



UNIVERSITY OF CAPE TOWN
University Examinations - November 1997

SHIPPING LAW - CML612W

Paper 2

TIME: THREE HOURS PLUS FIFTEEN MINUTES FOR READING THE PAPER

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); to "The Wreck & Salvage Act" to Act 94 of 1996; 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, any international convention or instrument, and copies of standard Institute insurance clauses and standard charterparties.

3. Sections:

The examination is divided into the following sections, with the mark allocation indicated:

<u>Section C</u>	Carriage of Goods by Sea	60 marks
<u>Section D</u>	Marine Insurance	25 marks
<u>Section E</u>	Limitation of Liability	15 marks
TOTAL		100 marks

PLEASE ANSWER EACH SECTION IN A DIFFERENT BOOK

4. Write on one side of each page only. You may use the other side for rough notes.
 5. Answer **all questions**. Note the choice within Question C.3.
 6. Where appropriate, give relevant case authority.
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SECTION C

Carriage of Goods by Sea
[Different answerbook please]

Question C.1

The cargo vessel PANDEMONIUM, 17 500 grt, is sold in execution in Brazil to scrap buyers who want to get her to a Pakistani breaker's yard. The buyers find a trader in Sao Paulo, SP Freight ("SPF") who is prepared to take the vessel on a one-voyage time charter to load cargo at a range of Brazilian ports thence round the Cape to Malaysia for discharge - after which the run to Karachi is comparatively short.

An NYPE charterparty is entered into between the buyers, Knackship, and SPF. It is on unaltered NYPE terms.

SPF sends its booking agents out into the market to find cargoes for the voyage east. Booking notes are issued by SPF's agents to a variety of breakbulk cargoes. SPF decides to use a standard liner bill of lading containing a Clause Paramount invoking the Hague Visby Rules, and nominating English Law. It instructs the Master of the PANDEMONIUM to sign Bills of Lading naming itself as "Carrier" on the face of the Bill, but its legal department decides to insert a demise clause which reads:

Notwithstanding the signature of any person purporting to bind the time or voyage charterer as Carrier to this Bill of Lading, the contract evidenced by this Bill of Lading shall be between the shipper and the owner of the vessel.

SPF manages to book 27 containers of motor spares for carriage to Singapore. Knackship says it will be fine to load the containers on deck, and it arranges for container shoes and securing padeyes to be welded to the deck to accommodate the containers. The vessel was built before the advent of the container, and is not fitted out in any other way for carriage of containers on deck or otherwise. A deck cargo liberty clause is added to the Bills of Lading, giving the carrier the right to stow containers on deck.. No special clausung on the face of the Bills is made for deck cargo.

A bulk cargo of phosphates is also booked: but for this consignment SPF as disponent owner enters into a GENCON voyage charterparty with Fertiship. The basic terms of the charterparty are:

Cargo to be 3 000 tonnes bulk phosphates, 5% more or less; Stow to be numbers 2 and 4 holds, equal distribution;

Voyage charter freight to be \$12 per tonne, FIOS, payable 50% on completion of loading, balance on completion of discharge; Deadfreight @ \$8 per tonne;

Bill of Lading to incorporate terms and conditions of GENCON Voyage Charterparty, and specifically disponent owner's lien for unpaid voyage charter freight;

Reversible laytime to be 6 days, NOR to be given for loading Rio de Janeiro WIBPON, 4 hours grace time, WWSSHex. Demurrage chargeable for maximum 3 days @ \$5 000, despatch half demurrage rate.

Knackship hires a "United Nations" crew: none of the deck officers speak a common home language. The Captain has a Master's certificate which has been suspended by the Chilean authorities because he managed to put his first and only command aground on Cape Horn. Knackship feel this is no problem because the ship will not be sailing into Chilean waters. The Engineers are led by a retired Chief Engineer who has not been to sea for 20 years and suffers from such bad emphysema that he is unable to spend any time in the engine room.

SPF employs stevedores at the various Brazilian loading ports. The vessel takes on bunkers at Rio and sets sail ... (the bunkers were a special offer which SPF managed to buy at cut rate from a local slops merchant).

Not unexpectedly, the PANDEMONIUM is beset by problems the nature of which is apparent from the claims set out below. Against the odds, she limps across the southern Atlantic. 4 days out of Cape Town, the Master realises that the bunker offer was indeed "special": the fuel separators and purifiers can no longer cope with the contamination of bunkers, and the vessel is totally immobilised. She is towed in to Cape Town where she is detained immediately by Port State Control inspectors.

