

Carriage of Goods By Sea Workshop and Tutorial Questions

- 1 Outline the liabilities of a common carrier regarding loss or damage to goods in his charge.
- 2 What tests can be applied to distinguish between the various classifications of charterparty? Discuss the consequences that flow from such classification.
- 3 What classifications can be applied to the various provisions that may bring about the creation of a charterparty? Why is it important to classify these provisions? Discuss the consequences that flow from breach of the various types of provision.
- 4 Why is it important that a vessel under a Voyage Charterparty must proceed with reasonable dispatch? Explain the implications involving the implied undertaking in a voyage charter party that the vessel shall proceed with reasonable dispatch.
- 5 What is a deviation? Explain the implications regarding the excepted perils of a breach of the implied undertaking in a voyage charter party that the vessel shall not deviate. Reference should be paid to the common law and the statutory provisions regarding the saving of life and goods.
- 6 Discuss the implications regarding the payment of freight, general average and demurrage of a breach of the implied undertaking in a voyage charter party not to deviate.
- 7 Fred chartered the mv. Flintstone from Barney for a voyage from Barry Island to Florida. The charterparty stated that it was a demise charterparty and provided inter alia that Barney would be responsible for the appointment of and payment of the wages of the crew. The crew would be under the orders of the charterer. The charterer to indemnify the owner for all liabilities arising out of bills of lading signed by the master. The charterparty contained a liberty to deviate clause and exempted liability for breach of the implied warranty of seaworthiness.

Betty consigned (consignment 13) a cargo of cartoon videos to Mildred aboard the mv. Flintstone, subject to Bankers Confirmed Documentary Credit. The bill of lading was stated to be subject to all terms and conditions of the charterparty. The Bill of Lading stated that the Consignment 13 had been received in good order and condition. Betty has received payment for the videos by The National Welsh Bank. Mildred has given a trust receipt to the Florida State Bank and taken possession of the bill of lading in readiness to present it to Captain Mouse when the mv. Flintstone arrives at West Quay Florida.

Captain M.Mouse called in at New York to drop a birthday present into Mrs.Mouse. On leaving New York the vessel ran into heavy water. Some waves penetrated the cargo hold through a porthole which had not been firmly secured, and which could not be reached once the ship was loaded. Some of the videos in Consignment 13 are damaged by salt water. During unloading consignment 13 is dropped from the crane onto the quay due to the negligence of the stevedores unloading the vessel and some of the videos are damaged. The stevedores take some of the undamaged videos home for their kids. Discuss.

8. When is a vessel unseaworthy? Explain the implications involving the implied undertaking in a voyage charter party that the vessel be seaworthy.
9. Explain the meaning of the term 'Seaworthiness'. Compare and contrast safety and seaworthiness.
10. What is the standard required to satisfy the undertaking to provide a seaworthy ship ? why is the warranty of seaworthiness described as being absolute?
11. Discuss the implications regarding breach of the implied undertaking as to seaworthiness in a Voyage charter party.
12. Does a vessel have to be seaworthy for an entire voyage ? What is the effect of a voyage that has been split up into a number of separate stages?
- 13 To what extent, if at all does the implied warranty of seaworthiness include cargo worthiness?
- 14 Compare and contrast the role played by causation regarding claims for loss in cases involving deviation and unseaworthiness.
- 15 Give examples of the types of deficiency that will result in a vessel being unseaworthy.

Carriage of Goods By Sea Workshop and Tutorial Questions

- 16 Compare and contrast the seaworthiness standards required to satisfy the common law and statute. Which test is any exists to establish which standard is required in any given situation?
- 17 What is the effect, if any of exemption clauses on the implied warranty of seaworthiness in bills of lading, contracts of carriage of goods by sea and in charterparties? What is the effect, if any of exemption clauses on the statutory provisions regarding seaworthiness?
- 18 Discuss the liability of a guarantor of the payment of hire in a time charterparty for a failure by the time charterer to pay hire on time. Can the guarantor avail himself of the benefits of set off which would otherwise appertain to the time charterer?
19. How do the courts establish the amount due for hire of a vessel in a time charterparty when the parties have not specified the amount in the charterparty?
20. Discuss the provisions which provide for the variation of hire rates and the notion of set off, and in particular the effect of deductions permitted with regard to the final month's hire.
21. What obligations attach to a shipowner before the payment of hire becomes due?
22. What effect is their on the obligation to pay hire if the vessel is off hire?
23. Is payment by cheque, regular or otherwise, as good as payment in cash for the hire of a vessel in a time charterparty.
24. When, if at all, can a shipowner withdraw a vessel for a failure by the charterer to pay hire on time ? What is the test, if any applied by the courts to establish whether or not a payment has been made on time?
25. What is the effect on the payment of hire of a vessel being Off Hire? In what circumstances will a vessel be sufficiently deficient of crew to justify the vessel being off hire.
26. How do the courts interpret off hire clauses in a charterparty in relation to the break down of machinery, the prevention of the working of the vessel, and other allied problems?
27. At what point in time does a vessel cease to be on hire when it is clear the vessel needs repair work, and at what point in time does a vessel cease to be off hire following repairs?
- 28 Why is it important to distinguish between those orders given by the charterer to the master which concern employment and those orders which do not? What are the hall marks of an employment order? What has to be established if 'employment' is to be relied upon? When will the common law imply an indemnity clause?
- 29 What is a safe port? Why is it important to know what is or is not a safe port ? How many types of obligation arise out of the duty to nominate a safe port and what are they?
- 30 What are the respective loading and unloading duties of the shipowner and the charterer in a voyage charterparty?
- 31 What is an arrived ship?
- 32 Define the following terms : Lay Days & Demurrage. Discuss the types of events which will prevent lay days from running. What is the meaning of the expression '*Once demurrage, always demurrage.*'?
- 33 The issue of bills of lading under a charterparty is a facility given to a charterer which is not without risk to the shipowner. Whilst the law is ready to protect the shipowners rights against the charterer it is much less ready to extend them against the bill of lading holder himself. Explain and discuss.
- 34 *"Far from being the threat to shipowners' interests they are perceived to be, the Hamburg Rules do little to increase the rights of a cargo owner beyond that currently provided by the Hague-Visby Rules"* Discuss
- 35 *"Twentieth century legislators have failed to produce anything to compare with the simplicity of, and the predictability that flowed from, the common law rules governing the common carrier's relationship with cargo owners. Legislative attempts at creating a balance of bargaining power between the parties to contracts for the carriage of goods by sea have been misguided and have failed to fulfil their purpose."* Discuss, with particular reference to The Hague, The Hague-Visby and The Hamburg Rules.

Carriage of Goods By Sea Workshop and Tutorial Questions

- 36 On the 1st Jan 1989 Trans Ltd, owner of the m.v. Beaut, chartered the vessel to Albert for a period of 12 months. The charterparty contained the following provisions
1. Baltimore 1939 E & I Clause.
 2. Baltimore 1939 Safe Port Clause.
 3. Shipowner to maintain the vessel in an efficient state.
 4. Payment of hire to be made in cash in advance on the 1st of each month. In default of payment the owners to have the right of withdrawing the vessel from the service of the charterers.
 5. An off hire clause in Baltimore 1939 form.

