



SHIPPING LAW

INTRODUCTORY REMARKS

Overall, the scripts presented this year for marking demonstrated a good degree of understanding of the legal principles taken up for discussion. Question 6 was the most popular one this year, with 90% students answering the same. The least popular one was question 8 with around 25% students choosing to answer.

This year we see an increase in number of students scoring marks of over 60% and over 70%, and a decrease in the number of failures.

1. A cargo claim arose in relation to the vessel Sea owned by Company A. Company A then sold the vessel Sea and bought the vessel Water. The vessel Water had an incident and was salvaged successfully. Please advise the cargo claimants and the salvors whether they can arrest either the vessel Sea or Water by reference to statutory provisions.

This question was not a popular question. Here, the candidates were expected to be familiar with the UK Admiralty Court procedure and the 1982 Arrest Convention for the purposes of enforcing a maritime claim against a 'sister ship'. Those who fared above average had presented a good answer, using case laws in their discussions to demonstrate a good understanding of the law. Students who failed to answer this question did not demonstrate a clear understanding of the law relating to 'sister ship' arrest.

2. Answer both parts:

(a) Explain the rules regarding limitations of liability, and when shipowners can limit their liability.

(b) What conduct will bar a person's right to limit their liability?

The candidates were expected to be familiar with the concept of 'Limitations of Liability' and the 1957 and 1976 Limitation Conventions. In the first part, the candidates were asked to carry out a detailed discussion on the rules relating to limitations of liability and when a shipowner was entitled to limit his liability under the two conventions. In the second part, the candidates were asked to discuss the conduct that would bar limitation under both the 1957 and 1976 Limitation Conventions. Those who fared above average had presented a good answer, using relevant case laws in their discussions demonstrating a good understanding of the law. Students who failed to answer this question did not demonstrate a clear understanding of 'limitation of liability' and conduct barring the right to limit liability. The overall performance of the candidates was good.

3. Why would parties choose to arbitrate rather than resorting to the courts? Include in your answer references to the different types of dispute resolution offered by the London and New York Associations of Arbitrators?

The candidates were expected to be familiar with arbitration and other alternates to adjudication. The candidates were to present a detailed discussion on the advantages of resorting to arbitration as opposed to adjudication. The discussions were to be focused on:

- a) the benefits of using arbitration in a highly commercial environment, where time is the essence and
- b) the different types of dispute resolution offered by the London and New York Associations. The performance of the candidates on this question could be summarised as being good.

4. Compare and contrast a through bill of lading with a combined transport bill of lading.

Here, the candidates were expected to be familiar with bills of lading and their different formats used in sea transport operation and combined transport operation. The candidates were to present a detailed discussion on the two different types of bills of lading, namely, through and combined transport. The discussions were to be focused on

- i. key functions of the through and combined transport bill of lading,
- ii. the need for two different formats which arise out of the difference in the mode of operation, and
- iii. the differences in functions of the two. The performance of the candidates on this question was very satisfactory.



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5. The SCOPIC clause was introduced on 1st August 1999 following lengthy negotiations between the International Salvage Union, the P&I Clubs, shipowners and property insurers. What is the SCOPIC clause and does the SCOPIC Tariff benefit the salvors?

The candidates were expected to be familiar with the SCOPIC clause and how it was introduced following the opinion expressed by the House of Lords in The Nagasaki Spirit case. They were also to carry out a detailed discussion on the objectives and salient features of the SCOPIC clause, the SCOPIC tariff, how it has been periodically increased since its introduction, and if and how it benefits the salvors in certain circumstances. The performance of the candidates on this question was good.

6. Answer both parts.

Using suitable examples explain:

(a) Why a maritime lien is classified as a 'privileged claim'

(b) What advantage maritime lien has over other types of lien.

The candidates were expected to be familiar with the different types of liens, in particular with maritime liens. The candidates were to carry out a detailed discussion on how maritime liens arise and the benefits flowing therefrom. The discussion was to include how maritime liens are preferred over other liens, and viewed in admiralty, and referred to as 'privileged claims' in the enforcement of maritime claims. The overall performance of the candidates attempting this question was good.

7. What are the advantages of the in rem procedure as against the in personam procedure? What are the aims of the in rem procedure? Discuss the UK statutory provisions which set out the in rem procedure.

The candidates were expected to be familiar with *in rem* procedures before Admiralty courts and *in personam* claims before commercial courts. The candidates were to carry out a detailed discussion on the aims of an *in rem* action and what is sought to be achieved, followed by discussions ship arrest before the admiralty courts in the UK to enforce a claim arising out of salvage operations and cargo claims. Students were also expected to include in their discussions the relevant statutory provisions which set out the *in rem* procedure in the UK. The overall performance of the candidates was good.

8. The Athens Convention (Merchant Shipping Act 1995) has a significant impact on passenger claims. Discuss with reference to the carrier's liability and the right to limit liability.

The candidates were expected to be familiar with the Athens Convention relating to carriage of passengers and their luggage by sea, and the reasons for the introduction of the Convention. The candidates were to carry out a detailed discussion on the aims, objectives and the important provisions of the Athens Convention. Discussion was to focus on the duties, obligations and liabilities of the carrier to the passengers and their baggage by sea, and how the Convention has set a high standard in the carriage of passengers by sea. The overall performance of the candidates was satisfactory.