

INSTITUTE OF CHARTERED SHIPBROKERS

APRIL 2009 EXAMINATIONS

MONDAY 20 APRIL – AFTERNOON

LEGAL PRINCIPLES IN SHIPPING BUSINESS

Time allowed – Three hours

Answer any FIVE questions – All questions carry equal marks

1. The tanker *Archie* is chartered for the carriage of oil from “one safe port Ventspils” to Antwerp. The charter-party provides among other things for:
 - (a) minimum quantity of 90,000 metric tonnes to be loaded, and
 - (b) charterers to have an option to load/discharge via lightering/ship-to-ship transfer.

The ship is only able to load two thirds of her intended cargo because a severe storm shortly before her arrival silted up the channel, thus imposing a draught restriction. *Archie's* master therefore serves a Notice of Readiness stating that he does not expect to load a full cargo, but rather a maximum of approximately 67,000 metric tonnes. Therefore, although the charterers were able to tender for loading 90,000 tonnes of oil, the vessel loads only 67,000 metric tonnes.

Identify and discuss the potential claims *Archie's* owners may have in the above scenario.

2.
 - a) Analyse all the factors to be considered before the final resolution of General Average.
 - b) Discuss the purpose and the use of the so called “Amended Jason Clause”.
3. Under a carriage of goods contract evidenced by a bill of lading, John, the owner of the vessel *Lucky Lady* agrees to carry Jim's cargo, consisting of two pallets, to London. The contract of carriage and the bill of lading incorporate the Hamburg Rules.

The contract of carriage further states that the carrier (John) :

- a) is not liable for loss/damage arising from delay, and
- b) may bring an action against the shipper (Jim) within six years, and
- c) can limit his liability for loss/damage arising from unreasonable deviation to the amount of the freight charges.

Discuss and analyse the issues that arise from the above carriage provisions in the given scenario. Would it make any difference if the contract of carriage and bills of lading incorporated the Hague-Visby Rules instead?

- 4. a) Discuss the shipowner's/carrier's duty to provide a seaworthy ship under Common Law and under the Hague-Visby Rules.

b) The Master of a ship may be generally considered to be an agent of the shipowner. Explain and discuss the circumstances under which the Master may become an agent of the cargo owners.

- 5. John, a shipbroker, has been representing PB Ltd., a large ship owning company, for a number of years. PB Ltd. have always made the point that John is their shipbroker in so far as chartering their vessels is concerned. PB Ltd. have recently instructed John to conclude a contract (charter-party) for a specific cargo at a specific rate. However, as the particular market is quite buoyant, John delays the fixture and waits for a higher rate, which unfortunately due to an unexpected turn of the international economic climate never materialises.

Detail and explain the consequences of the possible courses of action PB Ltd. may take in the circumstances.

- 6. A shipbroker has concluded a contract (charter-party) on behalf of his principal (shipowner) for the chartering of a number of vessels. The Broker now realises that his principal (shipowner) is having financial difficulties to pay the agreed commissions, which amount to approximately £100,000. In negotiations the Broker and his principal agree that the Broker will accept the sum of £60,000 as payment of his full (£100,000) commissions claim.

On these facts, fully explain and discuss whether the Broker would be able to commence an action against the principal (shipowner) for the recovery of the balance, i.e. the sum of £40,000.

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

- 8. Discuss and analyse the tort of negligence in the Law of Torts.

THE INSTITUTE OF CHARTERED SHIPBROKERS

LEGAL PRINCIPLES IN SHIPPING BUSINESS (LPS)

2009

EXAMINER'S REPORT

OVERALL COMMENTS

The standard displayed was generally 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.

Compared to last year, this year's results indicate a considerable improvement of candidates' performance. In fact, this year's results represent an improvement over the last four years' overall results!

Questions 4, 7, and 8 were the most popular ones, whilst questions 7, 2, and 8 were the most successfully answered ones.

QUESTION 1 – DEADFREIGHT/SAFE PORTS

The scenario was based on *AIC Ltd v Marine Pilot Ltd* [2008] EWCA Civ 175. In this case the owners had two claims; one for deadfreight, and another for unsafe port. The Court of Appeal took the view that the Master tendered his NOR thereby giving a statement of the maximum quantity of cargo that could be loaded in the circumstances. Although the Charterers had tendered for loading 93,000 tons, they knew it would not be possible for the vessel to sail with this much cargo onboard. If the Charterers wanted to load a full cargo they had a choice. Load a full cargo and wait for the channel to be dredged or load 67,000 tons and top up by STS. Charterers had chosen neither. Therefore, the Court of Appeal allowed the dead freight claim to succeed and there was no need for the Court to consider the STS issue. Most answers identified and considered these issues, as well as the issue of safe port.

