

Introduction : Terminology

1. What are the functions of a bill of lading ? Who is responsible for its contents ?
2. Distinguish a bill of lading from a mate's receipt. Explain the legal consequences of the bailment relationship and the parties involved in the relationship with specific reference to the notion of the common carrier. What differences, if any, now exist between a shipped bill of lading and a received for shipment bill of lading ?
3. Explain the significance of a 'Clean Bill of Lading' and distinguish it from a 'Claused Bill of Lading'.
4. What is a Banker's Documentary Credit ? Distinguish between Revocable and Irrevocable Documentary Credits and between Unconfirmed and Confirmed Documentary Credits explaining the respective advantages to the buyer and the seller of the various types of documentary credits.
5. Describe the contractual relationships involved in the buyer - seller - carrier scenario and potential problems that exist regarding legal actions between the parties. What legal devices have been introduced to solve these problems ? How successful are these devices ?
6. Explain the significance of The Aliakmon [1986] 2 All E R 145 and the impact on the case of the Carriage of Goods By Sea Act 1992..
7. The Himalaya clause is no longer necessary in the Adler v Dixon situation but is still required regarding stevedores. Explain with reference to Art IV bis. Hague Visby Rules, Scrutton v Midland Silicones, The Eurymedon and the Contract Third Parties Rights Act 1999.
8. Explain the significance, if any, of Brandt v Liverpool to international trade contracts today.
9. Explain the respective roles played by the Carriage of Goods by Sea Act 1971, the Carriage of Goods by Sea Act 1992 and the Hamburg Rules in respect of international trade contracts.

fob and cif sales contracts

10. Define the classic f.o.b. sales contract with special reference to Pyrene v Scindia. Discuss the variations that are permissible to a classic f.o.b. contract. To what extent do these variations alter the duties of the parties ? And 'The nature of the obligations of a trade contract are determined by the characteristics of the contract and not by labels attached to it.' Discuss with special reference to The Julia..
11. Allan sells Bob 20,000 gallons of apple juice f.o.b. Cardiff (Wales), March shipment, five days allowed for loading, demurrage then payable at the rate of £800 per day. Bob charters the mv Junk on terms that it is "expected ready to load" at Cardiff on 15th March the charterparty allows for five lay days at the port of loading, demurrage payable thereafter at the rate of £500 per day.

When Bob nominates the mv Junk, Allan makes arrangements for the apple juice to be at Cardiff by 14th March. The vessel is, however, unexpectedly delayed by five days and Allan consequently incurs expensive storage charges at Cardiff between 14th and 19th March. Moreover, no loading takes place, before 28th March owing to industrial troubles at Cardiff. Allan warns Bob that it might be difficult load the entire cargo by the end of March. Loading in fact finishes on 2nd April; Bob finds on its arrival that it had been contaminated while it was in storage tanks at Cardiff.

Advise Bob on his rights against Allan.

International Trade Law Tutorial Questions

- 12 By a contract dated 16 December Archers sold to Transsucre 12,000 tonnes of granulated sugar f.o.b. Hull subject to English law and provided inter alia

Buyer to give provisional notice of 8 clear days of the date of the vessel's estimated time of arrival at loading port, such notice to show vessel name, itinerary and approximate quantity to be loaded. Provisional notice must be followed by a final notice of 4 clear days of the date of the presentation of the vessel for loading; in the event of failure to give definite notice Buyer will be deemed to be in default and seller/shipper will be entitled to cancel the contract.

On 18th February Transsucre gave a provisional notice by fax nominating the m.v. Dorigo or substitute, estimated time of arrival 27 February and on 20th February gave definite notice in respect of The Dorigo with an estimated time of arrival of 1st March. Archers acknowledged receipt of the definite notice of The Dorigo and said that they would accept the m.v. Dorigo provided she complied with all the terms and conditions of the contract.

