

# NAROTTAM MORARJEE INSTITUTE OF SHIPPING

MUMBAI

Examination Paper – March 2024

Fellowship / Advance Diploma in Shipping Management & Logistics – Final year

LAW OF SEA TRANSPORT

12.03.2024

Total 80 Marks

Time: 3 Hours.

**Note : Answer any FOUR Questions. All Questions carry equal marks.**

1. What is arbitration? Do you think arbitration is the most effective form of maritime dispute resolution? How is a foreign arbitral award enforced?

**OR**

What do you mean by the nationality of a ship? Do all sea-going vessels have to be registered and fly a flag of a country and why? What law governs the rules regarding registration of ships in India? According to Indian law, what are the requirements for the ship to registered in India's registry?

2. What are the different types of cargo claims? What is the procedure for handling a claim of short-landing? Elaborate on the provisions of limitation of liability under the Hague and Hague-Visby Rules.

**OR**

Answer the following regarding General average:

- i. What are the essential elements of General Average? What is the difference between the application of the terms 'voluntary' and 'intentional' in the definition of General Average as per the Merchant Shipping Act 1995?
- ii. At the time of General average act the vessel had unrepaired damage from a previous accident of Rs. 1 lakh. The sound value of the vessel on the arrival at the destination was Rs. 1 crore. The damage sustained on the current voyage was, say, Rs. 2 lakhs. What would be the contributory value of the vessel?

**PTO**

3. What is the principle of seaworthiness? Is cargo worthiness implied within seaworthiness? Explain. In a ship, Cargo A is loaded without problems. Cargo B is loaded next and contaminates Cargo A, before the ship sails. Is the ship unseaworthy? Explain in light of the decision in Elder Dempster & Co Ltd v Paterson Zochonis & Co Ltd.

**OR**

What obligations, if any, in your view, are imposed on a shipowner who intends to sail through an area where there is a known piracy risk? Also quote international efforts to combat piracy. What have India's efforts been in managing piracy?

4. What are the functions of bills of lading? What is the difference between straight bills and through bills? What is the validity of carriage terms that are not incorporated into bills of lading?

**OR**

Describe in detail the relevance of a clean bill of lading. How does a carrier protect himself from liability in case of damage to goods caused during packaging, loading, etc. Explain with the help of relevant case laws.

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Q	1	2	3	4	5	6	7	8	9	10	11	12	Total
M	15	15	17	15									62

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ANS NO. 1NATIONALITY OF SHIP :-

Nationality of a ship indicates the country where it is registered. The ship will be subjected to law & remedies of the country where it is registered.

Normally ships are registered at a dedicated port as specified by the particular country's shipping act / laws.

The name of the port where the ship is registered is marked / carved on the stern of a ship in a contrast color with the background.

In short, the nationality - means the country where the ship is registered the ship will be subjected to the law & remedies of that country with respect to shipping the ship will fly the colors of that country at the stern at ensign staff.

REQUIREMENT OF REGISTRY :-

All the commercial seagoing vsl are required to be registered. However, there might be some exemptions :-

As per MS Act 1958, ships with less than 15 NT are not required for registration.

The warships, naval ships have their own database & record keeping & not required to be registered like other commercial vessels.

Also, the registration is required by other conventions as well like UNCLOS - United Nations convention on the law of the sea which says about registry.

If a ship is not registered, it will have no identity & will not be allowed to sail.

### REQUIREMENT TO FLY A FLAG:-

All seagoing vessels which are registered in a country need to fly the flag of that country. The design & colors will be decided by the government of the country which might be slight different from the national flag. like in case of India.

This flag is known as ensign flag & is hoisted from sunrise to sunset at the stern of the ship.

However there might be some exceptions like in case of Saudi Arabia where it is <sup>kept</sup> hoisted all the times when in port.

Pls note that requirement to fly the flag is only in port or while entering / leaving the port limits.

