

THE INSTITUTE OF CHARTERED SHIPBROKERS

SHIPPING LAW (SL)

2007

EXAMINER'S REPORT

QUESTION 1 – FLAG OF REGISTRY

This question 1 was the least popular and the overall results were very poor with hardly any answers exceeding the pass mark of 10.

The question required, as a primary point, for the candidate to appreciate that the state to which the ship owning company belonged and the state of the ship's flag are two different things and both can impose different requirements on the vessel and its owners. Thereafter the candidate needed to discuss what could be the requirements imposed by the company registry and the flag registry and thus display an understanding of what constitutes a state/flag of convenience.

The vast majority of candidates did not answer the first part of the question because they did not understand the difference between the company registry of the company that owns the vessel and the ship registry where the vessel registers its flag. They seemed to think that the ship/flag registry also governs ownership and that they are one and the same. Naturally, this led to the answer being wrong and misguided for the most part. There was no effective analysis of the issues arising out of the registration of the ship owning company with the company registry, eg preparing accounts and anonymity. In fact, there was very little reference by the candidates to anonymity which can be very important to ship owners. Further, most of the answers were extremely short. This partly because candidates run out of things to say due to their wrong approach to the question which prevented them from considering a number of issues but also because they did not have sufficient knowledge to answer the question fully and in detail. This was one of those questions which was attempted because it appeared to be easy and a question to which everybody could say something because everyone is familiar with ship registration and flag registries. However, in order to score points the candidate was required to have more than just a general overall knowledge of flag registries and unfortunately most candidates did not have this knowledge.

QUESTION 2 – JURISDICTION FOR ARREST

One of the most popular questions and the quality of answers was generally average with a number of candidates scoring at or in excess of the pass mark

A somewhat technical question that required good knowledge of sections 20-24 of the Supreme Court Act 1981. Some easy initial points could be scored by mentioning the basics such as a reference to Admiralty jurisdiction, the Admiralty and Commercial Court and the Supreme Court Act 1981. Thereafter a second set of harder points could be earned by setting out in detail the provisions of sections 20 and 21. However, the biggest group of points, which could be easily earned because they did not require references to statute sections or case law but merely an understanding of the legal position relating to ownership when dealing with an arrest of the vessel were concentrated around the issues of “the relevant person”, beneficial ownership, piercing the corporate veil, sister ship and maritime liens.

Most candidates were able to pick up the initial set of easy points mentioning the basics. Thereafter very few picked up any of the difficult points that required detailed knowledge of sections 20 and 21 and reference to statute sections. In respect of the last set of points, the majority of candidates scored some easy points by discussing the maritime lien, listing the maritime liens under English Law and by stating that the lien is not lost upon the sale of the vessel. A number of candidates were able to pick up a few points by discussing the idea of sistership arrest but almost none proceeded to discuss in detail the concept of the relevant person. Overall, this was an easy question to score a pass mark but difficult to score high points.

A number of candidates went off on tangents by discussing liens in general and also *Mareva* injunctions. This did not cost them any points but neither did they receive any points. However, indirectly the candidates did lose out because they were under the impression that they had provided a substantial answer when in fact their answer on the issues which the question demanded from them was in fact very brief and they did not score as many points as they could have if they had spent their time concentrating on answering what was being asked of them.

QUESTION 3 – LIABILITY FOR COLLISIONS

The quality of answers was somewhat average with the majority of candidates scoring below the pass mark. Those few that scored in excess of the pass mark though, scored very highly.

The question required the candidate to explain that in English law a claim for a collision is a claim in *tort* and the candidate needed to briefly set out the components of a *tort* claim with a brief reference to the basic case law on collision claims in *tort*. This would enable the candidate to score some easy initial points. Thereafter the question itself guided them to write about the collision regulations. Easy points could be scored by setting out their purpose and practical significance and also by briefly setting out the context of a few of the regulations. Thereafter the candidate was again guided by the question to talk about the collision convention.

A number of easy points could be scored by briefly going through the historical development of the law and the convention in respect of the issue of apportionment of blame.