On 23 February Transsucre gave definite notice substituting the m.v. Cantona estimated time of arrival Hull 27 February. Archers rejected this notice on the basis that definite notice had already been given in respect of the m.v. Dorigo.

The Cantona arrived in Hull and gave actual notice of readiness to load on 27 February but Archers refused to load the ship on the grounds that she was not a contractual vessel not having been nominated in accordance with the contract terms. They regarded Transsucre as in default and cancelled the contract.

Transsucre wish to sue Archers in an action for non-delivery and seek your advice as to the likelihood of the success of such action. Advise Transsucre.

13. Nick in Cardiff agreed to sell Ronnie, in New York, 1,000 tons of Welsh leeks f.o.b. Cardiff, shipment in four equal instalments in 3anuary, March, May and 3uly. The price of £55J000 per instalment was payable in advance.

Ronnie nominated the m.v.Goodsail to carry the first instalment and stated that she was expected ready to load on 9th 3anuary. Nick accordingly had the goods taken to the docks on 8th 3anuary where they were stored in an unrefrigerated warehouse.

The m.v.Goodsail did not arrive until 29th 3anuary. In fact, although the 9th January was her advertised date of arrival, information in the shipping press suggested she would be delayed. During loading, many of the leeks were found to be rotten and Ronnie's agents directed the stevedores to load only those fit for consumption. Eventually 300 tons were loaded at considerable extra expense.

Ronnie nominated the m.v.Doeswell to carry the second instalment. 200 tons were loaded on 2nd March and the vessel sailed on 4 March. She became a total loss on 12th March but Ronnie had not insured the shipment as he waited for Nick to inform him of the shipment date which Nick did not do until 14 March.

The third shipment, shipped on 10 May, was found to be largely rotten on arrival. This was due to an attack of 'Black Spot' a bacteria which can affect leeks during the growing period. Some of the leeks were of a variety which were only grown in Yorkshire.

Ronnie nominated the m.v.Tightseal to ship the last instalment. Nick brought the shipment to the docks on 10 July, the day on which the m.v.Tightseal docked, but before loading took place, Nick was declared bankrupt and the leeks were seized by his trustee in bankruptcy. Discuss.

International Trade Law Tutorial Questions

14. Under a contract of sale, shipment due within the 1st week of January, Dai Jones bought five crates of cane chairs valued at £5,000 c.i.f. (incorporating Hague-Visby Rules) Cardiff, payment by Banker's Documentary Credit drawn on the Cymru Bank, due 20 days from endorsement of bill of lading, from Rafael in Antigua, aboard the m.v. Careless.

On the 10th January one of the crates was dropped into the hold by the stevedores during loading causing £200 worth of damage to the contents. A fire broke out in the next hold and the holds were sprayed with water to quench the fire. The master ordered the cargo to be off loaded and dried before reloading. Rafael received a shipped bill of lading, negligently dated the 1st January, which advised that the crates had been exposed to smoke. Rafael, knowing of the fire endorsed the bill of lading in Dai's name & sent him the shipping documents.

The Cymru Bank rejected the bill of lading. Rafael tendered the bill of lading directly to Dai who has now paid for it. Advise Dai Jones.

15. Explain the respective duties of the buyer and seller in c.i.f. contracts and the nature of the obligations of a trade contract are determined by the characteristics of the contract and not by labels attached to it.' Discuss in relation to c.i.f. contracts.
16. Ianto bought a bulk cargo of bananas, c.i.f. Barry Docks, property to pass ex m.v. Rubber Duck, from the Caribbean Fruit Exporters of the Banana Republic. Ianto paid C.F.E. for the consignment on presentation of the bill of lading, shipping documents and insurance documents. Several hours after sailing the m.v. Rubber Duck was arrested and the cargo impounded by the authorities in the Banana Republic in furtherance of government trade sanctions against the United Kingdom Government.