## LAW REGARDING REGISTRATION IN INDIA:-

In India the law regarding registration is looked by the Director General of Shipping under the Merchant Shipping Act, 1958.

Part 5 of the Indian merchant shipping act, 1958 deals with the registration of ships.

## REQUIREMENT AS PER INDIAN LAW:-

As per Indian law i.e. MS Act, 1958, all Indian seagoing vessel which are more than 15NT need to be registered.

The registration can only be carried out at the ports as specified in the Gazette of Central Government.

The ports of Mumbai, Chennai & Kolkata have been identified as the ports for registry & the duties of the registrar has been assigned to the Principal officer at these MMD (Merchant Marine Department).

For registration, an application need to be submitted with the following documents.

- Builder's certificate
- Certificate of sale deed (in case of second hand)
- Surveyor's certificate (surveyor appointed on behalf of MMD to survey the ship)
- Declaration for proof of ownership.
- Required fee deposit receipt.

Before a registry certificate is issued, the name of the ship & port of registry need to be marked at the stern & name only at bow.

After, all the formalities are completed a certificate of registry will be issued & entry will be made in the registry book at the particular MMD of that port.

## ANS NO. 2

### CARGO CLAIMS:-

There are 2 types of cargo claims:-

- 1) Cargo claim due to short-landing
- 2) Cargo claim due to damage, delay or loss.

### PROCEDURE FOR HANDLING A CLAIM FOR SHORT LANDING:-

When the goods / cargo have been delivered in short at the discharge port, the consignee need to give in writing to the shipping company i.e. carrier about the short landing of goods.

- The further procedure is as following <sup>of short landing</sup>.
- 1) Once the notice for claim is received from the consignee / receiver or any other person appointed on behalf of him like agent or the freight forwarder, the shipping company will inquire about it ~~the~~ with the port authorities of the discharge port & stevedores.
  - 2) The cargo discharged quantity & numbers can be verified with the help of daily

ted tally reports which are submitted by the port authorities to ship.

3) In case no discrepancy is found & no info is found at the discharge report, the ship will enquire about the same from her previous port of calls if same cargo has been accidentally discharged or discharged by mistake at previous discharge ports.

4) If previous discharge ports negate this enquiry, then the shipping line will enquire the details of the cargo at the port of shipment. If at the port of shipment, the authorities claim that cargo has been loaded & give complete report, it means that cargo has been lost at the discharged port.

5) The shipping company will pass this info to discharge port authority & consignee. At it, the discharge port authorities will issue a certificate of short landing to the consignee.

6) The consignee will claim <sup>this short landing</sup> from the owner. Normally, this procedure is lengthy & take times so the claimant i.e. consignee will claim for this short landing from his underwriter & will subrogate his right to the underwriter. The underwriter will pay the claim & then he will claim the same from the ship owner.

To put a claim for short landing, following documents are needed.

a) Certificate of short landing

b) Invoice for cargo i.e. CIF value + 10%.

- c) Bill of Lading.
- d) Import Goods Manifest.
- e) Bill of Lading.
- f) Letter of subrogation (if subrogated)

The receiver / consignee can claim the duty refund for the short landed goods from the customs, who <sup>(custom)</sup> will later on levy the penalty on the shipowner for short landing.

### PROVISIONS OF LIMITATION OF LIABILITY UNDER THE HAGUE & HAGUE VISBY RULES:-

Under these rules it is an implied obligation of the carrier to exercise due care for loadings, stowings, handling, caring & unloading all the times the goods are on board (tackle to tackle liability)

But the carrier is exempted from the liabilities in following cases.

- 1) Act, neglect or fault in navigation / management of ship.
- 2) Fire
- 3) Perils of the sea
- 4) Act of war
- 5) Act of God
- 6) Act of Public enemies.
- 7) civil wars, riots
- 8) strike, lockouts.
- 9) Arrest, restraint orders by prince / seizure.
- 10) Lack of packing
- 11) Lack of marking.



