

INSTITUTE OF CHARTERED SHIPBROKERS

APRIL 2009 EXAMINATIONS

TUESDAY 28 APRIL – MORNING

SHIPPING LAW

Time allowed – Three hours

Answer any FIVE questions – All questions carry equal marks

1. The SCOPIC clause was introduced on 1st August 1999 following lengthy negotiations between ISU (International Salvage Union), the P&I Clubs, shipowners and property insurers. What is the SCOPIC clause and does the SCOPIC Tariff benefit the salvors?
2. Discuss with reference to the relevant case laws
 - a) The significance of an “arrived” ship in relation to port and berth charterparties; and
 - b) How damages for detention differ from demurrage and the circumstances in which damages for detention can be claimed by a shipowner.
3. Discuss the three major functions of a bill of lading with reference to the relevant case laws.
4. The vessel 'Star' which was on a time charter, suffered engine problems whilst performing a voyage ordered by charterers. She put back towards the coast of Somalia and anchored in sheltered waters to undertake repairs. Whilst there, the vessel was attacked and held to ransom by armed pirates. The Owners paid the pirates a ransom two weeks later and then the vessel proceeded to the discharge port. The vessel arrived at the discharge port 20 days behind schedule. The Charterers do not wish to pay the Owners any hire during the various delays. Please advise the Charterers.
5. The vessel 'Sea Breeze' was chartered on a voyage tanker charter to carry fuel oil to Jamnagar, India. The Charterparty contained a cargo retention clause and a pumping warranty, which required the vessel to discharge its entire cargo within 24 hours. The Charterers ordered the vessel to wait outside Jamnagar for a week while they sorted out their Letter of Credit problems. Subsequently, the vessel was allowed to enter the port and the discharge of the cargo lasted 48 hours.

Following discharge a shortage of cargo was found and the sailing of the vessel was delayed as a result of the attendance on board of various surveyors who wished to investigate the cause of the cargo shortage.

Please advise the Owners as to their rights and remedies.

6. It is often stated that the incorporation of a “Himalaya Clause” into the bill of lading contract extends the defences that are available to the carrier to other parties. Discuss whether this is true with reference to the relevant case laws.
7. The Arbitration Act 1996 severely limits the right to appeal from an arbitration award. Discuss how the Act has affected the right to appeal with reference to relevant case laws.
8. A Freezing Injunction (formerly known as a Mareva injunction) may be used to obtain security for a claim. Discuss the English Admiralty Court procedure and practice for obtaining a Freezing Injunction.

THE INSTITUTE OF CHARTERED SHIPBROKERS

SHIPPING LAW (SL)

2009

EXAMINER'S REPORT

OVERALL COMMENTS

A good number of candidates scored over 60% and it is also worth noting that more candidates used case law in their discussion in this diet of exams than from last year

QUESTION 1 - SCOPIC CLAUSE

Although a not-so-popular choice amongst candidates, the marks achieved were quite reasonable. The question required the candidate 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 after lengthy negotiations. It should have been followed by a discussion on the salient features of the SCOPIC clause, SCOPIC tariff, how it has been periodically increased since its introduction, and if and how it benefits the salvors in certain circumstances. The majority of the candidates who attempted this question demonstrated a good grasp of the clause and its history. As this was not a problem question, no legal issues had to be discussed in the body of the answer.

QUESTION 2 - "ARRIVED SHIPS" & DAMAGES FOR DETENTION:

This was the third most popular question and candidates were to carry out a detailed discussion on **a.** the concept of an "arrived" ship in relation to port and berth charters, and **b.** the circumstances under which damages could be claimed for detention of the ship by the owners and how differed from a demurrage claim.

Candidates were expected to demonstrate clearly their understanding of the differences between the two from the operational and legal perspective. A majority of the candidates who attempted this question demonstrated a good grasp of the general issues surrounding arrived ships and also on damage for detention. Most of the answers presented were generally good, demonstrating a clear understanding of legal issues.

QUESTION 3 - BILLS OF LADING:

Candidates were to discuss in detail the three important functions of the bill of lading, namely, that of (a) being a receipt for the goods received, (b) being the best evidence of contract of carriage and lastly (c) that of being a document of title for the goods carried on board the vessel. Not all of the candidates who attempted this question had a good understanding of the legal functions of the bill of lading. Some answers were in the lines of being a narrative of how and when the bill gets issued and who issues it, etc. Two thirds of the candidates taking this question did not know all the three functions. Those who fared well demonstrated a good understanding of all three functions of the bill of lading and some even used case laws in their discussion. Those who performed below par presented answers which were too general and superficial, with no case laws in their discussions. Otherwise the performance of the candidates on this question could be summarised as being above average.

QUESTION 4 - PROBLEM QUESTION ON TIME CHARTERPARTY:

Here, the candidates were expected to be familiar with the position of law regarding time charter parties, especially those relating to off-hire and payment of hire. They were to study the scenario presented, discuss the legal principles and advise the charterers on the remedies open to them under the given circumstances. Two thirds of the candidates who attempted this question did come up with satisfactory answers, on the strength of their experience and background. Those who fared above average had put in the effort to identify and analyse the legal issues, and used case laws in their discussions to demonstrate a good understanding of the law. The performance of the candidates on this question could be summarised as being satisfactory.

QUESTION 5 - PROBLEM QUESTION ON VOYAGE CHARTERPARTY

Candidates were expected to be familiar with the position of law regarding voyage charter parties and the remedies open to the shipowner, especially where there is a cargo retention clause and pumping warranties in the charterparty and delays are caused in the cargo discharge operations. They were to study the scenario presented, discuss the legal principles and advise the owners on the remedies open to them under the given circumstances. The majority of the candidates who attempted the question did fare above average, identifying and discussing the legal issues arising for consideration. The performance of the candidates on this question could be summarised as being very satisfactory.

QUESTION 6 - “HIMALAYA CLAUSE”:

This was the least popular question and it expected the candidates to be familiar with the “Himalaya Clause” found in the bill of lading contract. Candidates were to discuss in detail how the “Himalaya Clause” worked in extending the same set of defences/ protection available to a carrier under the contract to that of a third party sub-contractor, and how the same worked when cargo claims are brought directly against in the sub-contractor. Those who fared well had a good grasp of the “Himalaya Clause” and used case laws in their discussions.

QUESTION 7 – THE ARBITRATION ACT 1996

Candidates were expected to be familiar with the changes brought about by the Arbitration Act 1996 and were to carry out a detailed discussion on the changes made to the arbitral process by the Arbitration Act 1996. In particular to the appeal provision which limits the right to appeal from an arbitration award. Some of the students who had performed well above the average grade had demonstrated a clear understanding of the Act of 1996 and the appeals provision introduced therein. On the other hand some candidates who failed in this question were awarded less than 5% as the answers did not contain the relevant information and did not demonstrate a clear understanding of the changes.

QUESTION 8 - “FREEZING” INJUNCTIONS

Here, the candidates were expected to be familiar with the grant of freezing injunctions (formerly “Mareva” injunctions) and the English Admiralty Court practice. They were to carry out a detailed discussion on (a) granting of “freezing injunctions” as security in certain actions before the Admiralty Courts, and (b) the practice of bringing an action *in rem* against the *res* as opposed to the person. Almost half of the candidates who attempted this question did come up with satisfactory answers. Those who fared above average had presented a good answer, using case laws in their discussions to demonstrate a good understanding of the law.