



EXAMINER'S REPORT NOVEMBER 2018

LEGAL PRINCIPLES IN SHIPPING BUSINESS

General comments.

Students were asked to display competence in identifying legal problems.

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

Answers should include authorities (i.e. cases and statutes), and follow a well structured line of thought.

1. Discuss, using examples, the different types of liens that can be used in charter-parties.

Clear explanations and examples need to be used to differentiate possessory and equitable liens. Answers need to explain how lien clauses in charter-parties deal with demurrage, deadfreight and damages for detention.

2. Describe and discuss the international conventions relating to oil pollution.

A common omission was the consideration of the two voluntary schemes (STOPIA and TOPIA). A frequent error was considering the U.S. Oil Pollution Act 1990 as a Convention.

3. Clean bills of lading are issued for the carriage of fresh mushrooms from the UK to Japan. On route to Japan, the vessel is grounded due to bad maintenance of the ship's navigational equipment.

The carrier tries to reach the shipper without success and therefore the carrier ships them on board another vessel, at extra expense, in order for the mushrooms to reach their destination without further delay. The goods arrived in Japan on time, and were received in good condition. Please advise the carrier's legal position.

Although the danger (bad maintenance of navigational equipment-lack of due diligence) was brought about by the carrier's fault, some concluded that the shipper would be liable to indemnify the carrier for the transshipment expenses.

It was apparent with some answers that the exercise of due diligence "before and at the beginning of the voyage" is misconceived; the expression refers to the time of exercising due diligence - it does not refer to the duration that the ship must remain seaworthy. Just because the vessel left port in a

seaworthy state, it does not mean that the carrier has exercised (adequate) due diligence to make the ship seaworthy to encounter the ordinary perils of the sea during the particular voyage. Indeed, it is this exercises by the carrier that shippers/consignees/bill of lading endorsees would question in the scenario. On the facts the determination of the test is made easier since it is stated that the grounding was "due to bad maintenance" of the particular equipment. In case that a general average is declared, the carrier will be precluded (excluded) from claiming a general average

4. Define BOTH of these, and explain how they are used and when:

(a) An action in rem.

(b) Ratification in the context of agency.

The first part of the question related to the arrest of ships. It is described as an action *in rem* (against the thing) as opposed to *in personam* (against the person). Most students adequately dealt with this part, mentioning that it is the ship itself that has incurred the debt or caused the damage.

The second part of the question related to agency ratification. If an unauthorised person contracts as an agent, the principal for whom he intended to contract may afterwards expressly ratify or adopt the contract, and thus be bound by it. Most dealt with this part adequately. A few, however, in giving examples erroneously considered that an agent who acts out of necessity needs principal's ratification.

5. Using case law, explain the legal implications of a Notice of Readiness.

Answers should explain what is a Notice of Readiness and its purpose.

Some students digressed into the issue of arrived ship. Although most answers included *The Happy Day* case, very few mentioned *The Agamemnon*

6. In a dock charter-party a ship will be arrived as soon as it gets into that dock. Even if it cannot reach a berth immediately and must wait, the cost of delay in reaching the berth will be for the charterers.

Discuss the effect of *The Stolt Spur* (*Stolt Tankers v Landmark Chemicals SA*) case on this statement.

In *The Stolt Spur* case, the Court held that if the owners in fact were using the ship for their own purposes, and it was therefore not available for cargo operations for the charterers, there was no reason why the charterers should pay compensation - in such circumstances the vessel would not be detained by charterers. Indeed, if a vessel is unavailable for cargo operations, this may be regarded in itself as preventing the loading or discharge of the vessel and therefore a cause of any delay in cargo operations; *The Johanna Oldendorff*, *The Maratha Envoy*.

Most answers only focused on *The Stolt Spur*, and did not use other cases to develop a line of argument in favour of the decision

7. Discuss why parties to a charter-party would agree to resolve their disputes by arbitration. What alternatives could be considered?

Most answers showed an understanding of the main advantages of reference to arbitration, e.g. finality of award, arbitrator's knowledge and experience in charter-party disputes, etc.

Answers to the second part of the question gave a brief outline of the alternatives to arbitration; mediation and conciliation.

8. Write a report discussing the main differences between the different sets of international rules applicable to carriage of goods by sea. What are the advantages and disadvantages of each?

Students were expected to deal, compare and consider, the three international conventions relating to the carriage of goods by sea (Hague-Visby Rules, Hamburg Rules, Rotterdam Rules).

Most answers included a few features of the two Rules, Hague-Visby and Hamburg. With Rotterdam Rules very few went beyond stating the reason of their existence/creation.