

**NAROTTAM MORARJEE INSTITUTE OF SHIPPING
MUMBAI**

Examination Paper – March 2019

Fellowship/Post Graduate Diploma in Shipping Management – Final Year

LAW OF SEA TRANSPORT

03.03.2019

Total 100 Marks

Time: 3 Hours.

Attempt any Five questions. All questions carry equal marks.

- 1) What is Voyage Charter Party? Analyze effect of any two of the following clauses in Voyage Charter party:
(a) Lay time and Demurrage;
(b) Notice of Readiness;
(c) Arrived Ship.
- 2) With the help of case laws explain the functions of the Bill of Lading?
- 3) Discuss the advantages and disadvantages of SCOPIC under Salvage.
- 4) Explain the term 'Seaworthiness' by supporting your answer with case laws.
- 5) Discuss salient provisions of Bunker Convention.
- 6) Discuss 5 salient provisions of any two of the following:
(i) Customs Act;
(ii) Multimodal Transportation of Goods Act;
(iii) Carriage of Goods by Sea Act.
- 7) Discuss any one of the following:
(a) Admiralty Jurisdiction;
(b) Maritime Fraud.
- 8) Critically examine Suppression of unlawful acts against the Safety of Maritime Navigation Convention.
- 9) Discuss the essential features of General Average.

NAROTTAM MORARJEE INSTITUTE OF SHIPPING

MUMBAI

EXAMINATION - MARCH 2019

SUBJECT : LST

Q	1	2	3	4	5	6	7	8	9	10	11	12	Total
M		17	12	17		15	15						76

WRITE BELOW

2

The following are the functions of the bill of lading.

It evidences the contract of carriage of goods though it is not the contract itself.

It is evidence of shipment of goods under a contract which may have been made by deed, word or written and which the claimant can lead towards in evidence.

Ardeens vs Ardeenes The Charterers Ardeenes contracted to carry cargo of mandarin from Colombia to England by the 30th of November. The carrier also Ardeenes performed the voyage but made a call at Antwerp prior to England. Vessel reach England later than 30 Nov and was in had to pay new import duties. The charterers sued for the damages caused. Case was held and owners paid as the charter lead evidence to existence of contract.

It is a receipt of the cargo handed into the care of the carrier

- a) of the leading marks and number.
- b) quantity of the goods and

Apparent condition of the goods.

With regard to leading marks the case of Parsons vs New Zealand Co which was a contract for carriage 608 carcasses marked 622X Sunbrand. However 507 carcasses were marked 622X and 101 were marked 522X Sunbrand. The master could prove that the leading marks and numbers were contrary to the bill of lading. It can be used in cases where leading marks are not material to good description.

Quantity of goods, case of Union Carbide vs Tatyantlal. The carriage entitled cargo of 499 units in 6 Packages 52 were found missing. Case held as the quantity missing were discovered due to quantity entered in the B/L.

Apparent good order and condition - Case law Silver vs Ocean where Cans of frozen eggs for carriage were punctured but the carrier entered them as in apparent good order and conditions against a request by a letter of Indemnity.

It is a document of title to the holder of the Bill of Lading and is as good as possession of goods. Case law Hotel vs Bidell where there was a situation of non payment as the goods were to be delivered by the vessel. Courts held payment to be made as holding the B/L is as good as holding the physical possession of the goods.

It also stated that all sets in a Bill of Lading do not have to be produced to secure payment ~~Sanders vs McLaren~~ where a Bill of Lading from the set was not produced.

It states that delivery of goods is to be made against production of a Bill of Lading. Case Law Trucks and Spares vs Maritime agency where cargo was loaded and freight paid however due to past payments unpaid a Bill of Lading was not issued. The receiver requested delivery at the discharge port which was not granted due to absence of Bill of Lading. Case Held:

The carrier is not required to check into title or parts of Bill of Lading. Case Law Glyn Mills Currie vs East and West India. Shipment was made on behalf of Cottani. Cottani used one of the Bills of Lading to secure a loan from a Bank; the second B/L was used to sell the cargo to a third party. The cargo was delivered to the third party with the second Bill of Lading. The Bank proceeded against the Carrier. Case Held carrier not responsible.