The majority of candidates picked up a few of the basic marks from the initial section where a brief analysis of the tort claim was required. Thereafter, those candidates that dealt with the Collision Regulations and also with the Collision Convention scored very highly because there were easy points to pick up in both sections. In the Collision Regulations section simply by stating the purpose of regulations and how they assisted the Court in a dispute would score you half the points of the section. Thereafter, if reference was also made to some of the regulations then extra points were scored above the half way mark without the need for extensive knowledge of sections and cases. In respect of the Collision Convention, again by simply mentioning the purpose of the convention, the state of the law prior to the convention and what is provided for now in section 1 of the convention would score you more than half the marks for the particular section. The candidates that failed to pick up these easy points either confused and joined the collision convention with the collision regulations or they simply knew that at an extremely shallow level and therefore they could not even pick up the basic points.

Several candidates also proceeded to speak about the position in the U.S. and Both to Blame Collision Clauses. At first this might appear as an innocent tangent for which credit should be given but the question specifically makes reference to English law, precisely so as to hint to the candidates that they should not spend their time on the U.S. position.

QUESTION 4 – LIMITATION OF LIABILITY

One of the most popular questions but the responses received were for the most part very average and the majority of the candidates scored below the half way mark. It was a simple question that simply required an analysis of the 1976 (London) Convention on Limitation of Liability. The candidates needed to be well versed with the main articles of the convention and its context. Further, the candidates needed to have some particular in-depth knowledge surrounding Article 4 of the convention.

However, the simplicity of the question created problems for those candidates who attempted it and had only some cursory knowledge of the convention. Their lack of in-depth knowledge meant that they did not think to deal with some of the issues that an answer required, such as article 4 or who may limit liability. This resulted in a loss of points. Further, these candidates made none or very little reference to cases or particular articles of the convention and so again they missed points. On the other hand, those who had prepared this topic well were given an easy opportunity to display their knowledge and score highly.

Another issue which arose with the question is that some candidates proceeded to talk about limitation under the Hague/Hague-Visby rules but the question was about limitation under English law. The only consequence for candidates who committed this mistake was the loss of their time and no penalty was imposed. On the contrary, if a good effort was made, some points were credited.

QUESTION 5 - GENERAL AVERAGE

A fairly popular question with most candidates scoring average marks around the pass level.

The question required the candidates to set out the pre-requisites which must be in place in order for a shipowner to be entitled to claim a General Average contribution. The question gave wide breadth to the candidate to discuss the topic of General Average but it needed to be with reference to case law in order to score maximum points because the question specifically demanded references to case law; thus candidates who could not provide case law could not expect to score highly. Finally, the question demanded that an example of a general average situation be provided. This was an easy opportunity for a candidate to score some marks, provided of course that they had understood the topic of general average.

The majority of the candidates that selected this question did not identify all the necessary components that must be in place in order for a claim for general average to be made or sometimes the candidate identified the component but he did not explain its meaning. Further, the vast majority of candidates did not refer to case law by name in support of the particular components that they were identifying. It was further noted that a number of candidates described the facts of a case while omitting to say the name of the case, but more importantly the candidates were not setting out the principle to be derived from the case whose facts they had just described. Nevertheless a number scored a passing mark on the question by simply listing a lot of the components of a G.A. claim. Finally, it is noted that nearly all the candidates followed the instructions of the question and provided an example of a G.A. situation. This was often the facts of a particular case which they could recall and which perhaps they had mentioned already in the answer. In any event, points were given for an example and invariably the candidates were awarded the full points for the example regardless of how complicated or simple the example was.

QUESTION 6 – TIMELY REDELIVERY UNDER TIME CHARTER

Those candidates which attempted this question fared poorly. The candidate had to consider the issues of breach of contract for late re-delivery, overlap, legitimate last voyage orders, implied time margins, and the rights of an Owner if illegitimate last voyage orders are given. The question raises a practical issue that requires a solution and therefore it should be treated as a problem question and not an essay. Thus the question required that the candidate offers a concrete answer to the problem at hand supported by references to case law. The references to case law are expressly requested by the question itself which means that they are necessary for the scoring of maximum points. However, simply because it is a problem question it does not mean that the candidate is entitled merely to give a brief answer without an explanation of the basic steps of his reasoning taking time to educate the reader on the surrounding issues.

