

General comment

Overall the standard answers displayed was fair, given the objectives of the examination, with over half of the candidates displaying competence in identifying legal problems. Both the essay and problem type questions were answered reasonably well by a large number of candidates, with a clear and well-informed presentation from a significant number of candidates. Legibility and tidiness was fair in the majority of answers.

The trend in so far as candidates' examination performance is concerned continues to improve. In fact, this year's results are encouraging, as they represent an improvement over the last five years' overall results. Questions 8, 4 and 6 were the most popular ones, whilst questions 1, 8 and 3 were the most successfully answered ones.

Question One

Well answered overall. A great deal of candidates was well aware of the recent Rotterdam Rules 2009, putting forward a comprehensive comparative analysis of the current two regimes (Hague-Visby and Hamburg Rules), highlighting differences with, as well as a view on the desirability of, the 2009 Rules.

Question Two

Unfortunately, the agency principles such as ratification, ostensible authority, and implied warranty of authority, are still not fully grasped by a large number of candidates. A noticeable common error was to state that ratification would also occur in agency by necessity. A couple of answers attempted to read between the lines, drawing adverse inferences on the shipbroker's revocation of authority for fixing dry cargo.

Question Three

Well answered overall. A common error with some answers was the conclusion that "breach of contract" equates to breach of a condition leading to repudiation/termination of the contract whereas a breach of a warranty is not a "breach of contract". This is, of course, inaccurate, since a breach of any contractual term (whether classified a condition, warranty, or innominate/intermediate) would result in/equate to a breach of contract. A couple of answers erroneously maintained that if a condition is breached then there is no contract.

Question Four

This was a reasonably well answered question. A few answers concentrated on seaworthiness. Even on this basis, the question would be "what are the charterer's losses as a result of the owner's breach". The scenario's facts clearly guided candidates to focus primarily on the off-hire position and to a lesser extent on payment of hire, rather than seaworthiness, so digressing into seaworthiness which was not directly relevant to the facts and the question, would only afford perhaps a mark for spotting the possibility.

Candidates seemed to be aware of list of events triggering various different charter-party off-hire clauses, e.g. break-down of machinery, insufficiency of crew, etc. However, quite a few did not recall the very important prerequisite included (usually) with such list of events; if the vessel is unable to perform the service immediately required (e.g. *Baltime*).

Question Five

This was the least well answered question. The use of some authorities seemed to cause some confusion. On the facts it was clear that the contract of carriage was governed by the Hague-Visby Rules, and that the same contract provided that the vessel would proceed directly to New York. The *Ardennes* case is mostly used to indicate that the contract of carriage is concluded before the bills of lading are issued, and therefore the terms of the contract of carriage take precedence over subsequently issued documents and their contents, i.e. bills of lading. On the facts, the bill of lading did not contain any wide liberty to deviate clause, and therefore the only issue to consider was whether *the* ship made a deviation from its contractual route not permitted by Article IV, rule 4. This Article allows "any reasonable deviation" to be made, however, deviation for picking up the shipowner's post, would not be considered reasonable; *Stag Line Ltd. v Foscola, Mango & Co. Ltd. (1932)*.

Question Six

Reasonably answered overall. In the context of "common danger", such danger must threaten the three maritime interests, namely, ship, cargo and freight. Danger to human life/crew is no consideration in determining whether a general average has been established.

Numerous answers erroneously concluded that where the danger has arisen through a party's fault, there can be no general average. Where the common danger has arisen through the fault of one of the parties claiming contribution, that particular party/interest will not be entitled to receive any contribution; in the contrary, such party will have to contribute towards general average losses suffered by other parties claiming contribution.

Question Seven

Quite reasonably answered. Although the question asked for the role of liens in shipping rather than the role of maritime liens, it was good to see numerous answers concisely dealing with the more difficult maritime liens.

Question Eight

This was the most popular question, and overall a well answered one. There is nothing in particular to report except that answers tended to be rather lengthy, particularly in part (b), as candidates perhaps saw it as an opportunity to put forward all matters relating to "arrived ship", notice of readiness, laytime, and demurrage.