Overall Comments

Overall the standard this year was fair, given the objectives of the examination, with over half of the candidates displaying competence in identifying legal problems.

Both the essay and problem type questions were answered reasonably well by a large number of candidates, with a clear and well-informed presentation from a significant number of candidates. Legibility and tidiness was fair in the majority.

The trend in so far as candidates’ examination performance is concerned continues to improve. In fact, this year’s results represent an improvement over the last five years’ overall results.

Questions 6, 5, and 3 were the most popular ones, whilst questions 6, 4, and 3 were the most successfully answered ones.

Question One

This was the least successfully answered question. The first part of the scenario required a short consideration of the application of Hague-Visby Rules. A number of answers indicated that there is some confusion on the bill of lading being evidence of the contract of carriage of goods by sea, not the charter-party (unless the charter-party states so). So, a few candidates seemed to digress into a “search” for a charter-party. A contract of carriage of goods by sea is not, strictly, a charter-party. The Charterer may or may not carry goods; in fact he/she does not have to, since such contracts (charter-parties) provide for dead freight and hire. Whereas a Shipper, i.e. the person who books space and ships goods on board a vessel for their carriage is, by definition (and common sense!) obliged in the performance of his contract of carriage of goods with the carrier to carry goods.

Having determined that the Hague-Visby Rules applied, the second part of the question required candidates to identify that there has been an unjustifiable deviation from the contractual route, something not permitted either by Common Law nor Art.IV, rule 4 of the Hague-Visby Rules. Quite a number of answers identified this unjustifiable deviation. However, the major criticism of the answers is that almost all failed to put forward the effect of unjustifiable deviation on the contract of carriage of goods, thereby reaching the incorrect conclusion on the Owners’ liability for the loss of the goods. Interestingly, most candidates followed an “investigation” on whether the bad weather would have been encountered if the ship had not delayed.

With regards to the bill of lading clause, a large number of candidates seem not to have read and digest it, seeing the similar figure of units of account and erroneously concluding that the effect of the clause is the same as that of the Hague-Visby Rules.

Question Two

Reasonably answered. Most answers missed The Starsin and the effect of the Charterer’s logo on the front of the bill of lading. With regards to the last voyage (overlap), it seems as if a number of candidates preferred to “ad-lib”, or not deal with it at all.
**Question Three**

A popular question, reasonably well answered overall. In describing a bill of lading, numerous answers seemed to hold the misconception that the holding of a bill of lading equates to being the Owner of the goods. A “title” in law comes in many forms, e.g. possessory title, not all of which equate to ownership. Furthermore, a few answers suggested that a letter of indemnity would indemnify the Carrier/Shipowner from all future consequences relating to the particular cargo, which is not correct; the specific letter of indemnity relates only to the “risk” of a holder of the bill of lading claiming delivery of the same consignment of goods. Any claims relating to the Carrier’s/Shipowner’s other liabilities for loss/damage to the particular consignment would not be covered.

**Question Four**

A reasonably well answered question. In relation to terms of contract, quite a few candidates seem to underestimate the effect of the verb “entitled” for breach of a condition; it certainly does not mean that the contract cannot be carried out. Generally, there seems to be some confusion when it comes to conditions and warranties, and it seems as if candidates are still struggling to come up with clear examples. Under English law, payment of hire is not a very important term, i.e. a warranty. This means that just because the parties have agreed for payment to be made, for example, bi-monthly in advance, if the Charterer does not pay on time, the Owner will be entitled to damages only. However, as all charter-party forms also include a right of withdrawal clause for late payment, prompt payment of hire is made (or “upgraded”) to be a condition. With regards to Mareva, a few answers thought that its purpose is to preserve the subject-matter of the claim, which is incorrect (this would be a Court order for the “inspection and preservation of property”).

**Question Five**

Reasonably well answered. With regards to the safe port issue, most candidates identified that this was not a safe port. However, some confusion was noted in relation to the port being named; this only refers to the situation where the port is named at the time of conclusion of the contract, and normally in time charter-parties the Charterer does not name the ports at that time. Quite a few answers suggested that the port authority was liable based on negligence. There was also a tendency by a few to consider general average in part (a) of the question, ignoring the fact that the vessel was unladen; “She arrives at the loading port ready to load her cargo”.

**Question Six**

The most popular question and well answered overall. Most answers omitted to use leading cases, e.g. The Agamemnon, The Happy Day, and instead they focused more on the issue of arrived ship. On demurrage a remark is that being liquidated damages, demurrage be “a penalty” as some answers suggested.

**Question Seven**

Part (a) was generally not well answered. Apart from a couple of good answers which put forward The Dominique, the rest varied in their treatment from The Nanfrí, to promissory estoppels.

Part (b) was reasonably well answered, most candidates being able to explain what this clause is about and how it operates.

**Question Eight**

This was the least popular but reasonably answered question. Quite a few answers put forward The Happy Day, and The Front Commander cases. However, most answers reached a reasonable interpretation of the relevant clause on the facts.