



Maritime Law & Marine Insurance - CML 625S

MARITIME LAW & MARINE INSURANCE
[CML625S]

TIME: FOUR HOURS

NOTES

1. *Students may take into the exam clean, unannotated but highlighted copies of any local or foreign statute, of any international convention or instrument., and of published standard contract terms*
 2. *Write on one side of each page only. You may use the other side for rough notes.*
 3. *Answer all questions. Note the choice within question 1.*
 4. *All answers should be fully supported by the authority of appropriate statute and case law.*
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QUESTION 1

Write notes on any four of the following questions (a) to (e)

- (a) The disciplinary powers of the master of a South African ship.
- (b) The Himalaya Clause.
- (c) The priority of the registered mortgagee over a vessel owned by an insolvent owner, both in terms of current South African law and in terms of the Ships Registration Act.
- (d) The interplay between salvage and occupatio of historical wreck.
- (e) Towage: Command & responsibility.

**[5 MARKS EACH
TOTAL 20 MARKS]**

QUESTION 2 - SALVAGE, TOWAGE & PILOTAGE

- 2(a) The Salvage Convention, 1989 effected a compromise between those who advocated separate liability salvage, and those who sought merely for an enhancement of traditional awards for property saved. In the process the traditional no cure no pay basis of salvage was softened.

Discuss.

[10 MARKS]

- 2(b) The coal carrier SIROCCO, while entering Table Bay Harbour under compulsory pilotage, with two port tugs in attendance, collides with an outer harbour breakwater. The vessel is considerably damaged, and is in grave danger of sinking in the harbour entrance. The two port tugs manage to keep the SIROCCO afloat against all odds, in a salvage operation which draws on subcontracted divers, hired pumps, and no little measure of salvage expertise. The vessel is safely escorted by the tugs into the drydock for repairs.

Her owners claim the cost of the repairs and resultant consequential loss of profit from Portnet, basing their action upon pilot error.

Portnet responds with a counterclaim for damage to the breakwater, and for salvage. They aver in their claim that they have not only salvaged the vessel, but they have thereby averted the probability of the SIROCCO having blocked the port entrance, which would surely have given rise to a wreck removal order.

The SIROCCO owners in turn respond by averring that the port was contracted to tow and escort the SIROCCO into port in any event, and they tender the tug daily hire to which their port agent had agreed prior to the vessel entering port. But they set the hire off against the damage to the vessel. They aver further that not only was the pilot severely under the influence of alcohol at the time of the accident, but he was known by the port to have suffered from alcohol addiction for many years. It emerges from the transcript of the port radio log that one of the two tugs, at a crucial stage of the SIROCCO's port entry, suffered a malfunction of the bridge-to-engine room main engine control, and that this may have been a contributory factor in the cause of the accident.

You are asked to mediate, and to make a reasoned award to the parties.

[20 Marks]

[Total for Question 2: 30 MARKS]

QUESTION 3 - SAFETY AT SEA

Discuss the scourge of the substandard ship, and in particular the armoury of domestic and international preventive and enforcement measures available to SAMSA to rid South African waters of this menace.

[20 MARKS]

QUESTION 4 - LIMITATION OF LIABILITY

In what circumstances and in terms of what laws may a shipowner limit its liability for third party damage in South African court proceedings in Admiralty? In relation to each form of limitation, indicate how a claimant would set about breaking limitation. In your answer refer to relevant legislation, conventions and caselaw. You need not consider limitation of liability for oil pollution.

[15 MARKS]

QUESTION 5 - MARINE INSURANCE

The general cargo vessel THOR, en route from Oslo to Singapore, calls at Cape Town after a chapter of mishaps sufficient to motivate her master to decide to fly home to Norway and become a professional elk hunter. Before signing off however, he is obliged to submit a report to his vessel's owners. The report reads:

I regret to inform you of a most eventful and singularly unfortunate voyage southbound from Oslo. I believe that you may wish to notify your insurers of the following occurrences:

- (a) Upon dropping the pilot in the Oslo roadstead, the third last rung of the pilot ladder failed, causing the pilot to fall between the vessel and the pilot tender. He was saved from drowning, but sustained a broken leg and, I understand, required hospitalisation and was laid off work for a month.*
- (b) During a stormy passage across the Skagarat, my vessel pitched and rolled to the swell excessively, and a bulldozer in No 1 lower hold broke its lashings and slid across the hold for two days before it could be properly resecured. In the process it damaged a consignment of newsprint in No 1 hold to the extent that it will probably be rejected by its consignees.*
- (c) This same storm resulted in such heavy seas coming over the accommodation of the vessel, that the port lifeboat was extensively damaged.*
- (d) In the English Channel, the vessel traffic was horrendous. At one stage I was surrounded by fishing vessels, all apparently going in different directions, when a fast ferry approached on a collision course. As I was the give way vessel, I was obliged to alter course hard a-starboard. In so doing I inadvertently cut across the bows of a fishing vessel which had a net out so could not get out of my way. I am happy to report that the skipper and crew of the fishing vessel enjoyed the passage out to Cape Town with us, though the skipper did not seem at all pleased that his vessel had sunk so quickly that he was unable to rescue the ship's cat. I appeased his anger by confirming that my vessel was of course solely to blame for this unfortunate accident. He says that they had a full cargo of fresh fish on board.*
- (e) It was because we had insufficient accommodation for all the fishermen that I had to open No 2 hatch and allow some of them to use the No 2 'tweendeck as their sleeping accommodation. I did tell them not to smoke, but when they set fire to bales of cotton (which had made comfortable beds) I had little alternative but to turn on the fire hoses. The cargo is still very wet, and I fear that it will be a total loss.*

- (f) *The fisherfolk were however adamant that the fire only caused real damage because the Chief Engineer when transferring bunker fuel from one deeptank to another, made a mistake and turned on a bunker valve instead of a firehose. The bunker fuel has made a bit of a mess in the hold. I wonder if this makes any difference to our insurance cover?*
- (g) *And just when the voyage seemed to be improving, we had this problem in the approaches to the port of Cape Town. I recall having told you that the port radar set was malfunctioning. It has been so since you bought the vessel. You told me not to worry about it, and that you would fix it when the vessel next goes for drydocking. Well it now seems to have a mind of its own. I was sure that the blip in the centre of the screen was Robben Island. In fact the blip was some electrical interference from the set (which we have had before). And the fog was very thick. You will be pleased to hear however that the local salvors managed to refloat us off the island within a few hours and that the damage to the vessel appears to be confined to 50 or so meters of her bottom plates. We will have more details when the water of the drydock from which I write this report is fully pumped out. But the class surveyor has confirmed that our classification certificate is suspended.*

I conclude by respectfully confirming that the local port doctor has advised that I be repatriated immediately to Oslo. He mentions something about "advanced paranoia" in the certificate which I attach.

*Your obedient servant
etc.*

Discuss briefly the insurance implications of each of the above incidents, indicating which insurer should carry liability, and what, if any, defences the insurers may have to each claim.

[15 MARKS]
EXAMINATION TOTAL 100 MARKS