

INSTITUTE OF CHARTERED SHIPBROKERS
LEGAL PRINCIPLES IN SHIPPING BUSINESS (LPS)
2007

EXAMINER'S REPORT

OVERALL COMMENT

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.

A general criticism of the answers is that they lacked any inclusion of authorities (i.e. cases) even in the landmark cases..

Compared to last year, this year's results indicate an overall improvement of candidates' performance.

Questions 2, 5, 7, and 4 were the most popular ones.

QUESTION 1 – SAFE PORTS

Reasonably answered. This was an essay type question, requiring candidates first, to describe the operation of the doctrine of safe port and secondly, to show a good understanding of the practical issues pertaining the doctrine. The continuous nature of the warranty, together with a discussion on the practical difficulties associated, for example, with the charterer's nomination of alternative port(s). Generally, answers lacked the use of authorities, and were quite unstructured.

QUESTION 2 – FREIGHT-PAYMENT OF HIRE-DEMURRAGE-SEA WAYBILLS

This was the most popular question in this year's examination.

- (a) A descriptive answer of the two types of freight was expected. However, a large number of candidates omitted to consider variations and their effects on the parties (shipper, charterer), e.g. where lump sum freight is payable in advance.
- (b) As expected most candidates dealt with such clauses, explaining that they allow the charterer a period of grace to rectify any non-payment of hire before the ship is withdrawn by the owners. However, only a couple of answers involved use of authorities, e.g. *the Laconia, the Afovos*.
- (c) Well answered overall. Generally, all time lost after the expiry of laytime, including Sundays, holidays, or strikes, would count and be payable as demurrage. This is, of course, subject to contrary agreement by the parties.

(d) Transferability was the main theme of the answers here. Some confusion seemed to reign in relation to whether a seaway bill is a document of title. No mention was made of the Carriage of Goods by Sea Act 1992 and its inclusion of seaway bills.

QUESTION 3 – GENERAL AVERAGE CLAIMS

Not very well answered overall. Almost half of those attempting it, failed to identify and consider the possibility of general average, and instead concentrated on the reasons for the vessel's grounding. About half of those who identified general average, failed to include ship's machinery damage.

A consideration for the reasons of the ship's grounding should follow the exposition of the above points, which, in turn, may (or may not) have affected the ship's machinery damage claim to general average.

QUESTION 4 – I.M.O. CONVENTIONS

Well answered overall. S.O.L.A.S. was one of the more popular choices, with MARPOL being the other favourite. The phasing out of single-hull tankers, the ISM Code, and STCW, were also mentioned in the better answers.

QUESTION 5 – HAGUE-VISBY AND HAMBURG RULES

Overall, a reasonably well answered question. A straightforward question examining whether candidates have a sound grasp of the differences between the Hague-Visby and Hamburg Rules.

Some errors included the explanation of the abbreviation SDR which stands for "Special Drawing Rights" and not "Standard Drawing Rights".

Some slight confusion was noted in respect of deck cargo; in order for the Hague-Visby Rules not to apply the particular cargo must have been agreed between the carrier and the shipper to be carried on deck, and such cargo is in fact carried on deck.

QUESTION 6 – POSTAL RULE AND FORMATION OF CONTRACT

Not well answered overall. A few answers wrongly considered that by limiting the time during which an offer is valid for acceptance would render ineffective the postal rule.

Some answers showed complete misunderstanding of what is "consideration", by suggesting that in situation (a) there was no consideration by Jim (the charterer). It was most worrying to see the confusion of words such as "confirmation".

In both situations John (the shipbroker) was not expecting any "confirmation". He was expecting a reply which could have been either positive or negative. The word "confirmation" has generally no particular significance (see per Lord Justice Dyson in *Pickford Ltd. v. Celestica Ltd.* [2003] EWCA Civ. 1741 at [22]).

In situation (b) most candidates failed to identify the lack of consideration in the agreement. In simple words, what if the following day Jim (the charterer) came back to John (the shipbroker) only to tell him that his boss decided not to accept the offer? John's acceptance to Jim's offer not to offer the fixture to anyone else, was not supported by any consideration. Quite a few answers suggested in situation (b) that John (the shipbroker) was in "breach of his contract" without specifying which contract that was; was it the one agreeing to extend his offer? If so, how come this is enforceable? Marks were awarded in both (a) and (b) for answers which criticised and considered matters of shipbroker's conduct and ethics.

QUESTION 7 – VICARIOUS LIABILITY

Reasonably well answered overall. As expected students fully expanded on issues pertaining the topic of vicarious liability. The short answer to the question is that the doctrine of vicarious liability does not transfer liability but rather provides an injured party/claimant with an additional defendant. *Adler v. Dickson (The Himalaya)* was generally used to illustrate the point of vicarious liability.

QUESTION 8 – CARRIAGE OF GOODS AND AGENCY OF NECESSITY

Reasonably well answered overall. It was quite disappointing to see that candidates had some difficulty identifying (a) the application of the Hague-Visby Rules, and (b) a situation where the master would become an agent of the cargo owners (as agent of necessity). Quite a few answers jumped to the conclusion that since the loss/damage was due to an excepted peril (negligent navigation/management of the ship), the carrier is not liable. This is incorrect; if the excepted peril was brought about by to the lack of exercising due diligence the carrier is liable. Clearly, a vessel would not be seaworthy (and the carrier has not exercised due diligence before and at the beginning of the voyage to make such ship seaworthy) if the ship is provided with navigational charts which are out of date. Therefore, John may allege that there was a breach of this obligation by Tankships Ltd., which resulted in the ship's grounding, and claim the loss he suffered from Tankships Ltd.