of lading in sea transport and its major functions.

To get a pass the answers presented should contain a detailed discussion on the three important functions of the bill of lading, namely, that of **i.** being a receipt for the goods received, **ii.** being the best evidence of contract of carriage and **iii.** Being a document of title for the goods carried. Quality of illustrations, both case laws and examples cited in the study material/ text book and

student's own choice. Case Laws: *Lickbarrow v Mason (1794)*; *Pyrene v Scindia (1954)*. *Smith v Bedoine* (receipt). Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Question 3.

Article IV bis (2) of the Hague-Visby Rules, provides that if a claim is brought against the servants and agents of the carrier in relation to cargo claims, the servant and agents are entitled to the same defences as are available to the carrier himself, and that such defences are not available to independent contractors? Using suitable case law examples, discuss how a stevedore can invoke the above provision to their advantage.

A very legal question, the student is required to be familiar with Article IV *bis* (2) of the H-Visby Rules. The students are expected to be familiar with the provisions of the H-Visby Rules, and in particular Article IV bis (2) and the Himalaya Clause; and also, the issue of privity of contract, *i.e.*, the stevedore not being a party to the contract of carriage as contained in the B/L.

The question presents a good opportunity for students to showcase their knowledge and understanding of Article IV *bis* (2) which is widely used. A good answer should contain a detailed discussion on Article IV bis (2) of the H-Visby Rules, which effectively incorporates the Himalaya Clause into the Rules. Discussions should include i) how Article IV bis introduces the entitlement of the carrier to defend themselves, or to limit their liability whether the action brought against them is founded in contract or tort – within the parameters of the Rules, and ii) the issue of privity of contract, which has seen the carriers inserting a 'sub-contracting and indemnity clause' in their B/L extending their benefits (defences, limitations of liability) to their stevedores. Discussions should refer to 'The Himalaya' case, and how the legal principles handed down in the case came to be extended and incorporated in the H-Visby Rules.

Quality of illustrations, both case laws (*The Himalaya [1954]*; *Midland Silicone Ltd v Scrutton Ltd [1961]*) and examples – as cited in the study material/ text book 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 4.

Compare and contrast the Shipowners' duty to provide a seaworthy vessel under the common law and the Hague-Visby rules. What consequences are there for a ship-owner under the Hague-Visby rules if they fail to provide a seaworthy ship and there is damage due to an accidental fire?

A straight forward legal question on the shipowners' duty to provide a seaworthy vessel under two different regimes. The students are to be familiar with the duty of the shipowner to provide a seaworthy vessel, both under common law and the Hague-Visby Rules.

To get a pass mark, the students are to engage in a detailed discussion to be carried out on the differing obligations of the shipowner to make the vessel seaworthy both under common law and the

H-Visby Rules - the difference being under the Rules the obligation is one of 'due diligence'. The students are to refer to the relevant provisions of the H-V rules, viz., Article 3 R 1, which notes that the carrier 'shall be bound before and at the beginning of the voyage to exercise due diligence.'

Quality of illustrations, both case laws and examples cited in the study material/ text book and student's own choice. Case Laws: ***McFadden v Blue Star Line [1905]***; ***The Eurasian Dream [2002]***; ***The Aquacharm [1982]***. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Question 5.

Discuss in what circumstances a claimant would contemplate the following actions before the Admiralty Court in England to obtain a freezing order (formerly known as *Mareva* injunction).

An essay type question, where the students are to be aware of the unique procedure of granting a freezing order/injunction before the English Admiralty Court (*in rem* jurisdiction/ proceedings). This procedure is often used to secure a debt, before the creditor seeks to move their valuables out of the jurisdiction.

The answers presented should contain, without being descriptive, a detailed discussion on i. granting of "freezing order" 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.

Quality of illustrations, both case laws and examples cited in the study material/ text book 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.

Question 6.