Ianto requested the return of his money but C.F.E. refuses claiming that it had done all that was required of it under a c.i.f. sales contract in that it had delivered the cargo to the ship and presented a valid clean bill of lading and documents. Advise Ianto.

Passing of Risk and Property.

17. When and how may goods be appropriated to a c.i.f. or f.o.b sales contract ? Does it make any difference if appropriation occurs before or after loss at sea, or before or after endorsement of sales documents from seller to buyer ?
18. When does risk pass in c.i.f. contracts and from who and to whom does it pass ? Who carries the loss if goods are damaged or lost at sea after risk has passed ? Does it make any difference if the sales documents are tendered after the loss has occurred ? Does it make any difference whether or not the seller knows of the loss at the time that he tenders the documents ?
19. When does risk pass in f.o.b. contracts and from who and to whom does it pass ? Who carries the loss if goods are damaged or lost at sea after risk has passed ?
20. Discuss the circumstances (if any) in which risk may pass to the buyer before shipment f.o.b. & c.i.f..
21. Explain the implications on the seller of the date of notice of arrival by the seller to a buyer of s32(2) S.O.G.A. 1979. Do the provisions apply equally to c.i.f. and f.o.b. sales contracts ?
22. Explain the doctrines of mistake and frustration. Do the doctrines of mistake and frustration apply to international sales contracts ?
23. Discuss the effects, if any of the provisions of s6 & s7 S.O.G.A. 1979 on sales contracts in international trade.

International Trade Law Tutorial Questions

24. Enoch & Sons, Yidish Importers plc of London, bought 10,000 tons of citrus oranges c.i.f. London contract subject to London arbitration, and 20 gross of bottles of Fine Passover wine in cases of 20, f.o.b. Tel Aviv from Za Groucho Exporters Co of Jerusalem who also undertook to arrange insurance. Za Groucho delivered up the oranges to Convenience Flag Shipping Co for loading aboard the m.v.El Greco and delivered the wine to the warehouses of The Panamanian Shipping Co for loading aboard The S.S.Tramp as nominated by Enoch.

When the oranges arrived in London they had rotted and the skins had turned black. Enoch refuses to take delivery of the oranges claiming a breach of s14(2)(c). S.O.G.A. 1979 regarding satisfactory and refuses to pay. It would appear that the oranges were already ripe at the time of loading. The arbiters found as a fact that the m.v. El Greco had a malfunctioning air conditioning system and dismissed the claim. Enoch appeals to the Court of Appeal.

The correct overall number of bottles of wine are shipped in cases of 24. Za Groucho tendered a bill of lading and a covering note stating that insurance had been arranged. The S.S.Tramp takes a very long time to make the journey to London and there is very little time to distribute the wine to retailers before the passover. The long period in a hot hold has fermented the wine and has turned very bitter. Also, Enoch reads in the Jewish Traders weekly journal that demand for Passover Wine is down this year and is looking for a way to escape from his 'contract'.

Discuss the legal liability, if any of each of the parties.

25. Imports U.K. p.l.c. contracted for 20,000 gallons of petroleum gas f.o.b. Amsterdam from Export Rotterdam GmbH, to be shipped aboard the m.v Petro Carrier operated by Liberiacarriers Shipping Co. A worker at the storage depot in Amsterdam lit a cigarette close to a ventilator pipe and all the petrol was destroyed by fire. Export Rotterdam GmbH sue for the price.

Discuss.

26. When does property pass in f.o.b. contracts and from who and to whom does it pass ? Who carries the loss if goods are damaged or lost at sea after property has passed ?
27. When does property pass in c.i.f. contracts and from who and to whom does it pass ? Who carries the loss if goods are damaged or lost at sea after property has passed ?
28. When does property pass in c & f contracts and from who and to whom does it pass ? Who carries the loss if goods are damaged or last at sea ?
29. What is the relationship between appropriation and the passing of property in c.i.f. sales ? Can appropriation occur before shipping c.i.f. ?
30. What is the effect of a reservation of title clause in a c.i.f. sale ?
31. Explain the rules governing the s49 S.O.G.A. Action for the Price, in relation to the passing of property, and the effect if any of a waiver of s49 rights.
32. Is it possible for property to pass pre-shipment ? Is it possible for property to be ascertained pre-shipment and if so what consequences, if any flow from pre-shipment ascertainment ?