QUESTION 2 – GENERAL AVERAGE/AMENDED JASON CLAUSE

Despite the fact that this question, which was one of the most popular questions this year, was clearly and expressly split into an (a) and a (b) part, too many students just overlooked part (b) about the New Jason Clause. This obviously leads to the loss of otherwise 'easy' points. The concept of the New Jason Clause generally appears to be very badly known. Often the link with US law was not even made.

Most candidates had fair knowledge of the basic ingredients and mechanisms of general average, but many do not know or forgot to mention that general average is commonly governed by the York Antwerp Rules (YAR).

QUESTION 3 – HAMBURG RULES/HAGUE-VISBY RULES

It was surprising to observe that not one candidate recalled that the Hague-Visby Rules allowed “any reasonable” deviation. There was a tendency of answers to digress into the general differences of the two carriage regimes.

Quite a few candidates confused the application of Hague-Visby Rules, thinking that since the carriage was to London the Hague-Visby Rules would apply.

QUESTION 4 – SEAWORTHINESS/AGENCY OF NECESSITY

This was the most popular question in this year's examination, and was well answered overall. Most were aware of the absolute warranty of seaworthiness under common law, but quite a few were not accurate as to the Hague-Visby Rules' requirement of due diligence.

QUESTION 5 – AGENCY/AGENT'S OBEDIENCE TO INSTRUCTIONS

A straightforward question examining whether candidates have a grasp of agents' duties, and particularly on the issue where the agent has specific instructions.

Some confusion seemed to exist on the implied warranty of authority. This occurs when a person (agent) purports to act on behalf of someone else (principal) and induces another party (third party) into a contract on the basis that his authority is valid. Clearly not a relevant issue on the facts of the question.

A few answers suggested that the broker (John) delayed the fixture in an attempt to safeguard his principal's interest in good faith. If this was correct then brokers would be in a “win-win” situation by delaying “at will” principals' specific instructions, irrespectively of market rates!

One matter not touched upon by any answers is that on the basis of the broker acting in good faith, he should advise his principals to promptly fix their ship at as close a rate as they originally instructed him, due to the “unexpected turn of the international economic climate”. Such notification by the broker may also serve as a “shield” against any potential claim the principals may pursue later against him, particularly if they did not attempt to minimise their loss.

QUESTION 6 – BROKER'S COMMISSION, EQUITABLE ESTOPPEL

Not very well answered overall. Although some marks were awarded for the historic review of brokers' commission payment, the issue here was not that the shipowner/principal denied his liability for commission payment.

Quite a few candidates thought that the broker could not take action against the owners due to equitable/promissory estoppel; however, equitable estoppel does not stop the broker suing the owners. It would be used as a “shield” by the owners to resist the broker's claim for the balance payment.

QUESTION 7 – ARBITRATION/ADR

A straightforward open question requiring candidates to give a comprehensive account on arbitration and ADR. As expected most candidates fully expanded on issues pertaining the topic.

A few candidates were not aware of the 1996 Arbitration Act. Furthermore, there seemed to be an opinion that in the Court system there is an automatic right of appeal, whereas in arbitration there is not!

QUESTION 8 – NEGLIGENCE

A popular essay-type question, and a well answered overall. Most candidates identified that the law of torts is to be situated outside and opposed to the law of contract. This may seem obvious, but there were quite a few candidates who mistook the term 'negligence' for that of 'omission' and discussed and gave examples in the area of contractual liability. Likewise, there were a number of answers, giving the right theoretical explanation of what torts are, but giving examples related to contractual relations. This gives the impression that certain candidates learn (parts of) the syllabus by heart and do not really know or understand what they are reproducing at the exam.

CONCLUSION

It was striking to see how many candidates left badly needed marks uncollected by omitting to answer parts of questions or by wrongly reading or interpreting the question (typically questions 1 (time charter instead of voyage charter); 2 (b) (claims against the shipper instead of claims against the owner); 4 (b) agent of the ship owner instead of the cargo owners).

Candidates should remember that the policy in the Institute's examinations is for essay-type answers and a simple list of 'bullet points' will not gain high marks.

A final point. Failing to comply with the instructions on the cover page including such things as starting each question on a fresh page will not cost the candidate marks but why risk causing irritation?