A Vessel was time chartered for 12 months plus or minus 15 days. The off-hire clause of the CP read as follows: '*...in the event of loss of time from deficiency of men or stores, fire, breakdown or damages to hull, machinery or equipment, grounding, detention by average accidents to ship or cargo, drydocking for the purpose of examination or painting bottom, or by any other cause preventing the full working of the vessel, the payment of hire shall cease for the time thereby lost; and if upon the voyage the speed be reduced by defect in or breakdown of any part of her hull, machinery or equipment, the time so lost, and the cost of any fuel consumed in consequence thereof, and all extra expenses shall be deducted from hire.*' While cargo was being discharged, the runner wire in one of the cranes snapped, which resulted in slowing down the operations. While the technicians were attending to the crane, the engine broke down, which left her powerless. Once in full operation, she was able to complete discharge, and after a brief delay was able to proceed to the load port. The charterers have now proceeded to set the vessel off-hire for 2 days, on the grounds that she was not fully operational for the said period and have deducted 2 days hire charges from the following month's hire payment. The shipowners intend to challenge the above

deductions. Advise the ship owners using suitable case law examples to support your answer.

What is presented here is a problem scenario, set against the backdrop of a time charterparty operation. The student is expected to be familiar with time charterparty operations, when a vessel could be deemed off-hire and the corresponding legal position.

The students are to carry out a detailed discussion to determine if the vessel under time charter could be set on off-hire under the circumstances, and if the charterers were legally justified in deducting sums from the following months' hire payments?

Quality of illustrations, both case laws and examples cited in the study material/ text book and student's own choice. Case Laws: *The Doric Pride* [2006]; *The Clipper Sao Luis* [2000]; *The Berge Sund* [1993]; *The Rijn* [1981]; *The Aquacharm* [1982]. Answers are to be well structured, dealing with the issues individually and critically using relevant case laws and references.

Question 7.

In 'The Timna' it was observed that "It is a good working rule...to give Notice of Readiness and to go on giving such notices in order that, when later the lawyers are brought in, no one shall be able to say; "If only the Master had given Notice of Readiness, laytime would have begun and the Owners would now be able to claim demurrage". Discuss with particular reference to a) when laytime starts for both port and berth charterparties and to case law, and b) what happens if the Notice of Readiness is invalid.

An essay type question where the student is to be familiar with the principles laid down under *The Timna* in relation to the issue of NOR, and with the practice/legal requirement of issuing an NOR in a voyage charter party. The student is to present a preliminary discussion on the importance of giving notice of readiness in a voyage charterparty contract and the general principles attached to it.

The student is expected to present a detailed discussion on the legal requirement of issuing an NOR in a voyage charter, with particular reference to the case in hand, namely *The Timna* [1971], and the reasons for the observation of the court as above.

Additional marks are awarded for answers with good structure, critical analysis while dealing with the issues individually and critically using relevant case laws and references.

Question 8.

Discuss the salvor's entitlement to reward under Article 14 or SCOPIC of the Salvage Convention 1989 and his level of remuneration in comparison with a reward under Article 13. Use examples to support your answer.

The student is required to be familiar with the key provisions of the Salvage Convention 1989, and in particular Article 13 & 14. Being a legal question, the answer is to contain a detailed discussion of the key provisions, *i.e.*, Articles 13 & 14. The discussion is to focus on the salvor's entitlement to reward under Art 14 and the level of remuneration in comparison to a reward under Art 13, and demonstrating a clear understanding of the reasons behind the introduction of the provisions. Also, the discussion is to include a coverage of the 1989 Salvage Convention, which encourage salvors to engage in saving, or minimising the damage done to environment and seek an up-lift on their salvage remuneration, and how it seeks to reward the salvors for such actions.

Reference is to be made to the landmark House of Lords decision in ***The Nagasaki Spirit (1997)***, where problems in the drafting of the Convention were also identified, besides the above highlighted points of law. Additional marks will be awarded for use of student's own choice of relevant case laws (not identified above); and answers that are well structured, dealing with the issues individually and critically.