



UNIVERSITY OF CAPE TOWN
University Examinations



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); to "COGSA", the Carriage of Goods by Sea Act (Act 1 of 1986) and to "The MSA", the Merchant Shipping Act (Act 53 of 1951 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.*
5. *All answers should be fully supported by the authority of statute and caselaw where appropriate.*

Question 1

Write notes on any **five** of the following:

- (a) Sister ship arrest and its limitations.
- (b) The legal effects of a judicial sale of a ship in admiralty.
- (c) The arrest of ships in any one non-South African jurisdiction.
- (d) The onus of proof in ship arrest proceedings.
- (e) Attachments *in personam*.
- (f) The position of the charterer in South African admiralty practice.

[5 MARKS EACH: TOTAL 25 MARKS]

Question 2

- 2(a) What is the approach of the South African 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]
- 2(b) In what circumstances, if any, is the admiralty jurisdiction of the South African High Court exclusive?

[10 MARKS]
[TOTAL 25 MARKS]

Question 3

The South African High Court in Admiralty has a broad discretion to offer relief to a litigant who seeks to secure its claim, counterclaim, or costs, wherever such claim or counterclaim may be enforced or defended, and whatever it may cost to do so.

Discuss the security provisions of the Act and how they have been applied in South African admiralty practice.

[25 MARKS]

Question 4

The MV *Sugarlump*, a superannuated tramp, overdue for the scrapyard, is chartered by demise to **Deutsche Afrika Schifffahrt** ("DAS") which employs her master and crew. She is currently on a voyage charter to **Sweetness Chartering Inc** ("SCI"), which, as contractual carrier, is conveying a full consignment of bagged sugar from Malaysia to Nigeria for Kuala Lumpur shippers. *En route* down the east coast of South Africa, the *Sugarlump* collides with the cargo ship *Blazer*, which promptly catches fire. The *Sugarlump*'s master jumps overboard as his vessel sinks. The *Blazer* is laden with containers of general merchandise, and limps into Cape Town, with damage to both ship and cargo.

There is, in Saldanha Bay (within the jurisdiction of the Cape High Court), a vessel which bears a remarkable similarity to the now lost *Sugarlump*. She is the MV *Sweetness*, also on demise charter to DAS. She flies the same house flag, and is mortgaged to the same bank. Her certificate of registry shows she is owned by **Sweetness Trading Inc** ("STI"), and there is filed at the register a declaration of beneficial ownership recording that the beneficial owner of all the shares of STI happens to be the major shareholder of SCI.

You are approached by the following claimants who ask you to act for them in Cape Town to pursue their claims and seek appropriate ancillary relief. You may assume that you are not precluded from taking any of the instructions by potential conflicts of interest. Indicate fully what action you would take on behalf of each client by invoking the various provisions of the Act (to which you should cross reference, by section).

- (a) The underwriters of the *Blazer* wish to sue for the loss of the *Blazer*, alleging fault on the part of the master & crew of the *Sugarlump*.
- (b) The Malaysian sugar shippers want to arbitrate for their loss against SCI as carrier, and ask you to look for security for their claim. They suggest that they should perhaps look also to the *Blazer*.
- (c) The owners of the *Sugarlump* aver that there was contributory fault on the part of the *Blazer* and want to inspect all the deck and engine room records of that vessel relating to the accident, and to interrogate the Master and Chief Engineer. They want also to conduct a damage survey of the *Blazer*.
- (d) Owners of cargo damaged on the *Blazer* want to recover their losses from any possible source.

[25 MARKS]