International Trade Law Tutorial Questions

33. Samuel ships 50,000 tons of oil from Texas to Southampton aboard the m.v. Lenuf. He sells the 20,000 tons of oil in hold N01 to Boomer f.o.b. U.S. port, taking a bill of lading to his (Samuel's) own order, payment to be made by Boomer's bank cash against documents on arrival. After the vessel arrives, the bank pays on tender of the documents and the oil is pumped into Boomer's storage tanks. Boomer then discovers that the documents presented included a certificate and not a policy of insurance, that the total volume of oil in the hold and pumped into his tanks was only 18,000 tons and that the oil is not of the quality agreed in the contract.

Discuss the courses of action (if any) available to Boomer.

Would your answer differ in any way if the sales contract was c.i.f. Southampton ?

34. Explain the rationale behind the decisions relating to rulings of the Prize court in *The Parchim* and *The Kronprinzessin Margareta*, in the light of the fact that in *The Parchim* the seizure was held to be unlawful, yet the seizure in *The Kronprinzessin Margareta* was lawful.
35. Chen sold a consignment of 25,000 copies of *The Wranglers* L.P. 'Death on a Marshmallow' to Trans-national Music Importers p.l.c., c.i.f. London, by way of B.D.C., and shipped aboard the m.v. *Lucky* from New York.

The goods were received by the loading master and a mate's receipt issued to Chen. Having been loaded aboard *The Lucky*, owned by World Transport p.l.c. and chartered to *The Big Pond Bridging Co*, a fire occurred on board the mv *Combustible*, a vessel berthed alongside, belonging to a third party. *The Lucky* escaped with little more than burnt paintwork, but heat from the fire penetrated through the hull of the ship and warped some of the records. The cargo of *Lucky* was discharged into a nearby warehouse whilst surveyors checked for damage and the paintwork was restored. On reloading, it was noticed that some of the packaging of the records was mishaped and a note to this effect was included on the bill of lading for the records when it was written up.

The bank refused to accept and pay against tender of the bill of lading so Chen presented the bill of lading direct to T.M.I. who has refused to accept & pay on tender of the document.

Advise Chen.

International Trade Law Tutorial Questions

- 36 Fergie sold 20 tractors to Diana in Sydney Australia, fob Liverpool; 30 tractors to Phillip c.i.f. Durban South Africa; 24 tractors ex S.S. Enterprise to Charles cif Melbourne and 26 tractor c&f to Elizabeth in Wellington New-Zealand. All cargo was shipped aboard the S.S. Enterprise, sailing from Liverpool to Wellington via Captetown, Sydney & Melbourne on the 1st November and promptly consigned shipping documents to Charles that day. Each tractor was shipped with a lot number assigned to it. The four biUs of lading issued stated the correct number of tractors but did not identify which tractors were covered by each document. On the 3rd November the S.S. Enterprise dared to go where no other vessel has dared to go before and was lost without trace.

Hearing reports of the loss of the vessel Fergie phoned Diana and Phillip respectively stating that tractors 1-20 were allocated to Diana and 21-50 were to be allocated to Phillip and then consigned their documents to them.

Diana and Phillip refuse to pay on endorsement of their bills of lading claiming that Fergie cannot endorse the documents since risk did not pass before the loss since the goods had not been appropriated to the contract at the time of the loss. They both complain that if they had been provided with exact details of the date of shipment they could have taken out additional insurance cover in respect of cargo on board vessels that dare to sail where no other vessel has dared to go before.

