

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: Maritime Law  
Semester-VII (Batch: 2013-18)

End Semester Examination: October-2016

Date: 28<sup>th</sup> October, 2016

Duration: 3 hours

Max. Marks: 50

**Instructions:**

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.

**Answer all questions**

**Marks**

- Q.1 Specify the losses covered under the Specific Insurance and cross claims that could be possible. (10)

**Facts:** The river channel up the Elbe from the sea to the port of Hamburg is a peril of the sea in its own right. One foggy night, a VLCC, the MT Big Red, collides with the stern of a containership, the MV Boxer. Both vessels are insured on IUA Hull Clauses Time Clauses on valued policies: the Big Red for \$60 mil and the Boxer for \$50 mil. The Big Red's cargo is insured on Institute Cargo clauses on a valued policy for \$84 mil. Both vessels have P&I Club cover. The Big Red is holed, and catches fire. 6 crew members are seriously injured, requiring hospitalisation and repatriation. The Big Red loses large quantities of oil which spills into the Elbe. She is then towed out to sea and sinks in deep water, losing the remainder of the cargo which in total was valued at \$120 million. The Boxer sinks in the river and is a CTL. She and her cargo have to be removed under a wreck removal order issued by the Hamburg Port Authority. The harbour is closed for 2 months while the wreck removal operation takes place. Half the Boxer's cargo (insured on IUA Cargo Clauses for \$50m) is lost. The collision was caused solely by the negligence of the Big Red's navigating officers.

Consider:

- (a) The loss of the Big Red [\$60mil]
- (b) The loss of the oil cargo [\$120 mil]
- (c) The oil pollution cleanup costs
- (d) The personal injury costs and claims of the Big Red's crew.
- (e) The loss of the Boxer [\$50m]
- (f) The partial loss of cargo from the Boxer
- (g) The removal of the wreck of the Boxer
- (h) The loss of profits suffered by the Port of Hamburg while it remained closed
- (i) The loss of hire/profit by vessels trapped in the closed port
- (j) The loss of freight to the owners of the Big Red, presuming her freight was only to be paid on arrival at her destination port.

Q.2 Define the marine pollution. Elucidate the MARPOL Annexes and explain how the Marine Environmental laws can be enforced? (06)

Q.3 Read the facts carefully and answer the questions given below: (15)

T was the owner of 360 tons of copper cathodes which was stowed by them in 18 sealed containers at their factory and then shipped on board the CC Carrier for a voyage from South Africa to China. The bills of lading were issued to T as shipper and were made out "to order". The Law and Jurisdiction clause in the bill of lading provided for the exclusive jurisdiction of the High Court of Justice in London, and for English law to apply. The bill of lading contained a box in which the value of the cargo could be declared but this was left blank. The bill of lading also included the following clauses:

*Clause 1. This B/L shall have effect as follows:*

*(a) For all trades, except for goods shipped to and from the United States of America, this B/L shall be subject to the 1924 Hague Rules, or, if compulsory applicable, subject to the 1968 Protocol (Hague-Visby) or any compulsory legislation based on the Hague Rules and/or the said Proto-cols".*

*Clause 4. "The Carrier shall not be liable for loss of or damage to the goods during the period ... after dis-charging from the vessel, howsoever such loss or damage may arise."*

*Clause 22. "Neither the Carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding £ 100 per package or unit unless the nature and the value of such goods have been declared by the Merchant before shipment and inserted in the Bill of Lading ... Where the goods have been packed into sealed containers by or on behalf of the Merchant, it is expressly agreed that each container shall constitute one package for the purpose of application of limitation of the Carrier's liability, since the Carrier cannot verify its contents."*

On arrival at the discharge port the containers were discharged directly into a container yard in accordance with the usual procedures at the port. In order to obtain delivery of the cargo the receiver was obliged under local law to surrender the original bill of lading to the ship's agent who would then give the receiver a delivery order. Such a delivery order was necessary to enable the receiver to pay VAT and customs duty payment which was an essential precondition for obtaining the release of the containers at the discharge port. At some time after shipment, T had sold the cargo to H, but since T was not paid by H, H was not able to produce an original bill of lading to the carriers on the arrival of the ship at the discharge port. Consequently, the cargo was retained in the container yard, pending settlement of the purchase price. Some days later, fraudsters produced a fraudulent bill of lading for the cargo and on presentation of the false bill of lading to the carrier's agent at the discharge port, obtained a delivery order. The fraudsters then obtained the authority of customs to remove the containers from the terminal, having previously utilised the delivery order to pay customs duty and VAT on the cargo. A few days later T presented an original Bill of lading to the carriers' agents in order to obtain delivery of the cargo for their own account. On learning that the cargo had been delivered in the meantime to another party, T claimed the full value of the cargo (approximately USD 3 million) from the carriers. The carriers denied liability on the basis that they had discharged the cargo in good condition and in good faith into the container yard in accordance with usual procedures at the discharge port and the cargo had been stolen by third parties without their control after discharge of the cargo from

the ship. Secondly, and in any event, the carriers argued that they were exempt from all liability by virtue of clause 4 of the bill of lading. Finally, the carrier argued that even if they were liable for the misdelivery they were entitled to limit their liability to £ 1,800, i.e. £ 100 per container pursuant to clause 22. T argued that since the bill of lading was subject to English Law, the Hague-Visby Rules applied compulsorily under COGSA 1971 with the result that the Hague-Visby Rules package limit of SDR 720,000 applied. The carriers argued that this was irrelevant since the load port was in South Africa which was not a party to the Hague-Visby Rules and that in any event, the carriers could not rely on limitation provisions such as this to protect their interests in the case of misdelivery of cargo.

Questions:

- (a) Do the carriers have any responsibility in relation to the cargo after it has been dis-charged into the container yard at the discharge port?
- (b) Are the carriers protected from liability by the provisions of clause 4 of the bill of lading?
- (c) If the Hague-Visby Rules apply what is the relevant package limit?
- (d) If the Hague Rules apply what is the relevant package limit?
- (e) Do the Hague or Hague-Visby Rules apply and if so, which Rules apply?
- (f) Can the carriers rely on the package limitation provisions of Clause 22?

What is the relevance of the fact that the cargo value box on the bill of lading has not been filled in?

Q.4 What do you mean by rules of the road at sea, in the case of if vessels are in restricted visibility discussed the liability of vessels towards the avoid collision at sea? (07)

Q.5 Write short note on **any Six** of the following. (6x2 =12)

- (a) Pillars of Maritime Law
- (b) Fundamental rights of seafarers
- (c) How the Ship owner can limit the liability under LLMC 1976
- (d) What do you mean by Safety of Life at Sea? Discuss the amendment procedure under SOLAS
- (e) Safe Speed at Sea
- (f) Utmost Good faith under Marine Insurance
- (g) P& I Club
- (h) Warranties under Marine Insurance Contracts
- (i) ISPS Code

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