



Admiralty Jurisdiction & Practice - CML 624F

TIME: FOUR HOURS

NOTES

1. *References to "The Act" refer to the Admiralty Jurisdiction Regulation Act (Act 103 of 1985 as amended).*
 2. *Students may take into the exam clean, unannotated but highlighted copies of any local or foreign statute, and of any international convention or instrument..*
 3. *Write on one side of each page only. You may use the other side for rough notes.*
 4. *Answer **all questions**. Note the choice within question 1, and that question 1 requires **notes** not mini essays.*
 5. *All answers should be fully supported by the authority of statute and case law where appropriate.*
 6. *Please answer **each question in a different book**.*
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Question 1

Write notes on any five of the following:

- (a) The origins of SA admiralty law.
- (b) The legal consequences of a judicial sale of a ship in admiralty.
- (c) Wrongful arrest in SA admiralty.
- (d) The maritime lien for damage done by a ship.
- (e) The exclusivity of the High Court's admiralty jurisdiction (or lack thereof).
- (f) The position of the charterer in SA admiralty practice.

[5 MARKS EACH: TOTAL 25 MARKS]

Question 2

What is the approach of the SA High Court in Admiralty in relation to the recognition and enforcement of jurisdiction clauses referring a dispute to a nominated forum? In your answer, distinguish the nature and effect of s 7(1)(a) from those of s 7(1)(b) of the Act.

[15 MARKS]

Question 3

Outline what you regard as the main peculiarities of the SA ship arrest regime compared to the Arrest Conventions and to the practice of other maritime states. In your answer, give a critical analysis of the enforcement of maritime claims in South African Admiralty law and of the way High Court judgements have restricted or extended the reach of admiralty jurisdiction in practice.

[30 MARKS]

Question 4

The MV *Freak Wave* collides with the VLCC *Black Gold* half way between Mauritius and Durban. The *Freak Wave* is so badly holed that she sinks, with a full mixed cargo of containers on board. The *Black Gold* limps on to Cape Town where she lies at anchor in Table Bay. The *Freak Wave*'s anchor is embedded in the bow of the *Black Gold*, and three containers stowed on the foredeck of the *Freak Wave* at the time of the collision ended up on the foc's'le of the *Black Gold* as well.

4.1 You act for the *Black Gold* and her owners.

Your clients instruct you to advise them on how you could protect their interests in relation to the following matters:

- (a) They aver 100% causative negligence by the officers of the *Freak Wave* in relation to the collision, and wish to sue her owners for their losses. The *Freak Wave*'s owner's lawyers advise that their clients have abandoned ownership of the wreck of the *Freak Wave* to their hull underwriters.
- (b) One of the dislodged *Freak Wave* containers carries dangerously corrosive acids which are leaking slowly onto the foredeck of the *Black Gold*.
- (c) The operator of a beach resort on the Wild Coast south of East London avers that oil from the leaking *Black Gold* has come ashore, and that his business will be ruined. He threatens the attachment of the *Black Gold*.
- (d) The owners of the cargo on board the *Black Gold*, who are the voyage charterers of the vessel, aver a breach of the contract of charterparty in that the voyage will have to be abandoned in Cape Town, and the cargo transhipped. They declare a dispute, and appoint an arbitrator in terms of the arbitration clause of the charterparty which nominates arbitration in London. They demand security, also threatening to arrest the *Black Gold*. Your clients authorise you to offer a Club Letter of Undertaking to be issued in London and there to be handed over to the cargo owner's London solicitors. The cargo lawyers say this does not protect their rights in court in South Africa.
- (e) The *Freak Wave* also asks for security to cover an indemnity for any claims which they may be obliged to pay out to the owners of cargo lost with the *Freak Wave*.

[20 MARKS]

- 4.2 Once all the above problems have been solved, you receive another request for advice - this time from a salvage syndicate who claim to have located the wreck of the *Freak Wave* lying on the seabed beneath the high seas. The *Freak Wave* has now been abandoned by both her owners and her hull insurers. The syndicate wants to stake its claim for ownership and exclusive salvage rights to the wreck and ask you to go to court to do so. You decide that this would not conflict with the interests of your other clients.

Advise the syndicate of steps you may possibly take to protect their rights, focussing particularly on whether or not the Cape Town court could exercise jurisdiction and what law would then apply.

[10 MARKS]

[TOTAL FOR QUESTION 4: 30 MARKS]

TOTAL MARKS: 100