Fergie has now heard that Charles, who has not paid her yet, has gone walkabout and has disappeared without trace. Elizabeth who has not paid yet either has apparently run off with an Argentinian Polo player and has been linked with a major fraud investigation.

Advise Fergie who has not yet paid the carrier for any of the shipping costs and cannot afford to do so since without payment by the various parties she is facing financial ruin.

37. "The scheme of remedies laid down in the S.O.G. Act 1979 is inappropriate for dealing with the types of breach which occur in f.o.b. and c.i.f. contracts and it is only with difficulty that they are fitted into that scheme." Discuss.
38. "Any regime dealing with International Trade should approach the issues of the passing of risk and property from a different perspective from that of Domestic Sales, since the outcome of disputes involving these issues will rarely, if ever, result in hardship and injustice to the individual". Discuss.

Sales of undivided bulk cargo

39. Critically analyse the decision in The Gosforth [1986] L.M.C.L.Q. 4, and discuss what the result would have been if the contract had been governed by English Law. Has the position changed in any way as a result of COSA 1992 or the Sales of Goods Amendment Act 1994 ?
40. Critically analyse the difficulties relating to the passing of property in bulk sales identified by, and the solutions to these problems proposed by, the 1989 Law Commission Working Paper 112 on Rights to Goods in bulk.
41. "International contracts for the part sale of undivided bulk products involving the carriage of goods by sea are no longer a problem under English Law Discuss.

International Trade Law Tutorial Questions

- 42 Alex sold 100,000 tons of Arabian crude oil cif Southampton to Betty and shipped the oil aboard the vcl Onyx owned and operated by Bulk Carriers plc, shipment in September 1992, payment by DC drawn on the Universal bank subject to English Law and Jurisdiction. Due to delays in loading Alex had to pay for 3 days extra storage at a rate of £1,000 I day - the contract of carriage stated that any costs due to a delay in loading would be reimbursed to the shipper. The Universal Bank paid Alex following shipment and presentation of documents. Betty exchanged the documents from the bank for a trust receipt and sold 40,000 tons of the oil to John and 60,000 tons to Peter providing each with a sea way bill which she had drawn up. Carol sold 200,000 tons of Arabian crude fob Addis Ababa to Daniel who nominated the vcl Onyx for September 1992 - shipment to Rotterdam. Since the two cargoes were of a similar quality Bulk Carriers mixed the cargoes together to balance the load of the vessel. At Rotterdam 280,000 tons of oil was delivered to Daniel.

The Universal Bank learns that Betty has been declared bankrupt and seeks an order from the Dutch Courts that the oil aboard the vcl Onyx be detained to the bank's account.

COGSA 92 : Transfer of Rights and Duties

44. Critically analyse the difficulties relating to the transfer of rights of suit identified by Law Com Report 196, and the solutions to these problems introduced by COGSA 1992.
45. To what extent if at all has COGSA 1992 affected the rights of a shipper against a carrier after transfer of a bill of lading ?
46. Discuss E.M.Clives dissenting comments to the L.C.R. 196.
47. Consider the special problems posed by transshipment and the solutions adopted by the courts. To what extent if any at all has the situation been clarified by COGSA 1992 ?

Fraudulent Bills of Lading

48. Boozahol contract to buy 1,000 bottles of 'Invincible Whisky' from Malatet in Buenos Aires c.i.f. London [i.e. neither the Hague nor the Hague-Visby Rules Apply]. The contract stipulates that the goods must be shipped on or before 15th September. Malatet actually ships the goods aboard the S.S.Wagon on 16th September, but on the promise of an indemnity from Malatet should he suffer any loss, the carrier falsely dates the bill of lading for the 14th September. Freight is pre-paid by Malatet. Boozahol accept and pay against the documents on 20th September, though had he bothered to read the trade journal, Flater's Weekly, he would have discovered the actual sailing date of the S.S.Wagon and would have rejected the documents. The S.S.Wagon deviates via South Georgia to pick up some whale meat, and arrives in London on 3rd November. Had the sale and carriage contracts been properly performed The S.S.Wagon would have been expected to arrive in London on or about 3rd October. The 'Invincible' whisky is found on arrival to have deteriorated. This is partly because of the greater length of the voyage, but the deterioration is greater than would have been expected, even on a journey of the length actually travelled.