It is a quasi negotiable document. In that it does not transfer value as in the case of promissory notes or bank cheques which are negotiable but it does transfer property by way of endorsement to the endorsee or endorsee. Under Bills of Lading

them the same liabilities and rights as a shipper.

Case Law *Aramis* with a cargo of linseed oil to be delivered 20000 tons cash to Uni grain and Van der Vek. Due to multiple port discharge Vander Vek received 6500 T and Uni grain nil. They proceeded against carrier was found not held as the goods had not been ascertained or transferred.

The same applies in case of endorsement to a consignee or endorsee Case Law *The Kaptein Marcos* in which the purchaser could not proceed against the carrier as the ~~as~~ he was not named as the endorsee and only later endorsed the Bill of Lading.

It is also not applicable to bank as in the case Law of *Swell vs Burdick* where a bank's pledge cannot be construed as requirement to pay for freight not paid due to abandonment by the charter.

3

SCOPIC under Salvage.

Special compensation ~~and~~ Protection and Indemnity clause was a development to solve the issues pertaining to environment control of operations, geographical issues, tug rates and uplift. It evolved with the assistance of the International Salvage Union to ensure fairness in a Salvage contract.

(A) Carriers

(1) The following were the advantages

1. It looked out disputes and arbitrations post a salvage contract
2. It gave the carrier better control with the assignment of a special casualty report officer to keep a tab on the salvage proceedings
3. It gave a better understanding for cancellation of contract by the carrier via SCOPIC than that envisaged by LDF
4. The uplift for the Salvors was fixed at 25%

(2) The following were the disadvantages

1. The Salvors could quote tug rates at higher rates than with the Nagasaki Spirit accident
2. The carriers gave up their right to cover based on the threat to minimising of reducing environmental damage.

(B) Salvors

(1) The following were the advantages

1. The Salvors did not have to prove there was an environmental threat to receive a reward.
2. They were assured of compensation in all waters and not just coastal and inland waters

- 3 They were assured of profitable tug values.
- 4 They was a better access to cash as by invoking SCOPIC a carrier had to display a 3 million USD ~~per~~ security in 2 days else the terms were as per Article 14 of the Salvage Convention.
- 5 There was more security in the operation.
- (2) The following were the disadvantages:
 - 1 The carrier could cancel the contract at any time, hence this could be detrimental to the salvor.
 - 2 The salvor could not receive an uplift of more than 25% for his promptness, availability, usage, readiness and efficiency of his tugs, equipment or their value.

4 Sea worthiness is explained as
The fitness to receive, carriage and preservation of the cargo.

The fitness of construction design and equipment of a vessel

The ability of a vessel to sail against ~~extra~~ ordinary perils of the sea.

It is a warrant of due diligence before and at the start of a voyage as well as at the commencement of each part of the voyage. Hence a contract cannot be rescinded as it is not a law but it can be used to claim damages.

a due diligence case law Riverstone Meat vs Lancashire Shipping where carrier was held responsible for hiring a incompetent fitter who did not close 2 manholes resulting in cargo damages. It was the duty of the carrier to be diligent at the beginning of the voyage

b In respect to seaworthiness at each leg, case law Vortiger on a voyage ~~was~~ from Phillipines via Colombo - Suez to UK with copra. Master did not take ^{sufficient} coal at Colombo for voyage leg upto Suez. A part of the copra was used as fuel. The carrier was held responsible.

c Fitness to receive the cargo, case law Sanders versus Richardson where a cargo of sugar required moisture caused due to the sugar to be extracted by pumps. The vessel had operational pumps but these were not sufficient to cope with the sugar moisture

levels Held the vessel was not fit to receive and carry the cargo.

- d Fitness ~~to~~ ~~pres~~ of equipment to preserve the cargo Case Law *Maori King vs Hagher*. The voyage cargo required refrigeration machinery. This was inoperational hence the vessel was held not seaworthy due to non fitness of equipment to preserve the cargo.

