General Comments

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

Over the last five years, candidates’ examination performance has been steadily improving. The trend seems to continue with November’s overall examination performance representing a slight improvement on last April’s marks. I recall when the new syllabus was announced, back in 2003, it was explained that there would be a change of emphasis with a shift away from academic law to the law affecting shipping practitioners in their everyday work.

That being said, this is still a law paper. Far too many answers only discussed the practical issues without even commenting on the legal principles involved. Questions 7, 5, and 2 were the most popular ones, whilst questions 7, 2, and 8 were the most successfully answered ones.

Question one – Notice of Readiness/Laytime

Reasonably answered overall. A large number of candidates only addressed what is an arrived ship, and when NOR should be issued - not answering the actual question! This was not an essay-type question, however, a few candidates seemed to treat it as such, only dealing with the importance of NOR in calculating laytime-demurrage-despatch.

Question two – Vicarious Liability

A popular essay-type question and a well answered one overall. Most answers described the Himalaya case. However, a number of candidates did not clearly explain that the so-called ‘Himalaya clause’ extends the categories of persons entitled to the benefit(s) of the carrier’s exclusion/limitation of liability beyond the scope of vicarious liability. Some confusion was noted in some answers on the differentiation between employer-employee relationship with that of principal-agent. As a general rule, vicarious liability only arises in the case of the former.
Question three – Payment of Hire – Off-hire

Reasonably answered overall. Many candidates ignored clause (b) in favour of clause (a), thereby erroneously concluding that charterers were in breach for non-payment and therefore owners justified withdrawing the vessel.

A small number of answers completely digressed on charterer’s right of set-off, attempting to figure out the days of hire payable; something not relevant to the scenario facts nor asked by the question.

Most answers mentioned The Happy Day, but a few of these omitted to clarify further the position; in the absence of a second (or third!) NOR the latest time at which laytime must start running is when loading/discharge actually commences.

Question four – Agency

Very popular but answers were only fair in most cases. A common error was avoiding addressing whether there was an agency in place, whether the third party (charterer) had reasonable grounds to believe that David was X-Ships’ agent. On the facts, as David had not acted for X-Ships’ in the past (X-Ships being ‘a newly formed company’), it would be difficult to enforce a fixture against X-Ships based on ostensible/apparent authority.

A large number of candidates erroneously thought that ratification would result in the conclusion of David’s agency contract with X-Ships (owners). However, X-Ships (owners) ratification would only relate to the particular fixture concluded by David.

Question five – Agency of Necessity – General Average

Not well answered overall. The question did not require candidates to comment on whether the Master’s actions were justified in the circumstances, but what legal principles “cloth” granted him authority to deal with cargo owners' cargo, given that he is not the cargo owners' agent and therefore not possessing any authority to deal with the cargo.

A number of answers thought that SOLAS authorised the Master to jettison, ignoring that the Convention relates to protection of life, so if there was threat to human life, he would be justified to act in a way prescribed by the Convention. However, general average cannot be claimed on such a basis, since human life is not an interest of the common maritime adventure. A maritime adventure consists of ship, cargo and freight and the danger must be common to these interests. A ship’s crew (life) therefore falls outside the scope of general average (not a maritime property).

Some answers suggested that the Hague-Visby Rules authorised the Master to jettison. However, this is not the case (except in cases of dangerous goods), and the Rules only envisage general average. Therefore, again, the Master is not authorised through this Convention (Hague/Hague-Visby Rules).

Neither the York-Antwerp Rules authorise the Master to jettison, and only prescribe how general average contributions may be calculated/adjusted between the various interests of the maritime adventure.

So, by exhaustion, there must be some other source where a Master derived the authority to deal with cargo owners' cargo.
Some confusion was noted in the ‘mechanics’ of reporting a general average act (note of protest, liens, etc.), thinking that following such acts by the Master, he would subsequently seek ratification by cargo owners.

A tendency was noted to define general average only in relation to sacrificing property (jettisoned goods), but not for the ship’s necessary repairs, thereby omitting to include extraordinary expenditure.

**Question six – Hague-Visby Rules – Deck cargo**

This was the least well-answered question, although chosen by over half of the candidates. Most answers identified the application of Hague-Visby/Carriage of Goods by Sea Act, as goods were shipped in the U.K. However, from that point onward, confusion reigned!

Article 1 (c) states that ‘Goods’ includes goods, wares, merchandise, and articles of every kind whatsoever except deck cargo which by the contract of carriage is stated as being carried on deck and is so carried. Where a bill of lading properly records the loading of cargo on deck, the carrier’s liability for that cargo is not usually governed by the Hague or Hague-Visby Rules. On the other hand, where a bill of lading does not mention deck loading, it is assumed that the cargo is stowed under deck. The very fact of loading on deck may normally be in itself a breach of the contract of carriage.

In concluding, the position where cargo is loaded on deck but without recording the fact on the face of the bill of lading, the Hague or Hague-Visby Rules should still apply to that cargo, since those Rules can only be excluded where the bill of lading does actually record deck loading. A number of answers digressed into identifying whose fault it was that cargo was not stated as shipped on deck, with numerous answers concluding that the ‘blame’ lied squarely on the carrier! This, despite the facts of the scenario clearly indicating that there was no such issue raised or could be sustained.

**Question seven – Arbitration**

The most popular essay-type question and a well answered one overall. There were some unusual views in certain answers ranging from the belief that an appeal to a higher court could be made simply because the loser was unhappy with the result, all the way to the scurrilous suggestion that arbitrators could be biased or even could be bribed!

**Question eight – Equitable Estoppel**

The least popular essay-type question but a well answered question overall. A common error was that there was too much concentration on rights of third parties, without a simple explanation of why it is called a ‘shield’.