In addition, 'Invincible' prices have dropped considerably between the 3rd October and the 3rd November because of Japanese imitations flooding the market. Boozahol decide to re-sell the whisky, but for these reasons are able to obtain only very low prices.

Can Boozahol sue the carrier or the seller, or both, and if so, on what basis will damages be assessed ?

If Boozahol sue the carrier, can the carrier recover anything from Malatet on the indemnity ?

International Trade Law Tutorial Questions

49. Uncle Sam sells John Bull 2,000 tons of frozen beef c.i.f. Liverpool out of Texas, to be shipped between the 1st November and the 1st December aboard the m.v. Impecunious owned and operated by Stone Broke International Carriers Ltd. Stone Broke cannot afford the fuel for the voyage and so John Bull makes them an advance of \$50,000 to ensure that the cargo arrives in time for the Christmas market. Stone Broke loads the cargo on the 10th December but following a promise of an indemnity by Uncle Sam to cover any financial claims made against him for so signing Stone Broke states on the bill of lading that the goods were shipped on the 30th November. The Journal 'The U.S. Shipping Digest' published on the 12th December in New York & available by fax at Lloyd's of London recorded the sailing. According to U.S. Export regulations all food products must receive a clean bill of health and an export certificate must be issued to the buyer stating amongst other things, the date of export. The bill of lading, insurance certificate, invoice and export certificate are tendered to John Bull on the 14th December and he paid up on them. The goods arrived on the 24th December, too late for John Bull to market them for Christmas. He took delivery of the beef but had to sell it off cheap to deep freeze warehouses at a considerable discount. He claims damages for breach of contract and loss of the right to reject.
- Uncle Sam claims that John Bull accepted the documents and goods with full knowledge and was subject to waiver and estoppel. Discuss.
50. Under what circumstances, if any, can a buyer who accepts documents and goods, sue for damages for the loss of the right to reject the documents? What are the advantages of so doing?

The Contract of Carriage.

51. Explain the main differences, if any, between the contracts of carriage contained in bills of lading and charterparties in respect of shippers, charterers and buyers.
52. What, if any, is the legal effect of an indemnity given by a shipper to a carrier, where a carrier issues a clean bill of lading after taking an indemnity from the shipper (in respect of any potential claim for damages in an action by the consignee against the carrier because the goods are not as stated in the bill of lading)?
53. To what extent, if at all is the passing of property relevant to negligence actions by a consignee or indorsee against the carrier (or other third party)?
54. Compare and contrast actions against carriers by consignors & consignees under s1 Bills of Lading Act 1855, under the common law *Brandt v Liverpool* doctrine and under COGSA 1992.
55. What action, if any, can a bank in possession of shipping documents take against a carrier for loss or damage to goods?
56. It has been said in relation to the pre-1992 legal regime that "Whilst it is impossible to please everyone, English Law has succeeded in striking the best possible balance between the legal interests of those involved in the Buyer/Seller/Carrier relationship." To what extent, if at all, do you agree with this statement? If it was true then, was reform necessary, and if so does the law now strike a better balance than previously?
57. Examine the main respects in which the Hague-Visby rules differ from the common law in respect of the obligations of a sea carrier.

