

**NAROTTAM MORARJEE INSTITUTE OF SHIPPING
MUMBAI**

Examination Paper - March 2019

Associateship/Post Graduate Diploma In Shipping Management – First Year

COMMERCIAL & SHIPPING LAW

10.03.2019

Total 100 Marks

Time: 3 Hours.

Question No.1 is compulsory and carries 20 marks. Answer any Five questions from the rest which carry 16 marks each.

- (1) Say True or False. If false, give correct answers:
 - (i) The Indian Carriage of Goods by Sea Act is applicable to Coastal trade.
 - (ii) Under the Indian Carriage of Goods by Sea Act it is immaterial if the port of discharge is in India or outside India.
 - (iii) Contract of Guarantee is a tripartite contract.
 - (iv) Award under Arbitration is binding on the parties to the dispute.
 - (v) Under the Bills of Lading Act, Bill of Lading is conclusive evidence of shipment against the master.
- (2) Discuss any two of the following :
 - a) Essentials of the Acceptance and Proposal.
 - b) Privity of contract.
 - c) Frustration of contract.
- (3) Who is an agent? Discuss how an Agency is created?
- (4) Explain the three Sections of Bill of Lading Act in your own words.
- (5) Explain the concept 'Maritime Lien' and discuss its characteristics as a 'privileged claim'.
- (6) What is 'Torts'? Discuss different types of Torts.
- (7) Discuss salient provisions concerning Survey and Registration of Vessels under the Inland Vessels Act.
- (8) Write a note on 'Freight'.
- (9) Discuss the salient provisions of the Indian Light House Act.

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EXAMINATION - MARCH 2019

SUBJECT : CSL

Q	1	2	3	4	5	6	7	8	9	10	11	12	Total
M	20				10	10	12	11	11				74

WRITE BELOW

Q.5) Maritime Lien:

Maritime Lien is the strongest lien available anywhere. It is available only in shipping. In this type of lien, the lien travels with the property irrespective of who the owner is. In this lien it is not necessary that the goods must be in the possession of the person who is exercising the lien. Maritime Lien is independent of contract. Hence it is called as a privileged claim.

- Maritime Lien is enforceable "IN REM" mean on the world at large.

- Maritime Lien can also be enforced "in Personam" if the particular person or the owner of the "RES" (goods which give rise to the lien) is available.

- Under Maritime Lien it is not necessary

that the person against whom the Lien is enforce is in that particular country. It can be enforced on any person who is payable of dues even if he is anywhere in the world.

- This type of Lien is independent of contract and can be exercised on anyone who is in fault and not payed the dues or duties levied on him/her.

- The following are some reasons which give rise to the maritime lien.

- 1) Master & Crew Wages.
- 2) Masters Disbursement for the benefit of the Ship.
- 3) Salvage Reward.
- 4) Loss of life or Personal injury.
- 5) Damaged caused by the Ship in the Port or not paid port dues.
- 6) Damaged caused to another ship.

- It is called as a privileged claim because. Only in this type of Lien the person who is exercising it can arrest the 'Srster Ship' of the owner.

against who the debt are unpaid.

- The Maritime Lien is only dissolved when :-

- 1) The dues are being paid off.
- 2) The 'Res' which give rise to the Lien does not exist.

- It can be enforced on anyone who is not in an actual contractual agreement as it a privilege claim.
- And even if the 'Res' are transferred to any other person or owner. The Lien travels with the property.
- The above are some reasons and characteristics as to why a 'Maritime Lien' is called as a privileged claim.
- Even if there is no agreement between two parties.
eg:- A ship causes collision to another ship.
- The damages can be recovered^{re} by the Maritime Lien.

Q. Q) What is Torts.

- Tort is a 'Civil Wrong' for which the claim is a case for Unliquidated damage.
- The person who commits a wrong action ~~is~~ under the Law of Torts is called as a Tort Feasor.
- Tort is independent of a contract.
- The most famous example for the case of Torts is Donaghue VS Stevenson case.
- In this case Donaghue and miss 'X' went to a bar to have some drinks. Miss 'X' goes to the bartender and buys two drinks one for herself and other for Donaghue. The bartender 'Stevenson' give two bottles to Miss 'X'. When they were having drinks. Donaghue found a dead snail at the bottom of the bottle.
- Therefore, can she file a case on Stevenson.
- Yes, By the Law of Torts.

- Every tort comes under 3 categories:-

- 1) Mal Feasance.
- 2) Mis Feasance
- 3) Non Feasance.

1) Mal Feasance - Doing any work in a wrong way.

2) Mis Feasance - Doing any work which is legal, but the method/way of doing is wrong.

3. Non Feasance - Not doing the work at all.

- Torts are therefore, any civil wrong and they are independent of any agreement and each and every Tort falls under one of the 3 categories mentioned above.

