

INSTITUTE OF CHARTERED SHIPBROKERS

APRIL 2008 EXAMINATIONS

TUESDAY 29 APRIL – MORNING

SHIPPING LAW

Time allowed – Three hours

Answer any FIVE questions – All questions carry equal marks

1. The vessel 'Summer Song' was time chartered to EastWest Shipping for 8 months. EastWest Shipping defaulted in hire payments and the vessel was withdrawn while in its 6th month of the charterparty. The shipowners have now sold the 'Summer Song'. It now transpires that bunkers were supplied to the vessel while chartered to EastWest Shipping and the bunker receipt signed by the master of the vessel was addressed to *Charterers/ Owners/ Master*. Advise the bunker suppliers on their legal rights and remedies.
2. Under common law, the charterer is under an implied obligation to nominate a safe port under certain circumstances. In other words the port to which the charterer sends the vessel should be a "safe port". The English courts have held that "*what is a safe port*" purely depends on the circumstances of each case. Discuss the legal principles and 'circumstances' which courts take into account in ascertaining whether or not a port is safe.
3. Article III Rule 1 of the Hague-Visby Rules deals with the shipowner's obligation to make the vessel seaworthy. The common law also requires the shipowner to make the vessel seaworthy. How do they differ? Discuss the two with suitable case laws.
4. The shipowner's right to limit their liability is contained in the 1957 Limitation Convention and under the 1976 London Convention (as contained in the UK Merchant Shipping Act 1995). Discuss the changes made under the 1976 Convention and if it has helped the shipping industry.
5. Articles 13 and 14 of the Salvage Convention 1989 are seen as being pro-salvor and pro-environment. Discuss the accuracy of this statement with appropriate case laws and illustrations.

6. What are maritime liens and claims and how do they arise?
7. Discuss in what circumstances a claimant would contemplate the following actions before the Admiralty Court in England:
- a) Proceedings *in rem*;
 - b) Obtaining a Freezing Injunction (formerly Mareva injunction)

8. The vessel “Evening Song” was chartered on the NYPE Form 93 for 18 months, with amendments and rider clauses. The vessel was described as having 3 cranes and 5 holds. The amended charterparty contained a rider clause requiring the owners to give 36 hours notice before proceeding to withdraw the vessel in the event of non-payment of hire charges.

During loading operations one of the cranes broke down and the runner wire of another one snapped which caused considerable delays to the loading operation. The charterers were constrained to use a less efficient shore crane to complete the operations. They have placed the vessel off-hire.

The charterers have delayed the payment of hire while the vessel was *en route* to the discharge port. The owners are of the view that “delayed payment is no payment” and are intending to issue the charterers with a 36 hour notice.

Advise the owners:

- a) If the Charterers are entitled to put the vessel off-hire, and
- b) whether they are entitled to issue a 36-hour notice with the intention of withdrawing the vessel from the charterer’s service.

THE INSTITUTE OF CHARTERED SHIPBROKERS

SHIPPING LAW (SL)

2008

EXAMINER'S REPORT

QUESTION 1 – BUNKER SUPPLIER'S RIGHTS.

Although a not-so-popular choice amongst candidates, the marks achieved were not that bad. The question required the candidate to be familiar with the position of law regarding the time charter party operations, the supply of bunkers, ownership etc. and able to understand the legal rights of a bunker supplier when the vessel is under a time charterparty. The majority of the candidates who attempted this question demonstrated a good grasp of the general issues surrounding operations. However there was no effective analysis of the legal issues and only a handful of candidates managed to discuss the legal issues. On the whole the answers were rather too general and not suggesting the appropriate legal remedy for the unpaid bunker supplier.

QUESTION 2 - SAFE PORT OBLIGATION UNDER COMMON LAW:

This was a popular question among the candidates They were expected to explain the safe port warranty in charterparty contracts under common law and carry out a detailed discussion of the obligation and legal principles governing the nomination of a safe port by the charterer, its direct connection to the performance of the charterparty and how the courts have interpreted the said obligation. A majority of those who attempted this question demonstrated a good grasp of the general issues surrounding safe ports. Some candidates were totally oblivious to the safe port warranty in common law and went on to discuss issues which were purely operational in nature rather than being legal. With the exception of a few candidates, the answers presented were general and did not demonstrate a clear understanding of legal issues. In some cases there was little analysis of safe port even from an operational perspective which showed a lack of knowledge and understanding.

QUESTION 3 - SEAWORTHINESS UNDER COMMON LAW & HAGUE-VISBY RULES:

Candidates were expected to be familiar with the position of the duty to make the vessel seaworthy both under English Common law and The Hague-Visby Rules. They were to discuss in detail the legal principles behind the seaworthiness obligation under **i.** The Hague-Visby Rules, **ii.** How it differed from the English Common law position and **iii.** How the shipowner's duty of 'due diligence' is non-delegable. Most of the candidates who attempted this question had a good idea of making a vessel seaworthy from the operational perspective but only half of them knew and could differentiate between the position under common law and the Hague-Visby Rules.

Those who fared well demonstrated a good understanding of the legal position of the seaworthiness obligation and 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.

QUESTION 4 – LIMITATION OF LIABILITY:

Candidates were expected to be familiar with the two limitation conventions of 1957 and 1976, their objectives and role in the shipping industry and discuss their provisions with particular emphasis on the changes made under the 1976 Convention and if it had helped the shipping industry in any way. Those candidates who fared well showed a good understanding of the legal position others showed a reasonable grasp of the position of the law. A majority made reference to the important changes brought about by the 1976 Convention and its benefits to the industry.

QUESTION 5 - SALVAGE CONVENTION 1989:

This was the least popular question where candidates were expected to be familiar with the provisions of the 1989 Salvage Convention. A detailed discussion was to be carried out on the changes brought about by the 1989 Salvage Convention and the Articles 13 and 14 were introduced with a view to encourage salvors to engage in “saving or minimising the damage done to environment”. Those who did well, discussed the relevant provisions of the Convention, its importance and the role of the LOF.

QUESTION 6 - MARITIME LIENS AND CLAIMS:

This was the most popular question which expected the candidates to be familiar with the concept of maritime liens and maritime claims and requiring a detailed discussion to be carried out on **i.** *maritime liens* and *maritime claims*, **ii.** The law (Supreme Court Act) and Admiralty court practice in the United Kingdom, and **iii.** Where the claims mentioned would rank. Those who fared well had a good grasp of the maritime liens and claims and used case laws in their discussions. Those who performed below average did not have a grasp of the general concept of liens nor about the Admiralty Court practice in the United Kingdom. Sadly, no case laws were discussed.

QUESTION 7 - IN REM AND FREEZING INJUNCTIONS:

Candidates were expected to be familiar with the Admiralty practice of bringing an *in rem* action and the grant of freezing injunctions. The candidates were to carry out a detailed discussion on the bringing **i.** an *in rem* against the *res* as opposed to the person and **ii.** the grant of a “freezing injunctions” as security in certain cases. Those candidates who did well above average used case laws in their discussions.

QUESTION 8 - TIME CHARTER PROBLEM:

Here, the candidates were expected to be familiar with the position of law regarding time charter parties, especially those relating to off-hire, timely payment of hire, and *anti-technicality* clauses. They were to study the scenario presented, discuss the legal principles and advise the shipowners on the remedies open to them under the given circumstances. Almost half 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.

CONCLUSION

Disappointingly, only a third of candidates who took this exam used case laws in their discussion which limited the marks that could be won - this is, after all, a law paper.