International Trade Law Tutorial Questions

- 58 Albert bought 10,000 tons of Californian Grapes cif London from Bernard aboard the mv Fruitjuice operated by the Fruityship Co. Bernard paid the Fruityship Co a cheque for \$2,000 for freight and shipping costs in exchange for a received for shipment bill of lading which he dispatched to Albert along with a receipt and an insurance certificate on the 16th September. Bernard had cash flow problems and went into liquidation and his cheque bounced. Albert presented his documents to the captain of the mv Fruitjuice at London but Captain Fruity refuses to deliver to Albert unless Albert first pays the outstanding \$2,0000 freight charge and warns Albert that if he doesn't pay and collect soon demurrage charges will be added to the bill. Albert rings you up for some instant advice. Provide it.
- 59 Many of the terms and conditions in a charterparty contract are not directly are irrelevant to common law and statutory implied bill of lading contracts. Explain.
- 60 Arbitration clauses in a charterparty contract are neither terms nor conditions and will not consequently be incorporated by implication into a bill of lading which is drawn up on the terms and conditions of the charterparty contract. Explain.
- 61 Explain the interrelationship between the Hague & Hague Visby Rules and terms and conditions in a charterparty which are stated to be incorporated into a bill of lading.
- 62 Consider the legal problems relating to transshipment and through bills of lading. Do such bills of lading satisfy the Hague & Hague Visby Rules requirements ?
- 63 Explain the relationship between the contract of carriage and the bill of lading.
- When the shipper / seller, buyer, carrier and ship owner are different legal personalities and
 - When the shipper is also the carrier.
- 64 What is the effect of a deviation on exemption clauses contained in the contract of carriage ? Can this result be justified in terms of the general law of contract, or is the law on deviation sui generis ? Why does the law take deviation so seriously ?
- 65 Which terms in a bill of lading may not be contractual and why ?

Hague, Hague Visby and Hamburg

- 66 Explain the rationale behind and the mechanics of 'The Clause Paramount' device.
- 67 What, if any, is the effect of 'The Hollandia' ?
- 68 Compare and contrast the Hague & Hague Visby Rules with the Hamburg rules. Should the Hamburg Rules be adopted or will they create more problems than they will solve ?
- 69 "The Carriage of Goods by Sea Act 1971 adequately resolves the problems left by the original Hague rules.
- 70 'The failure of the Carriage of Goods By Sea Act 1971 to make provision for the use of waybills as an alternative to bills of lading is a serious omission which needs to be rectified'. Discuss.

International Trade Law Tutorial Questions

- 71 'The object of the delivery order is to facilitate the sale of a portion from a larger mass of goods and to accommodate the vicissitudes of trade which, especially in the context of international trade, may involve a string of sellers and buyers. COGSA 1992 has now solved the conundrum caused by s16 of the Sale of Goods Act 1979 which had rendered the position of the sub-buyer impossible in as much as part owners of un-ascertained bulk now have rights of suit in relation to the portion of the whole that they have an interest in. What implications, if any does this reform have on the Carriage of Goods Act 1971 in its present form in that its provisions do not relate to delivery orders in any case ?
- 72 A British shipper ships cargo aboard a vessel owned by a British shipowner, for a voyage from New York to London. The bill of lading does not include the clause paramount required by the law of the U.S.A., which would have incorporated the Hague Rules. Instead, the liability of the shipowner is limited to "personal recklessness". There is an express clause that the bill of lading contract is governed by the law of Lestonia. Lestonia is a newly created state which has acceded from the U.S.S.R. It has no coastline, and is not a signatory state to the Hague or Hague-Visby Rules. The cargo is damaged in circumstances which are identical to those in 'The Muncaster Castle' [1961] A.C. 807. Discuss.
- Would your answer have been different if the voyage had been from London to New York ?
- 72 The words 'subject to the provisions of Article IV ...' in Article III rule 2 of the Carriage of Goods By Sea Act 1971 present the courts with a difficulty of interpretation not only in respect of the extent of the liability of the carrier by sea but also of the extent of proof required of the carrier to enable him to rely on the defences set out in Article IV rule 2". Discuss.
- 73 'The changes to a sea carrier's liability which will be effected by adoption of the Hamburg Rules merely amount to minor clarification and adjustment, and do not involve any major changes of substance to that liability ". Discuss.
- 74 'A cargo at sea while in the hands of the carrier is necessarily incapable of physical delivery. During this period of transit and voyage, the bill of lading by the law merchant is universally recognised as its symbol, and the indorsement and delivery of the bill of lading operates as a symbolic delivery of the cargo." Discuss this statement. Will the arrival of the Hamburg Rules affect the universality of recognition of the bill of lading as a symbol in any way ? If not what course of action if any do you recommend to allow for future developments in the field of maritime commerce ?