At the Commencement of her first voyage from Swansea, Albert ordered the master to sail at midnight. The master initially refused to obey this order as the port was foggy and a typhoon was forecast. Nevertheless, on being pestered, he set sail under protest. On leaving Swansea, the Beaut collided with another vessel partly because of poor visibility and partly due to the fact that her radar was not functioning properly. The cost to repair the damage sustained by the hull was £100,000. The repairs took 7 weeks. Albert informed Trans Ltd that he wished to repudiate the contract, but when Trans Ltd agreed that it would claim from Albert only 30% of costs of repairs Albert agreed to continue with the charter.

On the 3rd of March, the Beaut was ordered to sail to Bombay, which was at the time controlled by a group of terrorists. It was then reported in the press that the government was regaining control and the port was expected to be safe by the time the Beaut arrived. However, when the Beaut was about to enter the area of the port, further skirmishes developed and she was hit by a missile, sustaining serious damage to her hull. The master immediately withdrew the Beaut from the port and headed for Jakarta in accordance with instructions issued by Albert.

Whilst the Beaut was on its way to Jakarta, in the Straits of Malacca, she was boarded by a gang of pirates who were after her cargo of whisky. During the seizure, the pirates damaged the electronic equipment on board, and when the Beaut finally arrived in Jakarta, she was turned away by the harbour authorities by reason of her unseaworthy condition. As Trans Ltd. was reluctant to repair the damage, Albert refused to make a third nomination. The master then decided to sail for Singapore, a port known to be safe. On the 1st of August, which fell on a public holiday, hire was due. Albert, unaware of this, only managed to order his bank to credit the account of Trans Ltd. the next day. But due to a computer error, only £31,000 was credited when the amount of hire due was £31,700. On the 3rd of August, Albert, realising the mistake, immediately instructed his bank to correct the error. On the 4th of August, Trans Ltd. informed the master that he was to withdraw the vessel from the service of the charterer at the next port of call. On the 10th of August, Trans Ltd. entered into another charterparty with Rich Ltd. as freight rates had by then gone up.

Advise Albert as to his legal position.

- 37 The m.v. Middle, owned by Ill Ltd., was chartered to Scrub Ltd for 6 months from 1st January. The charterparty contained the following provisions.
- a). Shipowner to maintain the vessel in an efficient state.
 - b). Hire to cease to be payable in the event of deficiency of men, breakdown of machinery, damage to hull, accidents or other circumstances preventing the full working of the vessel for more than 24 hours.
 - c). Baltimore 1939 E & I clause is hereby incorporated.
 - d). Hire to be paid monthly in advance - failing regular payment, shipowner to have an automatic right of withdrawal of the vessel.

The vessel was not delivered until the 3rd January due to being held up by reason of a pre-delivery survey. Scrub Ltd. protested about the late delivery and the state of the vessel's holds but agreed to accept the vessel. When the charterer gave the order to load, it was discovered that the vessel's derricks were insufficient for the task. The master did not inform the shipowner of this immediately and 3 days were lost before the charterer acquired dockside cranes to assist in the loading.

Carriage of Goods By Sea Workshop and Tutorial Questions

The vessel was directed by the charterer to Hamburg. On its way to the port the vessel collided with an underwater wreck. Hamburg Port Authority broadcast a warning of navigational hazards existing in the approached to the port every six hours, but the ship's wireless operator had missed this particular report.

When the vessel was due to leave Hamburg for Sydney, a number of the crew were struck down by a peculiar virus. In consequence the vessel was four days late sailing. At Sydney the vessel collided with the discharging pier and it took four days to repair the damage to the vessel. During this period the discharging of cargo continued with only occasional stoppages. The Middie loaded a cargo of boxed eggs at Sydney. The master protested at the state of the boxes but agreed to accept an indemnity against giving clean bills of lading. He did this only after an assurance by the charterers that this style of packaging had always been used. On arrival at Singapore many boxes were found to have been crushed and the contents rendered useless. Xap Ltd., consignee of the cargo carried under the Hague Visby Rules has commenced an action against the shipowner for its loss.

In May the hire due was credited to the shipowners bank account some ten minutes after the proper time. As a result the shipowner announced a temporary withdrawal of the vessel. The parties agreed that the vessel should continue its cargo duties at a higher rate of hire, without prejudice to the legal rights of the parties.

Advise Ill Ltd. as to its legal rights and liabilities.

- 38 By a charter-party dated 12 March, Fred chartered the m.v. Flora from Melanie, for the carriage of bulk poly unsaturated margarine from Florida, USA to Sydney, Australia. The charter-party, governed by English law and jurisdiction, excluded the shipowner from liability for damage due to unseaworthiness and from negligence of crew and stevedores and excluded liability for delay howsoever caused and stated that all bills of lading should be issued without prejudice to the charterparty. It also allowed 2 weather working days for loading and 3 working days for unloading and a total of 5 days demurrage at \$3,000 a day.

The charter-party stated that the m.v. Flora was now at New Orleans and was expected ready 1 April and contained a 6 April cancellation date. The vessel was in fact in a dry dock undergoing repairs in New York on 12 March and subsequently Melanie informed Fay on 20 March that the m.v. Flora would now arrive before 8 April.

The m.v. Flora arrived in Florida on 8 April. Fay loaded a cargo of margarine. Loading took four days because the process was interrupted by a 2 day Mardi Gras celebration. Immediately after sailing the vessel headed for a nearby oiling depot to take on fuel for the voyage to Sydney and then proceeded to a shipwright's yard to take on engineers to tune the engines fuel system. The vessel sailed with the engineers on board. After they had finished their work the vessel heaved to close to the coast so the engineers could be returned to shore on the vessels service launch. Whilst approaching the shore the vessel temporarily grounded on a sand bank sustaining minor hull damage necessitating a return to port for repairs, eventually sailing for Sydney on 10 May.

Fred sold the margarine to Harry. The bill of lading, subject to English law and jurisdiction and the Hague Rules and signed by the master on Melanie's behalf, incorporated all terms and conditions of the charter-party. A residue of the previous cargo of ordinary margarine was left in one of the holds of the vessel and this combined with the new cargo turning the margarine in that hold into lower quality poly saturated margarine. During the course of the voyage rusty rivets between a ballast tank and one of the cargo tanks resulted contamination of the portion of cargo contained in that hold. The rivets were rusty even before the vessel sailed from Florida. The vessel arrived at Sydney on a Friday at 22.00 hours and no unloading took place till the following Monday. A quantity of margarine was lost during discharge at Sydney because of a badly connected discharge hose.

Harry claims compensation of Melanie for the poly saturated margarine, the margarine contaminated by water, for the margarine lost during discharge and because the cargo was delivered late.

Advise Melanie on her rights and liabilities in respect of the events outlined above.

Carriage of Goods By Sea Workshop and Tutorial Questions

38 Critically evaluate the contribution made to the jurisprudence concerning the carriage of goods by sea by the common law importation of implied terms into such contracts.

