



SHIPPING LAW - CML612W 1996

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) 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 any Institute Clauses.*

3. **Sections:**

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

<u>Section C</u>	Carriage of Goods by Sea	45 marks
<u>Section D</u>	Marine Insurance	45 marks
<u>Section E</u>	Limitation of liability	10 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 in question 1.*
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SECTION C
Carriage of Goods by Sea

Question 1

Write notes on any three of the following:

- 1(a) The interrelationship between shipment terms, carriage of goods by sea and marine insurance in international purchase and sale contracts.
- 1(b) The liability of the common carrier in relation to the carriage of goods by sea.
- 1(c) The legal rights of an indorsee of a bill of lading.
- 1(d) The doctrine of "safe ports" in charterparty law.

[5 MARKS EACH - TOTAL 15 MARKS]

Question 2

In a voyage charterparty, the clock is ticking against the shipowner.

Examine this statement, especially in relation to the implications it has in relation to loading and discharging. *In your answer, refer where appropriate to decided cases.*

[15 MARKS]

Question 3

*Article III Rule 1 of the Hague Visby Rules has been described as **First Base** which a carrier is obliged to reach before embarking on his defence of cargo claims.*

Analyse the concept of seaworthiness in relation to the carriage of goods by sea, tracing the route maritime law took to formulate this **First Base**, and, indicate what the carrier's further defences to cargo claims may be.

*[In your answer, do not quote extensively from the Hague Visby Rules: rather refer to them by number where appropriate. **Do not deal with the limitation of liability**]*

[15 MARKS]

SECTION D
Marine Insurance

Question 4

The Pearl of the Sea, 24 years old, in the hands of her 7th owners, is in a sad and sorry state. She lies in the Buenos Aires roadstead to where she had been towed following Port State Control detention in Vancouver where her classification society had suspended her class certificates pending repairs, which the owners undertook to do at Buenos Aires. The towage was on temporary classification certificates, now expired.

The Pearl of the Sea's owners, Fastbuck Limited of Cape Town, approach a relative in a Mediterranean classification society who arranges a full suite of class certificates without inspection.

Fastbuck then contracts with an Argentinian shipper to carry a cargo of fertiliser in bulk around the Cape to Bombay, India, from which they intend to send the Pearl to the scrapyards for breaking. Freight is payable at destination.

Armed with the newly issued class certificates, Fastbuck Ltd approaches its SA broker to arrange H&M on Institute Voyage Clauses (Hulls), freight insurance on Institute Freight Clauses and full P&I cover. Its managing director says nothing about the predicament of the vessel, and asks for hull cover for \$1,5 million. Proposal forms are completed in Cape Town, declaring the voyage to be at and from Buenos Aires to Bombay via the Cape of Good Hope. A warranty is added to each policy stating that the vessel is warranted crewed in compliance with the SA Merchant Shipping Act at the time of entering into the contract of insurance and at all future times material to the policy, . The proposals are handed to the broker.

The broker confirms cover by fax, and the premium and call are paid to the broker in Cape Town.

The Pearl of the Sea loads her cargo and is about to sail from Buenos Aires when the Master is stricken by a mysterious virus and is hospitalised. The Mate, who is very experienced but who has never qualified with his Master's Certificate of Competency, is appointed Captain for the voyage, and the vessel sets sail.

But the Mate (now being called "Captain" by the crew) decides on a short detour to Rio Grande in Brazil, some 500 miles up the coast: Without telling his owners, he puts into the roadstead at Rio Grande to collect his wife so she can join him for the voyage. He then resumes his voyage.

The shipper has yet to find a buyer in Bombay, and decides not to insure the cargo. He puts word out that the cargo is on the market, and a commodity broker puts in an offer. The shipper doesn't like the offer much and puts it on hold while trying to find a better price.

In mid ocean, the Pearl of the Sea's odyssey encounters its first problem: During heavy weather, seawater runs through the hatches and seriously wets the fertiliser in all holds - so seriously that about 30% of it dissolves. A few days later, the shipper decides to accept the purchase offer and indorses the bill of lading for the fertiliser to the commodity broker, who, not knowing of the 30% loss of cargo, insures the full consignment on Institute Cargo Clauses (All Risks).

Then the Cape of Storms takes its toll: heavy swells batter the Pearl of the Sea, tearing away a significant part of the hull plating of No2 hold. The vessel, having taken a lot of water, labours to the seas, and the Master (as we shall now call the Mate) takes fright. In his panic, he decides to make for Cape Town as a port of refuge. In so doing he negligently collides with a freighter lying at anchor in Table Bay, doing her considerable damage. Three crew members are badly injured.

As soon as he gets into Cape Town harbour, the Master notes Protest, declaring General Average. No sooner has he returned from the Notary's office, when the Sheriff arrives with a writ of arrest issued by the owners of the freighter.

Anxious to complete the voyage, Fastbuck uses its local credit to fund temporary repairs to enable the vessel to put to sea. It also puts up security for the freighter's claim, and manages to escape the SA Port State Control inspectors.

Once at sea again, Fastbuck contacts the cargo owners and calls for a General Average bond to guarantee cargo's General Average contribution to the costs of the Cape Town call and the temporary repairs.

But the Pearl of the Sea gives up the unequal struggle: she runs aground off the island of Mauritius and is a total loss as is the remainder of her cargo.

Examine fully the marine insurance and general average implications of the last voyage of the Pearl of the Sea. In particular, look at the policies, the claims, the defences, the subrogated cross-claim recoveries relating to the various interests.

Comment fully also upon where Fastbuck may sue and what law would apply.

Where appropriate relate your answer to Institute Clauses, to statute and to decided cases.

[TOTAL 45 MARKS]

SECTION E
Limitation of Liability

Question 5

The Constantia sails from Cape Town for New York with a full load of containers.

En Route she hits very heavy, though not unseasonal weather, and a container on the foredeck breaks loose, in turn breaking the stow of a further 8 containers which are all lost overboard.

The owners of the Constantia had recently supplied the vessel with container securing fitting which they bought very cheaply in Spain. The owners did not subject the fittings to any testing, even after some similar fittings had failed on another ship of the fleet.

While manoeuvring to try to prevent the containers going overboard, the Constantia collides with a small freighter. The cause of the collision is later attributed to the Second Officer's lack of adequate training in the operation of radar.. The freighter is extensively damaged (though there were no injuries) and her owners claim from the Constantia's owners.

The Bill of Lading described the goods as

Nine containers each containing 8 pallets said to contain tractor parts

There was no value declared for the consignments, freight was calculated according to cubic meters, and the mass of each container was declared as 2,3 tonnes.

How may the owners of the Constantia attempt to limit their liability in relation both to the cargo claim and to the claim of the owners of the freighter?

In your answer indicate also what counter arguments the two claimants may raise against the owner's attempts to limit, and whether the limitation of each of the two claims has any bearing on the other.

[10 MARKS]

TOTAL 100 MARKS