Bills of Lading & Master's Authority

- 75 By a contract of sale between Petrosellers (Iraq) Ltd (S) & Viscous International Ltd. (B)₃ S agreed to sell 120,000 tons of Iraqi crude oil in storage tank No7 at Khor-al-Amaya, ex The Plane Crude, shipment on or before 31st November, property to pass on payment.

The oil was received into storage tank No7 before 31st November by the master of 'The Plane Crude', which was owned by the defendants, but by 31st November no oil had been loaded aboard. The master, in the mistaken belief that all the oil had in fact been loaded, issued a shipped bill of lading for the consignment. It is accepted by both sides that the master was negligent but not fraudulent in issuing this bill. The bill of lading was issued to the order of the seller and was subject to the terms & conditions of a time charterparty. It is accepted by both sides that the master acted as agent for the defendant in issuing bills of lading.

Before sailing, the master discovered his mistake and pumped the contents of tank No7 on board the Plane Crude. However unknown to the master the oil had been stolen and secretly pumped aboard the mv Clandestine some time earlier at the instigation of Viscous International and water had been substituted in its place. The water was eventually loaded on 1st December. The seller indorsed the bill of lading and delivered it to Viscous International who endorsed it over to the South African Government and having substituted the name Plane Crude in the place of Clandestine delivered the oil to Cape Town. The vessel was subsequently scuttled somewhere off the coast of South Africa and the directors of Viscous International have disappeared without trace. Viscous International sent Petro-sellers a cheque for the oil but the cheque has bounced so Petro-seller gave notice subject to s46(1) SOGA that he was exercising his rights of stoppage in transit.

Advise Petro-sellers who wish to sue the owners of the Plane Crude for loss of cargo.

- 76 Where the ship is chartered, examine the principles upon which the courts decide for whom the master signs bills of lading, viz the shipowner or the charterer ? Why is it important to know this ?
- 77 A ship's master issues a clean bill of lading, for 200 sprockets to be sent to London from The Argentine, which the seller left for loading on the dock onto the first vessel bound for London, but which have not been loaded on board the ship. The seller had not booked freight space in advance, but the master intended to load the goods, and thought he had done so. The bill of lading is indorsed over to the buyer, who pays the seller for the goods on endorsement. The seller has since gone bankrupt. What actions, if any, does the buyer have against the master, or against the shipowner ? Would your answer be different if the H.V.R. applied ?
- 78 Explain the effect if any of s4 COGSA 1992.
- 79 A ship's master issues a clean bill of lading, for 200 crankshfts to be sent to London from The Argentine. Only 100 were loaded on board, however. The seller had not booked freight space in advance, but the master intended to load the goods, & thought he had done so. The bill of lading is indorsed over to the buyer. Under the sale contract property passes on payment, which occurs three days after indorsement, & independently of it. The buyer, expecting the delivery of 200 crankshafts in apparent good order & condition, presents the bill of lading upon the arrival of the goods, but refuses to pay the freight after discovering the true situation. Freight has not been prepaid. The seller has since gone bankrupt. Consider all possible actions by the buyer against the shipowner & master & the possible liability, if any, of the buyer to pay the freight. Would your answer be different if the H.V.R. applied ?