- e Not properly manned Case Law *Anglo Saxon Petroleum vs Adamastos ship* where due to the ~~inability of the vessel~~ incompetency of the vessel's engineers there was a delay in cargo discharge Held vessel not manned properly.

- f A vessel is further required to be equipped with navigational, communication, direction finders, signalling equipment, life saving and fire fighting equipment else she is deemed not sea worthy.

- g A vessel is also to be properly supplied with provisions, stores, fresh water and accommodation spaces.

- h Other important Case Laws are *Maritime Footwear vs Canadian Govt* marine agency where a blocked waste pipe clearance resulted in a fire and the claim by the vessel due to fire were overturned due to unseaworthiness as the vessel had blocked waste pipes which the crew attempted to clear using acetylene which resulted in the cable ignition.

WRITE BELOW

and subsequent five.

These above mentioned case laws are demonstrative of when a vessel is not seaworthy.

As per the merchant shipping act 1958

1. If the material of which she is constructed
2. The construction
3. The qualification of the Master
4. The qualification, description and the number of the crew
5. The vessels hull machinery equipment and boilers are

not ~~fit~~ fit for the voyage she is said to be unseaworthy.

6 (ii) Salient Provisions of Multimodal Transportation of goods Act.

1 License and Registration as a multimodal transport operator.

This is done by making an application in the respective form with a payment of 10000 Rs for attainment of a 3 year renewal licence based on fulfillment of central government requirement of

a company firm or proprietor in the shipping and freight forwarding business with a 50 lakh annual turn over for the last 3 years or an average aggregate 50 lakh turn over in the past 3 year.

A requirement of having a business in at least two places out of India

In case of a company firm or proprietor not in the shipping or forwarding business but a place in India the shared equity capital ^{of the company} capital in the capital accounts of the partners and the balance in the account an individual should be 50 lakhs

For persons not having a place of business in India he is to open a place of business and the mentioned amount is to be attested for by a known authority in the country.

2 The contract of Carriage is to be carried on as per the Multimodal Transport document which ~~acknow~~ is negotiable or non negotiable It gives the details

The multimodal transport operator can issue this only on attaining a proper valued insurance. He has a lien on the freight as well as the documentation by way of rights and liability of being a principal and not agent of the consignor, carrier or shipper.

3. The operator is liable for loss damage or non delivery of the goods. He is also liable to losses and damages arising due to consequences of delay. This is applicable especial if the contract has a time barred request and also if the goods are not delivered in reasonable time.

4. Limitations of Liability are set if the value of the goods is undeclared and the mode of transport in which the loss occurred is unknown to 666.67 SDR or 2 SDR per kilo of gross weight. But for liability when value of the goods is not known and the mode of transport in which the loss occurred is known then the liability is as per the laws pertaining to the road, rail, air or inland transport.

5. A ^{notice} ~~claim~~ for loss is to be made in writing at the time of delivery of the goods or within 6 consecutive days if discovered later. A good is considered to be lost if not delivered in reasonable time or 90 days. The loss claim is to ~~be made within~~ ~~90 days~~ applicable for 9 months.

The consignor is liable for inadequacy or inaccuracy for goods entered into the MMTS. He is liable for all losses and has to indemnify the MMT Operator. In case of dangerous goods which are not declared they are to be unloaded, destroyed and rendered innocuous without reimbursement. The operator is liable for the ~~loss~~ apparent good order and condition of the goods. He is also allowed to clause the MMT Document for evidence of fraudulent declaration or when he cannot check the quantity, description and condition of the goods with reasons for inability.

The operator undertakes to take care of the goods from the time of acceptance at a port in India to the place of delivery under the multimodal contract for which he acts as a principal and not agent of the shipper, carrier or consignee, which he signs on his behalf or by someone on his behalf and which he performs under licence of registration for a remuneration ~~called~~ called freight which is forfeited in a loss, damage or delay claim.