- The different types of Torts are:-

- 1) Trespassing.
- 2) Nuisance
- 3) Conversion.
- 4) Defamation.
- 5) Deceit / Fraud.
- 6) Negligence.

1.) Trespassing:- Causing any discomfort to other and their property.

eg:- A person ~~who~~ without permission going into a restricted/prohibited area.

2.) Nuisance:- Not letting the owner to enjoy his/her own property. Due to a civil wrong unknowingly another person is affected.

eg:- Poopa feeds ~~po~~ birds in her balcony but the birds are defecating in the balcony ~~where~~ of the flat below her, which belongs to captain Kapoor. Causing him trouble and restricting him to enjoy his own property.

3.) Conversion:- Making ~~use~~ wrong use of the property/ belonging and using them for some another purpose.

eg:- 'A' gives his Horse to 'B' so that 'B' can look after and take care of it in 'A's' absence. But 'B' is using the horse for some other

4) Defamation:- Defaming the name of other person by writing termed as "Libel". or by speaking termed as "Slander".

- Defaming any person or property by Libel or Slander.

5) Deceit / Frauds:- Supplying the wrong information.

- Misleading any person and making fraud / taking advantage by misleading.

eg:- Given wrong info when direction are asked.

6) Negligence:- The act of not doing the right work.

- Or doing the work in a wrong way.
- Not paying attention or neglecting any work that is allotted and causing harm to a person or property.

- The above are the examples of some Torts.

- There are also some defence against liability of torts as follows.

- 1) Consent.
- 2) Wrongdoer.
- 3) Contributory Negligence.
- 4) Necessity.

Q8)

Freight :-

- Freight is the remuneration that is payable against carriage / service or delivery of goods. }
- Basically, freight are the charges that are taken for providing any vessel or the carriage of goods from port A to port B.
- When is freight payable.
 - 1) On the delivery of goods.
 - 2) On the successful carriage of goods.
 - 3) When the carrier is ready to deliver the cargo.
- Due to non-payment of freight a lien can be exercised. |
- Freight is a very essential lesson in the shipping industry as every body is trying to acquire good freight value against the services rendered by them.

WRITE BELOW

- The freight are of five types:-

- 1) Lumpsum Freight - \$
- 2) Advance Freight.
- 3) Pro-Rata Freight.
- 4) Back Freight.
- 5) Dead Freight.

1) Lumpsum Freight:

This type of freight is generally a fixed/lumpsum amount.

In Bulk carrier, the owner of the carrier quotes a Lumpsum Freight for the booking of entire ship/holds of the ship or If the some part is full and some holds are not filled, he will ~~quote~~ quote a fixed or lumpsum amount for the unfilled hold. The lumpsum freight is payable if if the shipper does not acquire the full space. and it is also applicable if no placed booked is acquired. But to acquire freight the same

amount of cargo must be delivered.

2) Advance Freight:

- Payment of freight before the delivery of goods is called as advance freight.
- The payment when the shipment is loaded and despatched from the port is also called as advance freight.
- Or when there is an agreement between the parties that freight will be payable at a specific point during the voyage.
- Advance freight once paid cannot be acquired back if there is a damage or loss of certain part of the cargo. But at least some part of the cargo needs to be delivered.
- Advance freight can also be not returned when goods are damaged due to any unexpected peril.

3) Pro-Rata Freight:-

- Pro-Rata Freight is paid proportionate to the part of voyage completed.
- Pro-Rata freight is disbursed in parts according to the part of voyage completed.
- The amount that is Disbursed is already discussed and agreed prior to the delivery during the contract.
- The full payment of pro-rata freight is completed when the voyage is completed.
- Pro-Rata Freight can be ~~acquired~~ on the successful delivery of goods.

4) Back Freight:-

- Back Freight is the freight ~~when~~ and it is charged when the consignee refuses to take the delivery of the goods.
- When the freight is not paid on the agreed time under the voyage and the goods are

stopped in transit.

- If during certain circumstances if the port is strike bound and there is a need for the carrier to discharge goods at another port which is close by.
- The extra charges incurred for the voyage from the agreed port to the other port of delivery are also been charged as Back Freight.
- When the vessel does not receive freight if the importer refuses the delivery and the shipper has to bear extra charges to bring the goods back. Those extra charges are also charged as Back Freight and are recovered from the Consignee.

5) Dead Freight:-

- Dead Freight is charged when the freight that is booked, is not utilised.

WRITE BELOW

shipper books a certain space on a carrier for the transfer of goods and does not utilise it due to some reason.

- The carrier therefore cannot bear these losses due to the negligence of the shipper. And, also it cannot arrange for another cargo at that very moment.

- Therefore, the carrier charges the shipper for the unutilized space which was booked on it.
This is referred to as Dead Freight.

* A clause related to the freight is mentioned behind the Bill of Lading.

