



## ICS Examiner's Report

### LEGAL PRINCIPLES IN SHIPPING BUSINESS 2012

#### **INTRODUCTORY REMARKS**

Overall the standard displayed was fair, given the objectives of the examination, with over half of the candidates displaying competence in identifying legal problems.

Both the essay and problem type questions were answered reasonably well by a large number of candidates, with a clear and well-informed presentation from a significant number of candidates. Legibility and tidiness was fair in the majority.

The upward trend in so far as candidates' examination performance is concerned continues. This year's results show further improvement over last year's overall result.

Questions 5, 1 and 3 were the most popular ones, whilst questions 2, 5 and 8 were the most successfully answered ones.

#### **Question 1 – Seaworthiness & Deviation**

A straightforward essay type question on the two implied terms.

Not many candidates were aware that 'seaworthiness' and 'no deviation' under common law are implied terms.

Not much discussion on either of these terms may be excluded under common law.

Quite a few answers were unclear as to the meaning of 'contract of affreightment'.

#### **Question 2 – Hague/Hague-Visby & Hamburg Rules**

This was the best answered question in the examination. Most candidates were also aware of the Rotterdam Rules.

### **Question 3 – Time Charter - Safe Port & Off-Hire**

This was generally not well answered. Apart from a couple of good answers which put forward *The Dagmar*, the rest of the answers ranged from negligence of the port authority to an Act of God. It was indeed surprising, given the clear facts of the scenario, that a number of candidates came to the conclusion that the strong swell was 'unforeseeable', or an 'adverse weather phenomenon'.

Only one answer considered that if on the due date for hire payment the vessel is 'off-hire', the charterer's obligation to make payment of the next monthly instalment of hire may be suspended until immediately before the vessel is again at the charterer's service (*The Lutetian*). In the third part of the question a large number of candidates instead of concentrating on what is the generally accepted test for most 'off-hire' clauses, put forward time lost, or damages issues. If the vessel is able to discharge (that being the *immediately required service*) but unable to sail due to a defect or repairs but this (not being required at that time) the vessel will be on-hire (*Hogarth v. Miller*)

### **Question 4 – Time Charter – Payment of Hire & Redelivery**

A reasonably well answered question. It was good to see a mention of the possibility of an 'anti-technicality' clause in the answers. However, the facts did not indicate its inclusion, and a number of candidates avoided addressing the facts, feeling safer in talking about 'anti-technicality' clauses.

Most were not aware of the Court's view that a banker's draft might be equivalent to 'as good as cash' (*The Chikuma, The Georgios C.*)

On the facts, payment was to be made '30 days in advance...'; surprisingly for candidates prepared to deal with laytime and demurrage calculations, that some queried the meaning of '30 days'. Similarly to laytime/demurrage, it means consecutive days including Sundays and holidays (*Nielsen v. Wait*).

### **Question 5 – Arbitration & General Average**

The most popular question and reasonably well answered overall. One of the points that should be stressed is that general average requires these elements:

- i) a danger to the vessel, cargo and crew that is imminent and inevitable;
- ii) there is voluntary jettison for the purpose of avoiding the peril;
- iii) the attempt to avoid the peril must succeed.

### **Question 6 – Agency Law**

This was the least successfully answered question. Nevertheless, there was phenomenal support for Marion, the shipbroker, in the answers. Any price up to \$100 seemed to be interpreted that Marion would be justified fixing even at \$1!

There seemed to be a general misapprehension of the agent's duty to act in the principal's best interest. 'Best interest' is always defined by what the principal's instructions actually are. It is not a 'blank' duty; the agent does not undertake the principal's husbandry, i.e. doing whatever is best for the principal's well being. An agent must act within the confines of instructions and authority given. For example, where an agent is instructed to sell shares at a certain price and he fails to do so, by waiting for a higher price, he would be liable for not having acted as instructed (*Bertram Armstrong & Co. v. Godfray*).

In simple words, when the maximum price instructed was available it should have been fixed (as simple as that). Rumours, are not usually enough to justify a professional acting upon them.

Most questioned why the broker in part (b) scenario did not inform her principal about the 'rumours'. Not one attempted to ask the same question in relation to part (a) scenario, thereby omitting to consider the possibility of the principal not ratifying Marion's act and by implication her commission payment; instead principal's decision to adopt retrospectively Marion's act was taken for granted!

The reasons why a shipowner may not wish to make a larger profit on a fixture, could be countless, complicated, and not relevant to a shipbroker. The broker in such circumstances would be serving the best interest of his/her principal by communicating to him (without delay) the position, and letting his principal take the business/commercial decision (and risk). Indeed, in practice one finds that shipbrokers are almost continuously on the telephone to their principals not because they have a 'natural inclination' to talk, but because markets are changing rapidly and principals must take well-informed commercial decisions (and risks).

A common error was in the understanding of the implied warranty of authority; this relates mainly to the relationship between an agent and a third party. If an agent is not authorised to carry out a task but he nevertheless proceeds and completes it, he would be, in addition to any other remedies a third party may have against the principal (i.e. principal not proceeding with contract), liable to the third party for breach of the implied warranty of authority. It is not something that can be used by the principal against the agent.

### **Question 7 – IMO Conventions**

Well answered overall. A common error was that a number of answers considered Hague-Visby and Hamburg Rules to be IMO conventions.

**Question 8 – Hague-Visby & Hamburg Rules**

The examiner's comments for this question have been removed while we await clarification.