39 Andy chartered the m.v. Candy to Betty for twenty four months commencing on 1 January 1998. The charterparty provided inter alia : Payment of hire to be made in cash ... on the first day of each month. In default of payment the owners to have the right of withdrawing the vessel from the service of the charterers. In the event of ... breakdown of machinery, damage to hull or other accident, either hindering or preventing the working of the vessel ... no hire to be paid in respect of any time lost thereby ...The vessel to be employed only between safe ports.

Betty ordered the m.v. Candy to New York, U.S.A. to load a cargo of wheat. A stevedore fell over and injured himself on the deck of the vessel during loading. The deck of the vessel was wet and slippery following a rain storm. The stevedore claims compensation from Andy for the industrial injury.

Despite an adverse weather forecast, Betty then ordered the m.v. Candy to sail immediately for Halifax, Nova Scotia to discharge the wheat and take on a cargo of maize. The master protested at the order but eventually agreed to said before the weather improved. Because of the bad weather the m.v. Candy collided with m.v. Innocent resulting in £150,000 of damage to both vessels. The m.v. Candy vessel had to return to port for ten days repair work. It took three day's sailing to return to port. After repairs it took a mere day to pass the spot where the collision occurred. Having eventually arrived at Halifax discharged the wheat and loaded the maize Betty ordered the m.v. Candy to Granada in the Carribean to load a cargo of Bananas and to discharge the maize. At the time of nomination it was reported that there was civil unrest in Granada about the slump in the bananas trade which had badly affected the economy of Granada. The Government had issued a statement to the effect that the situation would soon be under control. During discharge of the maize a group of strikers who proclaimed themselves be 'The New Workers Government of Granada' attacked the vessel and requisitioned some of the maize to be used as army rations for their troops. Despite the fact that the vessel could have left port after the attack Betty ordered the vessel to remain in port until the cargo of bananas had been loaded. The master protested about remaining in Granada but felt obliged to remain in port in the absence of fresh orders. The following day a second attack by the protesters resulted in £1,000 worth of damage to the vessel. Betty then ordered the vessel to Amsterdam. At Amsterdam the vessel was impounded by the authorities for the illegal import of bananas into the E.C. contrary to E.C. Law because the bananas were too small in size for E.C. Regulations. The vessel was detained by the authorities for fifteen days and eventually released after the master paid a large fine. Hire fell for payment whilst the vessel was detained. The day after the vessel's release Betty instructed her bank to pay that month's hire to Andy less a sum of money to cover the period of detention. Andy instructed his bank not to accept the payment and ordered the master to withdraw the vessel.

Advise Betty on her rights and liabilities in respect of the events outlined above.

40. *"By virtue of Art IV(4) Hague and Hague-Visby Rules, the extreme consequences of deviation will seldom be visited on a sea carrier. Furthermore, the failure to address the circumstances when a deviation will or will not be lawful by The Hamburg Rules exposes a carrier subject to the Hamburg Rule regime, in respect of a claim before an English Court, to the full rigour of the doctrine of deviation."* Outline the legal consequences of unlawful deviation at common law and compare and contrast the implications of The Hague, The Hague-Visby and The Hamburg Rules on the legal liabilities of sea carriers.

41 *"A ship which is not safely managed or operated in accordance with the terms of the approved S[hip] M[anagement] S[y]stem (following the requirements of the International Management Code for the Safe Operation of Ships and for Prevention of Pollution – The ISM Code) is, it is contended, not reasonably fit to encounter the ordinary perils of the seas and, therefore, unseaworthy". The legal implications of the ISM Code. Dr.S.Hodges. [1999] IJIL p51.*

Assuming the above statement is correct, discuss the implications of a breach of the SMS on applications by sea carriers to avail themselves of the privilege of limitation of liability.

Carriage of Goods By Sea Workshop and Tutorial Questions

- 42 In December 1998, Angel, owner of the m.v. Teddy Bear, chartered the vessel to Gareth for a period of 12 months, commencing 1st January 1999.. Gareth took delivery of the vessel on the 1st January 1999. The charterparty contained inter alia the following clauses :-

In the event of dry docking or other necessary measures to maintain the efficiency of the vessel, deficiency of men or Owners stores, breakdown of machinery, damage to hull or other accident either hindering or preventing the working of the Vessel and continuing for more than 24 consecutive hours, no hire to be paid in respect of any time lost thereby during the period in which the Vessel is unable to perform the service immediately required. Any hire paid in advance to be adjusted accordingly.

The Master to prosecute all voyages with the utmost dispatch and to render customary assistance with the vessel's crew. The Master to be under the orders of the Charterers as regards employment, agency or other arrangements. The Charterers to indemnify the Owners against all consequences or liabilities arising from the Master, Officers or Agents signing Bills of Lading complying with such orders.

Payment of hire to be made in cash, in advance, without discount, on the 1st of the month.

When hire is due and not received the owners before exercising the option of withdrawing the vessel from the charterparty, will give the charterers 48 hours notice and will not withdraw the vessel if the hire is paid within 48 hours.

On January 3rd, Gareth discovered that the hull of the m.v. Teddy Bear was fouled by marine growth, as a result of which her speed was considerably reduced, as a result of which, it took the vessel the 3 days longer than anticipated for a voyage from London to New York. Gareth has refused to pay hire for the 3 days. At New York, Gareth ordered the master to deliver a cargo of bear skins to Mr Fote, without production of a bill of lading. Mr Fote is a well known international animal rights activist. The master, Captain Polar was very suspicious but nevertheless decided to release the cargo to Mr Fote when he was pestered to do so by Gareth. Angel was subsequently obliged to compensate Mr Hyde, the holder of the bill of lading, for the loss of his cargo of bear skins.

Blondy, a member of the crew, who had unloaded the bear skins, suffered a serious skin complaint as a result of his allergy to fur. Angel had to pay Blondy for all his medical expenses. On March 20th the use of the m.v. Teddy Bear was lost when she was arrested and detained for 7 days in the port of Cherbourg by the French authorities on the suspicion that several members of the crew were involved in the smuggling of drugs. Gareth has refused to pay hire for the 7 days.

On March 31st, Gareth instructed his bank to remit the instalment of hire due on April 1st to the Arctic Bank for the account of Angel. Unfortunately the telex never reached the Arctic Bank, as it was sent by mistake to the Antarctic Bank. On March 31st, at 23,00 hours, Angel sent a telex to Gareth giving him 48 hours notice to pay the hire due, failing which he would withdraw the vessel. On April 5th Angel withdrew the vessel and claimed damages from Gareth alleging that Gareth had breached the contract. The market rate of hire had risen after the withdrawal of the vessel. On April 6th, Gareth on discovering his bank's mistake, promptly sent his agent to Angel's office to pay him in cash the hire due under the charterparty. The hire, which was accepted by a clerk in Angel's office was never returned to George.

Advise Gareth on his rights and liabilities in respect of the events outlined above.

- 43 Spice Ltd., owners of the m.v. Gerry, chartered the vessel to Posh for a period of one year from the time of delivery. The charterparty provided inter alia In the event of the vessel being lost during the currency of the charterparty, any money paid in advance and not being earned shall be repayable to the charterer – Act of God, fire, restraint of princes or enemies always mutually excepted. Charterer to present bills of lading to the master for signature and to give orders as to employment. Charterer to indemnify the shipowner against all consequences of the same. In the event of breakdown or damage to hull or machinery or equipment, or deficiency and or default of men or stores or any other fault preventing the working of the vessel then the vessel is to be off-hire. Vessel to be in every way fitted for ordinary cargo service.