- 12) Latent defects
- 13) ordinary wear & tear
- 14) Act or omission on behalf of shipper.
- 15) Inherent vice
- 16) Earthquake, volcanic eruptions & lightning.
- 17) Any other cause with no fault of carrier.

Except these 17 clauses, the carrier is liable for the damages as mentioned below

666.67 <sup>SDR</sup> ~~SDR~~ per package or 2 SDR per kg of the Gross Weight whichever is higher. These are the limits as per the 1992 protocol. Earlier these limits were very low. i.e. 10000 Gold franc Poincare.

#### ANS NO. 4

#### BILL OF LADING FUNCTIONS:-

Bill of Lading is a document which is issued by the Master or the agent on behalf of him for the goods which have been received on board.

It serves the following functions.

#### 1) EVIDENCE OF CONTRACT OF CARRIAGE:-

The BL is an evidence of contract of carriage although it is not a contract in itself. Same is mentioned on the backside of BL under paramount clause.

#### 2) RECEIPT OF CARGO:-

It is a receipt for the cargo which have been loaded on board.

However there are some exceptions when the goods are coming from landlocked countries, in those cases a different type of BL is issued which is known as received for shipment BL.

### 3) DOCUMENT OF TITLE:-

The holder of the BL is as good as the holder of the cargo. The BL is a proof of title ship i.e. ownership of the cargo.

### 4) QUASI-NEGOTIABLE DOCUMENT:-

It is quasi negotiable document. The ownership of the goods can be transferred simply by endorsing the name of the new owner on it.

In shipping, it is very common to sell the cargo multiple times before it arrives at its destination. This is done with the help of endorsing the BL.

### DIFFERENCE BETWEEN STRAIGHT BL & THROUGH BL

A straight bill of lading has the name of consignee mentioned on it. It does not have words like "To order" mentioned on in place of the name of the consignee.

A through bill of lading as the name suggests covers the carriage of the goods from port of loading to port of destination so it is port to port provided the transportation mode is by sea only.

of multiple modes of transports are involve

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then combined bill of lading is issued.

VALIDITY OF CARRIAGE TERMS:-

The laws for the carriage on the BL are governed by Hague, Hague Visby Rules & Hamburg Rules. which can be mentioned by inserting a paramount clause.

→ Under Hague / Hague Visby Rules:-

Validity of carriage is from tackle to tackle i.e. goods are on board.

Any claims related to lost goods need to brought within 60 days from the days of delivery.

Any <sup>damage</sup> loss at the time of delivery & if not apparent within 6 days after delivery.

The period of claim is 1 year.

→ Under Hamburg rules:-

Validity of carriage is from the time till the goods are in carrier's custody.

Claim for lost goods - 90 days within.

Damage claim at the time of delivery & if not apparent within 9 days.

The period of claim is 2 years.

The validity of carriage terms can vary if some other law related to carriage of goods is incorporated like Indian COGSA 1925, Rotterdam Rules etc.

### ANS NO. 3

#### OBLIGATIONS IMPOSED ON SHIPOWNER WHO INTENDS TO SAIL THROUGH PIRACY RISK AREAS:-

There are various obligations imposed on a shipowner which are as mentioned below:-

##### 1) SAFETY OF SHIP, CREW & CARGO:-

It is an implied obligation which is exercised by the Master 5) who is the owner's representative on board.

The ship, crew & cargo has to remain safe at all times even while passing through piracy risk areas.

##### 2) ADDITIONAL INSURANCE COVERAGE:-

The shipowner need to buy additional insurance to cover this voyage.

##### 3) APPOINTMENT OF SECURITY GUARDS:-

With the increase risk of piracy & violent attacks, the shipowners employ security guards to safeguard the ship & cargo. Statistics show that this has been very successful in deterring piracy attacks.

##### 4) DEVELOPMENT OF ANTI-PIRACY PLAN:-

Though it depends from owner to owner, the shipowner need to develop & implement an APP plan to deal with piracy risks. These plans will cover the following elements.