It is clear that the PANDEMONIUM will not resume her voyage, and cargo owners are called upon to take delivery of their cargoes in Cape Town.

In the light of the above scenario, consider fully the rights, obligations and defences of the parties generally and in relation to:

- (a) **The loss of 4 containers from the consignment of motor spares, washed off the deck during a Force 8 gale in mid-Atlantic;**
- (b) **Extensive damage to a cargo of porcelainware, packed in cardboard boxes and shipped under deck but over-stowed with drums of palm oil which broke loose owing to bad stowage;**
- (c) **Short-delivery of 6 pallets of tinned fish shipped on a clean bill of lading confirming that the missing 6 pallets were “shipped on board” when they were in fact left on the quay at Rio de Janeiro;**
- (d) **Fertiship’s refusal to accept Notice of Readiness from SPI because the vessel had still to open up hatches during the grace period, the vessel was, at the time NOR was given, outside the legal port limits of Rio de Janeiro, awaiting availability of a berth - and NOR was in any event given on a Public Holiday in Brazil;**
- (e) **Fertiship taking 5 full days for loading a cargo of only 2 600 tonnes of phosphates, during which period one day was a Saturday, and rain necessitated closing of hatches for 4 hours.**

NB:

- 1. In dealing with cargo claims, do not deal with limitation of liability issues.**
- 2. Notwithstanding a possible conclusion that another law applies to the carriage contracts, you should deal with cargo claims with reference to the SA COGSA.**
- 3. In your answers for (d) and (e) above, explain generally the voyage charter terms given in the scenario**

[35 MARKS]

Question C.2

Article 5. Legal recognition of data messages

Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the form of a data message.

[Extract from the UNCITRAL Model Law on Electronic Commerce, 1996]

UNCITRAL is seeking to promote the use of electronic data interchange (“EDI”). Their efforts are complemented by the CMI. In the light of the above UNCITRAL Article 5, discuss the challenges which the use of EDI in relation to Bills of Lading present to tomorrow’s shipping lawyers, if they are to retain today’s Bill of Lading in recognisable form and effect.

[15 MARKS]

Question C.3

Answer either C.3.1 or C.3.2

C.3.1 “An agreement that the shipper will load and stow does not relieve the carrier of the overriding or residual obligation to ensure that the cargo is properly and carefully loaded and stowed per Art IV Rule 2(i). To achieve that result, something more is required than that the shipper will simply arrange and pay for loading and stowage.”

[The Sea Joy, 1997]

Discuss this extract from the judgement of the Cape High Court in The Sea Joy with particular reference to the ability of the carrier to contract out of its COGSA obligations.

or

C.3.2. Discuss the nature and effect of the “Himalaya Clause” in SA shipping law, referring to SA cases in which the subject has been debated.

[10 MARKS]

[Total for Section C: 60 marks]

SECTION D

Marine Insurance

[Different answerbook please]

Question D.1

What are the likely insurances which the various interests involved in the last voyage of the PANDEMONIUM (see Section C) would take out. Indicate how the various policies would be called upon to make good the disastrous situation in which the PANDEMONIUM finds herself in Cape Town and what defences the underwriters would have to any of such claims.

Substantiate your answer with reference to decided cases dealing with the general principles of marine insurance.

[20 MARKS]

Question D.2

Explain how marine insurance caters for collision losses sustained by ships, indicating how cross-liabilities between two vessels involved in a collision are underwritten.

[5 MARKS]

[Total for Section D: 25 Marks]

SECTION E
Limitation of Liability
[Different answerbook please]

Question E.1

The Shipping General Amendment Act, 1997, effected significant “tidying up” of South African laws applicable to the limitation of maritime liability.

Outline the effect of the changes brought about by this Act.

[Do not quote extensively from the text of the Shipping General Amendment Act].

[5 MARKS]

Question E.2

Assume the PANDEMONIUM (see Section C above) did not make Cape Town but sank in mid-Atlantic with the loss of all cargo and some of her crew.

In what ways would the owners and/or charterers be able to limit their liability to cargo claimants and to the dependants of the crew members lost, and what defences would there be to such attempts to limit liability?

[10 MARKS]

[Total for Section E: 15 Marks]

TOTAL 100 MARKS