Carriage of Goods By Sea Workshop and Tutorial Questions

On delivery to Posh, at Cardiff, it was found that the vessel's holds had not been properly cleaned from the previous voyage. Posh at first refused to take delivery, but later agreed to do so. Some of the crew had not been properly trained in cargo handling and as a result Posh was not able to fulfil a contract which she had arranged for the vessel immediately upon delivery to her. At Cardiff, it was also discovered that the vessel's monk cranes were not in proper working order and had to be repaired. This took some 8 days to put right. In fact, 2 of the days were lost due to a strike in the repair yard at Cardiff. The m.v. Gerry then proceeded to Swansea for a voyage to Pireas, Greece. At Swansea the vessel loaded amongst other things a cargo of wool belonging to Scary. The bill of lading issued to Scary was signed by Posh "on behalf of the master" and provided that the carrier was not liable for "any loss or damage due to the cargo arising from unseaworthiness or otherwise unless arising from a want of due diligence on the part of the carrier or its manager." Posh also shipped a cargo of bag pipes and a cargo of harps under bills of lading containing identical terms. Subsequently, during the course of the voyage, Scary sold the cargo of wool to Baby, a Greek merchant and Posh sold the cargo of bag-pipes to Pan Musical Instruments Co of Athens. In the course of the voyage to Pireas fire broke out and caused damage to all 3 cargoes. The fire resulted from a lack of fire prevention knowledge on the part of the crew. When the charterparty had only one month left to run, Posh sent the m.v. Gerry on a ten week voyage and as a result the m.v. Gerry was redelivered late and Spice Ltd. lost a very valuable pre-arranged charterparty. On redelivery Spice Ltd found that the hold of the vessel had sustained damage due to the nature of some of the cargoes carried during the course of the charter. Advise Posh on her rights and liabilities in respect of the issues outlined above.

44. John Bull, a wine and spirit merchant in England, arranged for a cargo of Canadian Whisky to be shipped from Canada to Seoul, South Korea; for a cargo of Bourbon to be shipped to Taipeh, Taiwan; and for a cargo of Californian Wine to be shipped from San Francisco, USA to Hong Kong. John Bull arranged free in and out contracts of carriage, subject to English Law and Jurisdiction, with The Booze Carrier Co, owners of the m.v. Hooch, on terms permitting transshipment on best terms available.

The Canadian Whisky was loaded aboard the m.v. Hooch at Vancouver. A clean bill of lading stating "weight and quantity unknown" was issued in respect of the cargo. It is later discovered that there were discrepancies between the invoice and the bill of lading regarding markings on the cases of whisky. The m.v. Hooch proceeded to San Francisco where the wine and the bourbon was loaded. The clean bills of lading issued in respect of these cargoes excluded liability for wrongful acts of third parties. Whilst the new cargo was being loaded at San Francisco a number of crates of Canadian Whisky were damaged by careless stevedores who decided to drink the contents of a number of loose bottles which fell out of the damaged crates. During the voyage to Seoul bad stowage resulted in a number of cases of bourbon breaking loose from their ties and smashing during stormy weather. Booze Carrier Co issued bills of lading, subject to English Law and London Arbitration, out of their London office to John Bull in respect of the 3 cargoes. Canada is a signatory to the Hague Visby Rules. The bill of lading in respect of the Canadian Whisky covered shipment from Vancouver to Seoul. The US is a signatory to the Hague Rules but the bills of lading in respect of the wine and the bourbon, covering shipment from San Francisco to Taipeh did not incorporate the Hague Rules. John Bull sold the whisky to Rod, the bourbon to Sam and the wine to Ted. Each buyer paid John Bull on endorsement of documents for their respective cargoes. The m.v. Hooch then proceeded to Seoul and discharged the Canadian Whisky before proceeding to Taipeh where the bourbon was discharged and the wine transhipped aboard the m.v. Saki bound for Hong Kong. The bill of lading, subject to Taiwanese Law and Jurisdiction, issued by the Plonk co, owners of the m.v. Saki, excluded liability for damage caused by unseaworthiness of the vessel and required all claims in respect of cargo loss or damage to be made within 3 months of the incident causing the loss. The m.v. Saki, which was clearly unseaworthy, started to flounder in heavy seas during the voyage from Taipeh to Hong Kong and the master ordered the cargo of wine to be jettisoned over board in order to save the vessel. The vessel limped into Hong Kong three months and a half months later.

Advise Rod, Sam and Ted of their rights and liabilities regarding the events outlined above, with specific reference to The Hague and Hague Visby Rules.

Carriage of Goods By Sea Workshop and Tutorial Questions

45 On 1 January, Cicone of Cicone Ltd. chartered the m.v. American Pie from McLean Ltd., for a voyage from San Francisco to New York. The charter party stated that the m.v. American Pie was an A1 vessel, capable of steaming at 22 knots. In fact, she could only do about 15 knots. The charter party further provided that Cicone had a right to cancel the charter party if the m.v. American Pie was not delivered by 20 January. When the m.v. American Pie was finally delivered to Cicone at 10:00 am on 21 January, Cicone refused to accept delivery and cancelled the charter party. The vessel was only classified A3.

On 22 January, Cicone chartered the m.v. Material Girl, owned by J.Public Ltd for a voyage from San Francisco to New York. Cicone loaded 10,000 bottles rice wine; 25,000 bottles rice vinegar; 8,000 sacks of soya bean and 5,000 boxes of Chinese fireworks. All four cargoes were required for the New York Chinese New Year celebrations. When the m.v. Material Girl was at San Francisco, the master, Captain Pit, discovered that the steering gear was defective. The ship repairer took five days to remedy the fault. Cicone protested about this and also about the damp condition of the hold. She was, however, persuaded to load her cargoes, as time was running short and she was anxious for the cargoes to arrive in time for the Chinese New Year celebrations starting on 15 February. During the voyage from San Francisco to the Panama Canal, the crew discovered that all the bottles of rice wine had leaked as they were not properly corked. The seepage from the rice wine contaminated 350 sacks of soya bean.

After leaving the Panama Canal, the vessel encountered a tropical storm and had to deviate to Kingston, Jamaica to seek shelter. Whilst at Kingston the master decided to give his men four days shore leave to attend a Bob Marley commemoration festival. The additional delay meant that by the time the sacks of soya bean were delivered to New York many of the beans had started to germinate and turn bitter.

Captain Pit was then ordered by J.Public to load a cargo of ceramic tiles which were urgently needed by the US Space Agency for the Voyager Space Shuttle and deliver them to Cape Kennedy. As a consequence of this delay, a large number of the bottles of rice vinegar started to ferment. Cicone, who was aware of the deviation, elected to waive it, as she had previously sold the vinegar to Aitcho Chi Min in New York. When the m.v. Material Girl arrived at New York on 28 February, stevedores negligently dropped 250 bottles of rice vinegar into the dock. Aitcho Chi Min refused to take delivery of the vinegar. As a result of the stevedore's rough handling the fireworks exploded and damaged parts of the vessel which cost \$80,000 to repair.

