



EXAMINER'S REPORT

December 2022

LEGAL PRINCIPLES IN SHIPPING BUSINESS

Overall Comments

Overall, on analyzing results, the standard displayed by candidates was reasonable. Over half of the students have displayed rigorous preparation for examination by displaying competence in identifying issues in questions, and thereafter elaborating them pursuant to the relevant law. Candidates must have realized by analyzing the pattern of exam questions that they have to prepare all topics from the syllabus well and cannot selectively study topics to attain higher marks.

The question paper comprised of both the essay and problem type questions. It was observed that the candidates clearly drew attention to issues accurately and thereafter elaborated on them properly. A few candidates, who have secured higher marks have analysed such questions in great depth and were answered fairly well, and were based on facts and relevant law. Even higher marks can be secured by including pertinent cases and statutes. Another way to secure higher marks is not to include irrelevant issues or answering what is not asked for in the question paper.

Comments on individual questions are as follows:

Question 1 – International Conventions and Regulations

A straightforward popular question and good marks are only possible if all sub-parts were answered. A common mistake was a few parts were answered in great depth and one part in a few lines. Equal marks are allocated to each part so proper examination strategy is required by the candidates to secure higher marks.

- a) Origins in 1993, A bit about safe system and *Herald Enterprise* tragedy, relationship of it with shore management, Mention of concepts of DOC and SMC was required. Validity and importance of audit required would have earned extra marks.
- b) The issue of discrepancy and non-conformities needs to be discussed within the context of ship operations. Powers that used to be there under then-existing *MARPOL* and *SOLAS* could be clarified. However, MOA 1982 (Paris MOA), minimum survey required and additional powers were given to states, and a bit of discussion is required. US already had a similar system through their Coast Guard and discussion on it would have earned higher marks for the candidates. All these agreements were outside of IMO and purpose to weed out sub-standards ships and enhance safety.
- c) Arrest Convention – international nature of trade, various claims, a bit of discussion on *action in rem* and *action in personam* and Convention 1952's popularity and also new 1999 Convention.

Question 2 – Bills of lading and Carriage of Goods at Sea

A straightforward popular question and good marks are only possible if all sub-parts were answered. A common mistake was a few parts were answered in great depth and one part in a few lines. Equal marks are allocated to each part; so proper examination strategy is required by the candidates to secure higher marks.

- a) Clean Bill of lading – a bit on the concept of LOI in the answer would have earned higher marks for the candidates.
- b) House Bill of Lading - Discussion of NVOCC and how they contract with Ocean carriers. NVOCC issue their own bills. There were lots of errors in answering this question. Container trade and role of NVOCC is important and understanding of such concepts cannot be neglected by candidates.
- c) Seaway Bill of Lading – a bit on how container trade is carried out and relevance of seaway bill would have attained higher marks for the candidates. The issue of them being non-negotiable is a must in an answer.

Question 3 – Time and Voyage charter parties

A straightforward popular question and good marks are only possible if all sub-parts were answered. A common mistake was a few parts were answered in great depth and one part in a few lines. Equal marks are allocated to each part so proper examination strategy is required by the candidates to secure higher marks.

- a) Shipowner's possessory Lien - Discussion on the concept of lien, possessory lien in context of lien on another's property as it arises in common law and its relation with unpaid freight. Importance of "Possession" highlighted in any answer would have earned higher marks for the candidates.
- b) Notice of Readiness in context of voyage charter parties - basic requirement of NOR in a voyage charterparty, issue of valid and invalid NORs and if details of cases like Happy Day are discussed in the answer, then higher marks were secured by the candidates.
- c) Anti-technicality Clause in the context of time Charter party – straightforward answer why it is required and its relationship with withdrawal of the vessel.

Question 4 – ADR and arbitration

It was a popular question that was selected by candidates to answer. Concept of ADR, litigation, mediation, etc. needs to be discussed along with advantages or disadvantages. Advantages include lack of formality and procedures, costs, to some extent, can be saved in ADR as compared to litigation, parties are at the centre of the process in ADR and so forth. Discussion on *ad hoc* versus institutional arbitration has earned some extra marks for the candidates. The discussion of popular forums for arbitration such as *London and other centres* and why it is popular for conducting arbitration was also discussed by a few candidates.

Question 5 – TORT

A straightforward popular question and good marks are only possible if all sub-parts were answered. A common mistake was a few parts were answered in great depth and one part in a few lines. Equal marks are allocated to each part so proper examination strategy is required.

- a) It will require straightforward answers on the concept of tort and issue of no-fault based liability. A good answer will discuss why it is there in a law.
- b) Contributory Negligence – how a defendant can show that a claimant contributed towards his own loss /injury.
- c) Proximate Cause - The discussion on causation is required and where does ‘the’ cause fits in. A good answer can discuss the scenario of multiple causes or multiple tort feasters

Question 6 – Agency

It was a first problem question of the paper that required the candidates to dissect the issues that could be discussed, for example, how an agency arrangement is created in commerce, discussion of ostensible authority (as it appears to others) and essential elements such as – representation, reliance of representation from the master, alteration of agent’s position as he relied and supplied to the vessel, fiduciary duty of the agent to find the finest deal for the principal and so forth. The other issues could be that agent is supposed to find the best cost-effective supplies pursuant to fiduciary duty and not to make any secret profits. These issues along with relevant laws, cases or examples could be used to highlight the understanding of issues. A few candidates raised many other issues and if material were awarded for innovative arguments.

Question 7 – Time charterparty

It was a second problem question that required the candidates to dissect the issues that could be discussed within the context of time charterparty. Three legal issues in light of time charterparty need to be discussed – (1) Offhire, (2) safe port warranty, and (3) issue of late delivery and accordingly damages. Good answers will discuss a few case laws and deeper concepts within each of the three issues such as net loss of time in off-hire, legitimate v illegitimate order and so forth. A few good answers discussed the concept of net loss of time within offhire and the way to calculate it in practice. A few candidates raised many other issues and if relevant were awarded for innovative arguments.

Question 8 – General Average and York-Antwerp Rules

The loss of cranes has to be discussed in the context of "particular average," while the fact of jettisoning of cargo will require discussion on General Average. When discussing General average, it is an opportunity for candidates to showcase their knowledge how it arises, the basic concept and application of it to the problem at hand. A bit, discussion on York Antwerp Rules will be needed as well to secure higher marks and why it is relevant in maritime trade. Many candidates secured good marks in answering this question.