- "Freight payable is to be recovered on the successful shipment of cargo onboard a vessel".

- These are the details and some types of freight.

Q 7)

Salient Provisions Concerning Survey and Registration of Vessel under the Inland Vessels Act.

- The Inland Vessels are also called as the Inland mechanically propelled vessels which ply on the Inland waterways.
- Inland water are Lakes, Rivers, Canals and coastal waters of a country.
- Every Inland Vessel has to acquired a Certificate of Survey and a Certificate of Registration before the commencement of voyage.
- The Inland Vessel Act was established in the year 1927.
- The provision for Survey are:-
 - Every Inland Mechanically Propelled Vessel should obtain a certificate of survey before the commencement of voyage. for that particular voyage.
 - The surveying authorities are declared by the Central government

and the place of registration is also declared by the government.

- The Inland Vessel does not include the following vessel.
 - 1) Fishing Vessels.
 - 2) Vessels which are registered under the Merchant Shipping Act, 1925.
- The Surveying authorities board the vessel and check whether the vessel is mechanically fit and whether it can ply on inland waters.
- It is also checked that the Master, Engineer and the engine driver has a valid Certificate of Competence.
- The Certificate of Survey is valid for 1 year and has to be renewed after the completion.
- The Surveyor can grant permission to a vessel for 45 days temporary sail. ~~It~~ under the Section 9A of the Inland vessel act and ensure that it does all the repairs and is fit to ply in the inland waterways.

- If a surveyor rejects the vessel he has to give in writing the reason as to why the vessel was not approved.
- The declaration of the survey must be attested and placed on Board the vessel during all times at the voyage.
- The certificate of registration must be acquired before the commencement of any voyage.
- The central government through general notification in their official gazette declares the places of registration for the vessel.
- The central government also appoints the registration authorities.
- The Certificate of registration must be displayed onboard the vessel at all times as it should be affixed.
- The Registration authorities mark the vessel in a special symbol of their registration.

WRITE BELOW

- The registration of the vessels is done on the allotted places.
- The new built vessels are allowed to sail for the first time from the place where it is built to the place where it will be registered, without the certificate of registration.
- The Inland vessels are registered in their particular states.
- If the vessel is not approved for registration the authorities will give in writing the reasons as to why the vessel is not registered.
- The above are the methods and some salient provisions of Survey and Registration of Vessels under the Inland Vessel Act.

Q9.}

Provisions of the Indian Light House Act.

- Light house are any Structure, buoy, light vessel, beacons, mark, sign or apparatus used for the guidance of ships.
- There are two types of Light-houses.

1) General light houses:-

- The light house which is declared by the government in their official declaration / notification in gazette are called as General light house.

2) Local light houses:- The light house which are not general light house are local light house.

The local light houses are operated by State government and management and superintendence comes under the State government.

- The people who take care of light house are:-

- Superintendent of Light House and Light Ship.
- Chief Inspector of Light house and Light Ship.
- Inspector of Light house & Light Ship.
- All of the above are appointed by the Central government.
- The superintendent and Inspectors can enter, inspect and inquire about any local light house.
- The authorised person or in-charge of the light house has to report and furnish all the required information to the authorities.
- The light dues are collected by the authorities.

* The government had made some rules and regulation so that there is no obstruction in the working of light houses. They are as follow.

- No Structure should be erected at a certain specified height within 1 km radius of the light

- No light should be put up without the prior permission of the authorities within 1 km radius of lighthouses.
- No building must be erected within the specified height and in one km radius of light house.
- No tree must be planted which can grow at a height above the lighthouse within 1 km radius.
- The authorities issues notice to the owner of the above structure and allots specified time to them to remove the ob. structure.
- If they fail to remove the same in the allotted time the authorities on their expenses remove the obstruction and recovers the expenses from the owner.
- They will be put in imprisonment for 6 month and charged a fine of ₹1000.

WRITE BELOW

- Rate of Light dues / Levy & collection
- The rate of light dues is declared by the central government.
- They are ~~levy~~ levied on every ship entering the port of India and are collected from the master.
- If the master/owner neglects to pay the light due and leaves the port.
- The Custom officer of that port writes to the Custom officer of the other port where the ship is going and recovers the due from the vessel.
- If light dues are not ^{paid} ~~pay~~ on the said port they are exceeded five times the original amount.
- Light dues are ~~settled~~ not paid at one port can be collected from other port.

- The ship will not granted clearance if the light dues are not paid.
- If light dues are evaded the Custom officer can seize the ship and give a time to pay the dues.
- If after five days the dues are not paid, he can cause the ship to be sold and satisfy the dues and return the remaining amount to the owner.
- The above are the rules and regulation and Salient provisions of the Indian Light House Act.

Q. 1) TRUE OR False.

i) ~~False~~ TRUE

ii) TRUE

iii) TRUE

iv) TRUE

v) TRUE