Advise Cicone Ltd. and Aitcho Chi Min as to their respective rights and liabilities in respect of the above events.

46 Hook chartered the m.v. J.Roger to Wendy for 24 months commencing on 1 January 1999. The charter party provided inter alia: *"Payment of hire to be made in cash ... on the first day of each month. In default of payment the owners to have the right of withdrawing the vessel from the service of the charterers. In the event of breakdown of machinery, damage to hull or other accident, either hindering or preventing the working of the vessel ... no hire to be paid in respect of any time exceeding 24 hours lost thereby ... The vessel to be employed only between safe ports*

Wendy ordered the m.v. J.Roger to Neverland, to load a cargo of wheat. At Neverland, Simon, a port authority health and safety supervisor fell over and injured himself on the deck whilst inspecting working conditions on board the vessel during loading of the wheat, due to slippery conditions caused by heavy rain,. Simon claims and receives compensation from Hook. Wendy orders Peter the captain to sail immediately for Wonderland to discharge the wheat and load a cargo of corn, despite the fact that adverse weather is forecast. Peter complied with the order under protest, then retired to his cabin for a quick measure of rum to calm his nerves from the verbal onslaught inflicted on him by Wendy. The m.v. J.Roger's radar was faulty at the time of sailing. Due either to the lack of accurate radar readings, mis-judgement by the drunken captain or simply because of the appalling weather conditions, the m.v. J.Roger collided with the S.S.Wrongplace. The S.S.Wrongplace was not at fault but sustained £300,000 worth of damage. The m.v. J.Roger sustained £200,000 worth of damage and returned to port under tow. It took 6 days to tow the vessel back to port, 17 days to carry out repairs and a further 3 days sailing to return to the spot where the collision had occurred.

Carriage of Goods By Sea Workshop and Tutorial Questions

The vessel sailed uneventfully to Wonderland, discharged its cargo of wheat and loaded a cargo of maize for delivery to Darling at Felixstowe and to load a cargo of hops for delivery to Amsterdam. At the time of the Felixstowe nomination it was reported that there was civil unrest in Suffolk. The self appointed Suffolk Liberation Army (SLA) demanded a Scottish style Suffolk Parliament. The British Government issued a statement to the effect that the situation would soon be under control.

Shortly after docking in Felixstowe the vessel was attacked by an SLA Brigade who requisitioned several tons of maize as army rations for their troops. Despite the fact that the vessel could have left port Wendy insisted that it remain and load the cargo of hops. Peter protested but felt obliged to comply. After the hops were loaded the SLA Brigade returned and caused £15,000 of damage to the vessel. Peter set sail immediately for Amsterdam after the SLA Brigade left.

On arriving at Amsterdam, the vessel was arrested by the authorities and refused permission to discharge the cargo on the grounds that the hops were genetically modified contrary to EC Regulations. The vessel was detained by the authorities for 15 days and eventually released after Peter paid a large fine to the authorities. Hire fell for payment whilst the vessel was being detained at Amsterdam. The day after the vessel's release Wendy instructed her bank to pay that month's hire less a sum of money to cover the period of detention. Hook instructed his bank not to accept the payment and ordered Peter to withdraw the vessel and promptly chartered it to Smythe. The hops are still on board the vessel.

Advise Wendy on her rights and liabilities in respect of the events outlined above.

- 47 A one-ship company, Pharaoh S.S. Co Ltd., (P.Co.) owners of the 25 year m.v. Sieve demise chartered the vessel for 10 years in 1998 to Quick Cash Charter Co Ltd. (Q.Co). Q.Co also own and operate the m.v. Collander. The m.v. Sieve is sub-chartered by Q.Co to Ferroco p.l.c. (FP) under a voyage charter party from Newport, South Wales to Hull, England. FP is the owner / shipper of a cargo of steel, which is loaded onboard the m.v. Sieve for delivery to Hull. During the loading process the ship's crane, which was in need of repair, broke and Charlie Wrongplaice, one of the stevedores loading the cargo, suffered a fatal accident. After loading at Newport, the m.v. Sieve was fuelled up (bunkered) by Mocoa Oil Suppliers Co (MOS) and then set sail to Hull. During the voyage sea water penetrated the hatch covers and the cargo of steel got wet. On arrival at Hull the cargo was found to have rusted. Whilst maneuvering to leave the port she accidentally collided with a jetty owned by Hull Port Authority and caused damage to it. P.Co. fearing that the Angelos may be arrested by various claimants, transferred her to a newly formed company called Stealth Co Ltd., (S.Co) but the ship's name remained the same. After the transfer, the m.v. Sieve (which badly needs repairs and is worth very little) is arrested by MOS, who has not yet received payment for the bunkers. S.Co. is contesting the arrest on the ground that it has nothing to do with the liabilities of the previous owner of the m.v. Sieve. Hullvoy Insurance Brokers Ltd (HIB) have not been paid outstanding hull premiums, though they themselves have already paid the premiums for a number of IVCH policies on the vessel for a number of voyages to Londonvoy Co, (LC) Insurance Underwriters.

Advise FP, the dependants of Charlie Wrongplaice, Hull Port Authority and HIB respectively in terms of Admiralty Jurisdiction, procedure and the assets against which they may proceed, taking into consideration the order in which they may be satisfied.

Assume that, legal personality issues apart, liability is not an issue.

- 48 The mv Fly was chartered by Amy to Ben for a voyage from Cardiff to Hong Kong and stated that the mv Fly was now lying off the coast of Jersey. It was in fact berthed at Cherbourg. The Charterparty provided inter alia

Vessel to be able to load or discharge at a berth reachable on arrival as may be indicated by the charterer. Master to give six hours notice on arrival of vessel to charterer - berth or no berth - for commencement of lay time. Three days laytime allowed for loading and unloading at any port of call. Demurrage to be charged at £10,000 per day for five days.

Captain and crew to be appointed by the ship owner and paid by the charterer. Master to be under directions of the charterer regarding employment of the vessel.

Carriage of Goods By Sea Workshop and Tutorial Questions

Ship owner to maintain the vessel in good order and condition. Charterer liable for all consequences flowing from the signing of bills of lading which must incorporate terms and conditions of the charter party and to indemnify the ship owner for all orders of employment of the vessel. All bills of lading to incorporate liberty to deviate to any port clause. No liability accepted for negligence of the crew or stevedores in absence of due diligence by shipowner.

On arrival at Cardiff, Amy sent the mv Fly on a short return voyage to Le Havre. When the mv Fly was finally delivered, Ben protested its late arrival but agreed to accept the vessel since he had been unable to hire a replacement.

Dan sent a cargo of violins and a consignment of video cassettes to Hong Kong aboard the mv Fly. The hold of the mv Fly was rather damp and some of the violins were damaged. The cassettes were loaded in the same hold as a consignment of magnets. The magnets erased the films recorded on the videos.