The majority of candidates rushed into providing a short answer without much explanation as to their reasoning and above all without providing any analysis of the

issues that would have to be considered in order to be able to arrive at a solution. One of the key issues in all such cases involving the re-delivery of the vessel under a time-charter and whether the last voyage instructions are legitimate or not is the issue of whether the Court will imply any margin to the charterparty time limits for re-delivery. The wording of the clause appears to suggest that the Court will imply a margin of a few days beyond the 10 day extension provided for in the contract. Therefore, the initial voyage instructions of the Charterers are legitimate. This conclusion is contrary to that adopted by most of the candidates. However, when there was a further three day delay, the Charterers' orders became illegitimate. Further, most of the candidates did not refer to any case law and this obviously cost them points. In any event, if the candidates mentioned a sufficient number of key terms correctly or if they described the levels of assessing the damages correctly then it was possible that they could reach the pass mark

QUESTION 7 – DEMURRAGE OR DETENTION?

Although a popular question, the majority of candidates scored poorly.

This was a lengthy question which required the candidate's concentration while taking in the various dates and times and assessing the periods for which the Owners could claim compensation and in what form. The question wanted the candidate to discuss the topics of detention and demurrage. The question also aimed to test the candidates knowledge on the running of laytime in general and the various possible interruptions to laytime and demurrage. On the topic of laytime and demurrage the key issue on which a lot of points were concentrated, was the commencement of the running of laytime bearing in mind that an invalid NOR had been tendered by the Owners. It should also be noted that the question said "advise the Owner" which clearly signifies that the answer should be practical and also offer a solution instead of simply a range of options. The candidate is being thrust in the position of having to give a legal opinion to a client.

The vast majority of candidates picked up the fact that there was an initial period of detention for which the Owners could claim unliquidated damages. Thereafter, the calculation of the running of time became very haphazard among the candidates with almost no two answers being the same. In calculating the running of laytime and demurrage after the detention of the vessel, the vast majority of candidates did not factor in the 3 days and 6 hours for which the vessel would have had to travel to Lagos in any event, and so their time calculations were all confused. The majority of the candidates also picked up on the point of the invalid NOR, though the extent of analysis and references to case law varied from candidate to candidate. Overall, the candidates appeared to be overwhelmed by the different dates and the fact that the port authority interrupted the normal berthing process and the running of laytime and demurrage.

QUESTION 8 –SHORT DELIVERY OF OIL CARGO

The performance of nearly all the candidates was rather poor. This was another problem question which required the candidate to advise a client as to his legal options. It required a good working knowledge of Bills of Lading, the terms commonly encountered in Bills of Lading, their transfer and the rights and obligations which emerge from them. A thorough understanding of the interaction of all these principles was required in order to write a well structured and persuasive answer. It is noted that as we are dealing with a problem question the candidate is expected to make reference to some case law so as to score maximum points.

The majority of candidates failed to address all of the topics that the question strongly hinted that they needed to be touched upon. For example, although it is evident due to the references to dates that there is an issue to be discussed in respect of limitation, the majority of candidates did not touch upon this point. Further, a lot of candidates failed to make a distinction between the legal and actual carrier and they even failed to determine correctly who the legal carrier was, a number of them thinking that the legal carrier was the Charterer. There was almost no discussion whatsoever by any of the candidates on the issue of the merits of the dispute with references to the provisions of the Hague Rules and the case of *The Atlas*. There were hardly any references to the possibility to institute a claim in tort against the actual carrier. Finally, there was extremely little reference to case law, presumably because the question did not expressly say that the problem had to be answered with reference to case law. This cost candidates a lot of points since references to case law are always relevant when dealing with a problem question regardless of whether the question expressly asks for case law or not.