WRITE BELOW

6 (iii) 5 Salient Features of Carriage of Goods By Sea Act (COGSA)

1. It applies to the whole of India for the carriage of goods from a port in India to a port outside India. Hence it does not apply to inward cargoes it only applies to outward or export cargoes. It also does not apply to carriage of deck cargoes or live animals.
2. It requires the vessel to follow due diligence in seaworthiness at the beginning of the voyage, hence the requirement of absolute seaworthiness earlier required by carriers has been done away with.
3. It applies to bills of lading which are compliant with an express statement that they are issued as per the Rules - being the Hague Rules ^{Hague-Visby Rules}. It hence does not apply to cargoes carried where,
 1. ~~with~~ No bill of lading has been issued
 2. Bill of lading has been issued without a statement that the rules apply to the

Charter Parties.

- 4 It allows a carrier to reduce or exempt himself ~~for~~ from liabilities when carrying a particular goods or ordinary commercial goods.

On a sailing vessel from a port in India to any port in or out of India

On a vessel from a notified port in India to a ~~port~~ notified port in Ceylon

- 5 The act applies to Bills of lading as a receipt of goods but not as evidence of quantity "weight" of the goods when the goods are,

a Bulk cargo

It is the custom of the port to measure the weight of the goods by a third party other than the shipper or carrier. The weight measured is entered into the bills of lading.

It assigns the limits of liability as per the rules which are prevalent 666 ~~67~~

SOR or 2 SOR per kilo of gross weight

It establishes the application of the rules are only from the time the cargo is loaded up to the time of discharge (tackle for tackle)

7 b Maritime Fraud

is said to be committed when a person, his agent or by his connivance cause to deceive another person or his agent into a contract, it is called as a fraud as per Contract Law.

Maritime fraud is said to occur when ~~any one~~ in an international trade transaction one of the parties (shipper, consignor, shipbroker, agent, banker, insurer etc) to the contract illegal and unjustly gain access to moneys and goods of the other party to whom on the surface value he appears to be fulfilling a trade, transport or financial obligation.

Some of the important Maritime Frauds are

a Documentary fraud where any of the document or commercial invoices are faked or forged. This could be a commercial invoice for non-existent goods or bill of lading for less quantity than declared. Due to international trade it is difficult to locate the fraudster.

b Charter Party Fraud when anyone party to the negotiation commits a breach of obligations either charterer or shipowner. A charter pays the first higher rate. The carrier releases prepaid bills of lading. The shipper collects the freight entirely and disappears leaving the carrier where he is liable to deliver the cargo but unable

c Insurance Fraud also called hull frauds where vessels are sunk or destroyed by fire to claim hull insurance eg 300000 USD steel cargo on a voyage from Italy to UK was sold to a third party and the vessel was claimed lost due to a fire but the crew was found safe. Investigation to find details of the steel cargo also failed

d Container Frauds where part of the cargo in a container or the entire container itself disappears. This is aided by each change of electronic or physical documentation as in the case where 996 cans of mushrooms shipped in 5 containers on two vessels from Hong Kong to Rotterdam and from there on 4 ships to five different ports were all found without cargo, pointing towards container fraud

e Phantom ships

Ships which disappear with lucrative cargoes. This is aided due to high corruption at the FOC Registries or improper investigation by the Registrar into the validation of the vessel. Substandard vessels and cheap crews aid the fraud.

To combat Fraud ICCs International maritime Bureau deals with fraudulent activity by education through training, general information through publication, authentication of documents

WRITE BELOW

transaction and remedial measures such as investigation into partial losses and location of vessels not heard of after loading cargo. It creates awareness of malpractices and advises how to avoid them. It has a vast information centre and network.

- Fraud can be avoided by

Dealing with reputable parties.

Employing surveyors at the time of cargo loading to ensure cargo is actually loaded and the quantity loaded.

Buyers can insist on performance bond or guarantee on the contracts from a bank.

The Use of Lloyd's Investigative Service to ensure the vessel exists and cargo is loaded and safe ~~guard~~ guard against phantom ships.

Sale contracts should be on FOB basis to ensure contract control and request for copies of B/Ls to ensure cargo loading.

Awareness to be created among traders to various risk exposure by commercial sectors and Chambers of Commerce.

Authentication of documents by Banks who

goods accepted and release goods on
letters of indemnity as from first
class banks acceptable by their P&I Clubs
Lastly it can be avoided by due diligence
from all parties involved in the contract
of Carriage.