Charles shipped a cargo of fireworks to Leng on the mv Fly and told Ben that it was essential that the cargo arrive in time for the Chinese New Year celebrations. Ben assured Charles that the vessel would sail direct for Hong Kong without delay. The bill of lading incorporated all terms and conditions of the charterparty. The mv Fly called in at Cairo in Egypt and Calcutta before being ordered to Bombay to pick up a cargo of rice for Hong Kong. The mv Fly eventually arrived in Hong Kong ten days after the Chinese New Year Celebrations had ended and Leng consequently suffered a loss of profit.

When the vessel arrived in Hong Kong the berth, nominated by Ben, was occupied by a broken down vessel. Amy gave Ben prospective notice of arrival twenty four hours before the vessel reached Hong Kong. The Hong Kong government would not let any vessels into the harbour for three days because of a security scare. By the time the harbour was reopened the berth had become available. Loading and unloading at Hong Kong took another three days.

Advise Ben as to his rights and liabilities in respect of the events outlined above.

- 49 Explain the rationale which underpins the rule of maritime law known as "General Average" and discuss the role played by the York Antwerp Rules in the assessment of claims for General Average.
- 50 Chandler time chartered the *Phoebe* from Sitcom Ltd. The charterparty provided *inter alia*:
- the Owner agrees to let and the Charterer agrees to hire the said Vessel, from the delivery at Felixtowe, England, on 11 March 2000, for a period of about 20 days to maximum 30 days. Vessel to be redelivered at Bristol. England.*
 - in the event of loss of time from deficiency of men, breakdown of machinery, damage to the hull or other accident, either hindering or preventing the working of the vessel no hire paid in respect of any time lost thereby during the period in which the Vessel is unable to perform the service immediately required.*
 - this charter is governed by English law and all disputes to be settled by arbitration in London.*

On 12th March 2000, Chandler ordered the master of the *Phoebe*, Captain Ross, to load a cargo of 350 containers at Felixstowe for delivery at New Orleans, USA. A total of 200 containers belonged to Chandler, while the remainder, containing dolls, was the property of Joey. Captain Ross issued two separate bills of lading which provided that "all terms and arbitration clauses of the bill of lading as per charterparty" and that "bill of lading freight is payable in lump sum at destination." On the back of the bill of lading were the hand-written words "disputes to be settled by arbitration in New Orleans, subject to English Law and the Hague-Visby Rules." Subsequently, Captain Ross also gave an oral assurance to Joey that the containers would be delivered to New Orleans before 1 April, the day on which the US Government implements a new import tax on toys.

On 17 March, the *Phoebe* arrived at New York to bunker. Two days later, Chandler ordered Captain Ross to sail up the Mississippi river to New Orleans. At the time that order to sail was given, Chandler could still meet the last delivery date of 10 April. Later that evening, when the *Phoebe* was thirty miles up river, Captain Ross received news that the only navigable route to New Orleans was blocked because the *Monica* had grounded in thick fog. It would take three weeks for the *Monica* to be salvaged and the navigation channel cleared. Chandler informed Sitcom Ltd. that he intended to overrun the charter period to deliver the cargo of containers. Sitcom Ltd. accepted this under protest.

Carriage of Goods By Sea Workshop and Tutorial Questions

The *Phoebe* only arrived in New Orleans on 7 April. When the cargo was discharged, Chandler discovered that all the security seals had been tampered with and their contents pilfered. On this ground, Chandler withheld payment of hire Sitcom Ltd. Joey deducted the amount he had to pay on the new US import tax from his payment of bill of lading freight. Chandler only redelivered the *Phoebe* at Port Talbot, Wales, on 14 April. Sitcom Ltd, has filed actions against both Chandler and Joey at the High Court in London.

Advise the parties of their rights and liabilities.

- 51 Cordelia chartered the *Buffy* from Slayer Ltd. for a voyage from Sydney, Australia, to Tokyo, Japan. The charterparty provided *inter alia*;

- a) *the ship is at liberty to proceed to any port for any purpose whatsoever*
- b) *all disputes under this charter to be settled by arbitration within 10 months of delivery*
- c) *this charter is subject to English Law.*

On 9 May 1999, 4000 boxes, each holding 5000 bars of processed Australian cheddar cheese belonging to Willow were loaded on board the *Buffy*. Also loaded on board was a cargo of 3000 sacks of wool belonging to Zander. The master of the *Buffy*, Captain Goon, stowed the cheese in the ship's refrigeration hold and lashed the sacks of wool onto the ship's deck. Captain Goon issued two bills of lading which provided *inter alia*;

- a) *the carrier has liberty to carry cargo on deck*
- b) *all terms, conditions and arbitration clauses as per charterparty*
- c) *bill of lading freight is payable at Sydney.*
- d) *this bill of lading is subject to English Law and the Hague-Visby Rules.*

On 11 May the *Buffy* encountered heavy monsoon rains in the South China Sea. The sacks used to package the wool were not water proof and the cargo of wool suffered water damage. The heavy rain also short circuited the refrigeration and radar system. Captain Goon deviated to Port Kelang, Malaysia, and had the wool dried out at a cost of £1,000. He also spent £5,000 repairing the refrigeration system and the radar. At Port Kelang, Captain Goon noticed that half the cheese had gone bad in the tropical heat but did not take steps to separate them from the unspoilt cheese.

The *Buffy* left Port Kelang on 17 May. The next day, one of the *Buffy's* crew, Angelo set fire to the cargo of wool while welding a hatch. Angelo was intoxicated at that time. As the fire extinguishers on board were defective, the fire could not be put out. Captain Goon then decided to dump half of the wool which was on fire overboard to save the ship.

On 21 May, the *Buffy* sailed into Tokyo harbour. Zander has discovered that the remainder of the wool could no longer be used to knit sweaters as the drying had deteriorated its quality. Willow has learned that the spoilt cheese had imparted a foul odour on the remaining cheese. Zander and Willow now refuse to pay the required freight and have commenced suits against Cordelia and Slayer Ltd. on 20 April 2000.

Advise Zander and Willow of their legal rights and liabilities.

- 52 Crane chartered the *Frasier* from Seattle Ltd. for a period of 25 days, commencing 1 February 2000. The time charterparty provided *inter alias* : - in the event of deficiency of men, breakdown of machinery, damage to hull or other accident either hindering or preventing the working of the vessel... no hire to be paid for any time lost thereby during which the vessel is unable to perform the service immediately required. This charterparty is subject to English Law

On 2 February 2000, Crane instructed the master of the *Frasier*, Captain Niles, to pick up a cargo of reggae compact discs at Kingston, Jamaica, for delivery at Copenhagen, Denmark. At the time when the order was given, a hurricane was forecast to hit the West Indies in a few days and Seattle Ltd. insisted that the *Frasier* remain at her home port in Halifax, Canada. Despite this, Crane ordered Captain Niles to sail immediately. Captain Niles obliged under protest. Three days into her voyage, the *Frasier* was caught in the hurricane and sustained damage to her hull and rudder. The *Frasier* finally reached Kingston on 11 February. At Kingston, two separate cargoes belonging to Daphne were loaded on board the *Frasier*.