Training for crew

Enforcement measures prior transiting piracy risk

areas like

- razor wire
- security equipment (night vision binoculars)
- satellite phone
- anti-shatter screen for bridge glasses
- CITADEL / SAFE HAVEN for mustering in case crew pirates have boarded.

Access control measures.

Precautions taken while transiting these areas.

### 5) REPORTING TO STATES, AUTHORITIES :-

Before transiting a piracy risk area various kind of reporting is required which may be to coastal states (MACE) who will pass it to coast guard.

- to report to UKMTO
- to report to various navies as required which are deployed in those areas to counter piracy.

### 6) ADDITIONAL SUPPLY OF SECURITY EQUIPMENT AS PER APP-

In case,

the equipments are short as per anti piracy plan, same need to be supplied on board before transiting piracy prone / risk area.

### 7) TO TAKE PROFESSIONAL HELP OF SECURITY FIRMS IF REQUIRED:-

Sometimes, the owner don't deploy security guards in case the vessel is in ballast & freeboard is too high say 15-20 mtrs (VLCC).

In that case, the shipowners must take the services of professional security firms who will responsibly assess the preparation & control measures on board.

## 8) TO FOLLOW INSTRUCTIONS OF THE REGIONAL AUTHORITIES / NAVIES :-

Normally navies from various nations are deployed in piracy risk areas. Also various firms like UKMTO, IMB issues instructions / orders / guidelines / precautions which need to be followed while as before transiting piracy risk areas.

## INTERNATIONAL EFFORTS TO COMBAT PIRACY:-

There have been multiple efforts taken to combat piracy which are as mentioned below:-

### 1) PUBLICATION LIKE BMP5, IMB REPORTS:-

International chamber of shipping publishes BMP5 which give best management practices to be followed while transiting piracy risk areas.

Also International maritime bureau, piracy reporting centres, Kuala Lumpur regularly transmits & publishes the piracy situation in that area.

This info is being sent on SAT-C onboard as it can be accessed by internet.

### 2) INTERNATIONAL DEDICATED TRANSIT CORRIDOR:-

A dedicated transit corridor has been established which need to be followed while transiting the piracy risk area.

Statistics show that following this dedicated corridor is safer than any other route.

### 3) REGISTRATION WITH UKMTO & MSC (HOA) :-

This is the effort taken by United Kingdom & IMO. vessel need to register themselves with UKMTO & Maritime safety committee Horn of Africa. This registration will enable these authorities to provide any help in case of piracy attack provided such attack is reported to them or transmitted by SSAS (ship security alarm system) to flag state.

### 4) DEPLOYMENT OF NAVAL FORCES :-

Many countries including India have deployed the naval forces who escort the vessel while transiting the Gulf of Aden area. To be in a convoy of these naval forces, vessel need to register with them.

### 5) PIRACY BILLS / LAWS :-

Many developed countries have enacted the piracy bills & law for the prosecution of pirates as a preventive & punitive measures. This will create a sense of fear in pirates & they will try to avoid piracy.

### 6) PROMULGATION OF PIRACY REPORTS / INFO :-

In the Indian ocean, the limits for the areas have been clearly marked like high

risk area etc.

The purpose of marking these areas to caution the vessel who are using it & other vessel can avoid these area if same is possible or not in route.

### INDIA'S EFFORTS IN MANAGING PIRACY:-

India's efforts in managing piracy has been very successful & commendable. There are as mentioned below.

- 1) Deployment of naval forces in Gulf of Aden to assist the commercial vessels in transit.
- 2) Introduction of Piracy Bill in Assembly.
- 3) Passing info to rel. using Indian ocean & Arabian sea regarding piracy updates by SAT-C & internet.
- 4) Co-ordinating with other regional & state to demarcate the piracy area, high risk areas.

The good thing is that with the combined efforts of international bodies, governments, the Gulf of Aden is now no more a piracy area & the incidents