Carriage of Goods By Sea Workshop and Tutorial Questions

Captain Niles issued two bills of lading which described the cargo as “400,000 reggae compact discs in apparent good order and condition” and declared that “... all particulars particulars relating to weight and quantity thereof as stated by the Merchant, unknown to the Carrier” The bill of lading was subject to English law and incorporated the Hague-Visby Rules. Loading should have been completed on 13 February but was only concluded on 17 February because the stevedores hired by Captain Niles were on strike. Crane had to hire substitute stevedores to load the cargo as Captain Niles made no effort to look for an alternative service. There was a further two days delay as repairs for the damaged hull and rudder were completed. On 20 February, the *Frasier* left Kingston. The next day, Daphne sold half of her cargo to Crane and endorsed the bill of lading accordingly. The *Frasier* arrived in Copenhagen on 25 February and began to discharge the cargo immediately. The discharge was carried out by stevedores, employed by Captain Niles. During the unloading, Captain Niles realised that 500 compact discs belonging to Crane and a similar number belonging to Daphne were missing. They were in fact left behind at the dock in Kingston due to an oversight, but, the stevedores, without production of bill of lading, released the cargo to Martin. On 29 February, Crane and Daphne discovered that the cargo was missing. Martin has disappeared without trace.

At the High Court in London, Crane and Daphne have filed actions against Seattle Ltd. Discuss the rights and liabilities of each of the parties.

- 53 CIA Ltd. chartered the *Mulder* from Scully plc. for a voyage from Barcelona, Spain, to Dhaka, Bangladesh. CIA Ltd’s only other ship, the *Skinner*, was undergoing repairs at a shipyard and the *Mulder* was hired as an emergency measure. The charterparty provided inter alia:
- Freight to the amount of £75,000 payable in lump sum at Dharka*
 - The carrier has absolute liberty to deviate.*
 - This charterparty is subject to English Law.*

7000 sacks of fishmeal owned by Gillian and 5000 bottles of industrial solvents belonging to David were loaded on board the *Mulder*. Due to an oversight, David failed to inform the master of the *Mulder*, Captain Dana, that stowing the solvents required special care and attention, although the bottles were labelled “attention – corrosive and volatile.” Captain Dana issued two bills of lading for the respective cargoes which had “Scully plc” printed at the top and the words “on behalf of the charterer” printed in the signature box. Scribbled next to the signature box in red ink were the words “pp Captain Dana as agent of the Owners.” On the back of the bill of lading the words “the contract evidenced by this bill of lading is between the shipper and the charterer” were in small print. Captain Dana stowed both cargoes next to each other in the first cargo hold.

On 3 January 2000, the *Mulder* left Barcelona for Karachi. Three days later Captain Dana discovered that some of the bottles had cracked and the solvents had leaked out and reacted with the fishmeal, creating toxic fumes in the cargo hold. The ventilation fans failed to work when Captain Dana switched them on. Just one week ago, Scully plc. Had the ship’s systems serviced by a reputable engineering firm. Captain Dana deviated to Karachi, Pakistan for repairs.

After repairs, on 15 January, just 10 nautical miles from Dhaka, the *Mulder* received a distress call from Fox. Captain Dana deviated to save the crew of the Fox and its cargo of uncut diamonds.

Finally, the *Mulder* arrived at Dhaka on 16 January. Gillian and David have only made a partial payment of freight and withheld an amount that was proportionate in value to the estimated damage suffered by their cargo.

Advise CIA Ltd of its rights and liabilities.

- 54 Andy bought 30,000 tons of barley c.i.f. London, November Shipment, from Bob in Canada. The cargo was loaded on board the mv Granary on the 2nd December. Ben endorsed shipping documents including a bill of lading dated 29 November. Andy, unaware of the facts paid for the documents. The price of barley fell dramatically. Only 27,000 tons are delivered to Andy. It would appear that 3,000 tons were stolen sometime between storage in the docks warehouse and shipment. Andy would like to get out of the contract and buy cheaper barley elsewhere.

Carriage of Goods By Sea Workshop and Tutorial Questions

Andy bought 20,000 tons of rice in Taipei and arranges for Gerry, a freight forwarding agent to ship the goods to the UK. Gerry made a contract of carriage with Harry to carry the cases to London. The contract of carriage, subject to Taiwanese Law and Jurisdiction incorporated the Hague Visby Rules but required all claims for loss or damage to cargo to be made within 2 weeks of the event causing such loss or damage. The rice was loaded on board the mv Riz. Harold subsequently issued a bill of lading to Andy via his London office. The mv Riz was unseaworthy and sank in the Indian Ocean. Andy was not notified of the loss until 4 weeks after the event and seeks your advice as to whether he can claim in Taiwan or in the UK courts and whether it is now too late to claim.

Andy bought 15,000 crates of chopsticks c.i.f. Cardiff from Danny in Hong Kong. Danny arranged for a multi-modal carriage contract which gave the carrier the right to transship on any terms and conditions to another carrier during the voyage. The goods were shipped on board the mv Wood to Johannesburg, South Africa under a contract of Carriage subject to English Law and Jurisdiction and incorporating the Hague Visby Rules and then transshipped aboard the mv Forest to Cardiff. The new contract of carriage, subject to English Law and jurisdiction gave the carrier the right to discharge the cargo at any port of his choice for any reason whatsoever. During the voyage a crew member's discarded cigarette caused a fire. Part of the cargo is destroyed and subsequently the remainder is discharged at Gibraltar.

Andy bought 10,000 crates of nuts from Edith in Greece. The contract of carriage, subject to English Law and Jurisdiction incorporates the Hague Visby Rules. The cargo is shipped aboard the mv Athena. Due to negligence in the navigation of the vessel, the mv Athena strands on rocks and a number of the crates of nuts break open as a result of the collision ruining the contents. If the nuts had been packed in stronger crates they could have survived the impact.

Andy contracted with Indigo to receive and reprocess 100,000 tons of U.S. garbage in the UK for £200,000. The garbage was loaded aboard the mv Refuse Carrier and a sea weigh bill naming Andy as consignee was issued in respect of the cargo subject to English Law and Jurisdiction. During the voyage methane gas from the garbage ignited when a crew member lit a cigarette. The explosion killed the crew member and blew a hold in the side of the vessel. The vessel headed for a port of refuge where the cargo was discharged and the voyage abandoned. The damage to the vessel was so severe that the vessel had to be broken up. Andy has now received a bill from the vessel's owner for £25,000,000 to cover the cost of the vessel and allied losses on the basis that unknown to him the cargo was dangerous. The sea weigh bill fails to incorporate the Hague or Hague Visby Rules. The refuge port authorities send Andy a bill for £300,000 for disposing of the garbage.

Advise Andy on his legal rights and liabilities in respect of the above events. The United Kingdom, South Africa, Hong Kong and Canada are subject to the Hague Visby Rules. The United States of America is subject to the Hague Rules. Taiwan is not a signatory to any of the major conventions. Detailed knowledge of Convention Rules is not required but the aspects of incorporation of the various Conventions requires some comment. The Greek Maritime Code imposes strict liability on carriers for damage to cargo.

- 55 Andy bought 1,000 crates of 12 litre bottles of Canadian dry whisky c.i.f. London, shipment to be between the 1st & 5th of December for delivery in the UK by December 17th at the latest, from Bob in Canada. The cargo was loaded on board the M.V. Yo Ho Ho on the 12th December. Bob endorsed shipping documents including a clean bill of lading for 1,000 crates, dated 3rd December. Andy, unaware of the facts paid for the documents. The cargo arrived on the 24th December, too late for the Christmas trade and consequently demand for the whisky fell. Andy was forced to sell it at a substantially lower price. Only 900 crates are delivered to Andy. It would appear that 60 crates were stolen sometime between storage in the docks warehouse and shipment and a further 40 crates were damaged during loading. Loading was carried out by a firm of sub-contracted stevedores hired by the carrier. The bill of lading excluded liability of shipowner, agents and stevedores for loss or damage to cargo during storage and during the loading process. Canada is a party to the HVR.

Carriage of Goods By Sea Workshop and Tutorial Questions

Andy bought 5,000 cane chairs c.i.f. Cardiff from Feng Shue in Shanghai. Feng Shue arranged for a multi-modal carriage contract whereby the carrier was granted the right to trans-ship on any terms and conditions. The goods were shipped on board the MV Canton to Singapore under a contract of carriage subject to English Law and Jurisdiction and incorporating The HVR and then trans-shipped aboard the MV Ying Yang to Cardiff. The new contract of carriage, subject to English Law and jurisdiction gave the carrier the right to discharge the cargo at any port of his choice for any reason whatsoever. After learning that there was an outbreak of meningitis in Wales the captain decided to discharge the cargo in Cherbourg, France since he was calling there with other cargoes. The cargo is left in a warehouse and is daily incurring storage charges. Singapore is a signatory to the HVR.

Andy bought 10,000 crates of sardines fob from Edith in Portugal for delivery to Swansea cold store. The contract of carriage, subject to English Law and Jurisdiction incorporates the HVR. The cargo is shipped aboard the MV Lisbon, nominated by Andy. Due to negligence in the navigation of the vessel, the MV Lisbon strands on rocks and a number of the crates of sardines break open as a result of the collision ruining the contents. If the sardines had been packed in stronger crates they may not have broken open. The loading master had questioned whether or not the crates were strong enough but agreed to load the cargo and issue a clean bill of lading after Edith had convinced him that the crates were usual in the trade. However, as an insurance he insisted on Edith signing an indemnity clause so that his company could recover for any losses that might be incurred by the shipping company for issuing the bill of lading. For the purposes of this question assume that Art 27 Portuguese Maritime Code imposes strict liability on sea carriers for cargo loss unless caused by force majeure.

Andy bought a cargo of nitro-glycerine from Sam, cif New York, USA for delivery to Cardiff for £200,000. The cargo which was clearly labelled nitro-glycerine, handle with care, was loaded aboard the MV Smooth. A sea weigh bill naming Andy as consignee was issued in respect of the cargo subject to English Law and Jurisdiction. During the voyage the vessel started to roll violently because cargo had been badly distributed on the vessel rendering it unstable. A case of nitro-glycerine broke free from its lashings and exploded blowing a hole in the side of the vessel. If the nitro-glycerine had been stored in a cold store it would not have exploded. The vessel headed for a port of refuge where the cargo was discharged and the voyage abandoned. The damage to the vessel was so severe that the vessel had to be broken up. Andy has now received a bill from the vessel's owner for £25,000,000 to cover the cost of the vessel and allied cargo and freight losses on the basis that unknown to the owner the cargo was dangerous. The USA is a signatory to the Hague Rules but the sea weigh bill fails to incorporate The Hague Rules.

Advise Andy on his legal rights and liabilities in respect of the above events.

- 56 Alice bought 12,000 bottles of Jack Daniels c.i.f. London out of New York, from Bill in the USA. The cargo was loaded on board the SS. Plonk. Bill endorsed shipping documents including a clean bill of lading for 12,000 bottles of Jack Daniels. Alice paid for the documents on presentation. Only 11,900 bottles are delivered to Alice. It would appear that 60 bottles were stolen sometime between storage in the docks warehouse and shipment and a further 40 bottles were damaged during loading. 1000 of the bottles that were delivered were found to have been cracked and damaged. It is not clear to Alice if this is because the ship was unseaworthy or because the cargo was badly stowed or because the damage was caused during the loading process. Loading was carried out by offshoremens employed directly by the shipowner. The bill of lading stated that it was subject to English Law and Jurisdiction. The bill of lading excluded liability of shipowner for loss or damage to cargo howsoever caused with or without the fault of the shipowner. US is a party to the Hague Rules but the bill of lading stated nothing about incorporation of the Hague Rules.

Alice bought 5,000 bottles of Oozo c.i.f. London out of Pireas, Greece from Ballasteros. Ballasteros arranged for a multi-modal carriage contract whereby the carrier was granted the right to trans-ship on any terms and conditions. The goods were shipped on board the SS Minerva to Gibraltar under a contract of carriage subject to English Law and Jurisdiction and incorporating The HVR and then trans-shipped aboard the MV Rock to London.

Carriage of Goods By Sea Workshop and Tutorial Questions

The new contract of carriage, subject to English Law and jurisdiction gave the carrier the right to discharge the cargo at any port of his choice if discharge at the intended port was not reasonable. After learning that there had been a terrorist bomb attack on Canary Wharf in London the captain decided to discharge the cargo in Bilbao, Portugal since he was calling there to collect another cargoes. The cargo is left in a warehouse and is daily incurring storage charges. Greece is a signatory to the HVR. Alice has just learnt of the whereabouts of the cargo and wishes it to be delivered to London and does not want to have to pay storage charges at Bilbao or the cost of shipment to London.

Alice bought 1,000 crates of Camembert Cheese cif from Piaf in Cherbourg, France for delivery to London. The contract of carriage, subject to English Law and Jurisdiction expressly incorporates the Hague Visby Rules. The cargo is shipped aboard the SS Cockerel. Due to negligence in the navigation of the vessel, the SS Cockerel collides with another vessel in the English Channel and sea water penetrates the hold containing the cheese contaminating it and rendering it unfit for human consumption. If the cheese had been packed in water proof containers the cheese probably would not have suffered any harm.. For the purposes of this question assume that Art 95 of the French Maritime Code, passed to replace the Hague Rules in France, imposes strict liability on sea carriers for cargo loss unless caused by events beyond the control of the control of the carrier and crew.

In June 1999, Alice bought a consignment of postcards from Sheik Aleg, cif London out of Cairo, Egypt. In July 1999, employees of Ali Baba Co a stevedoring company, employed by the carrier to load the container onto the deck of the SS Sphynx, a container carrier, dropped the container containing the postcards into the dock during loading, but recovered the container and stowed it on board the vessel. A sea weigh bill, which excluded liability of the shipowner, servants agents and independent contractors and naming Alice as consignee, was issued in respect of the cargo subject to English Law and Jurisdiction. On inspection of the container on discharge Alice discovered that the postcards had been contaminated by seawater. Egypt is a signatory to the Hamburg Rules but the sea weigh bill does not mention anything about The Hamburg Rules.

Would your answer differ in any way if the contract was made in December 1999 and the cargo was loaded in January 2000 ?

Advise Alice on her legal rights and liabilities in respect of the above events.