Overall 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. Compared to last year, this year’s examination results indicate a very slight improvement of candidates’ performance. Questions 5, 3, and 6 were the most popular ones, whilst questions 2, 5, and 7 were the most successfully answered ones.

Question One

Reasonably well answered. The scenario was based on AIC Ltd v. Marine Pilot Ltd [2008] EWCA Civ 175. It was plainly wrong for the ship’s owners to claim that demurrage accrued whilst they were employing the vessel for their own purposes and the vessel was not detained by the Charterers. A number of candidates, presumably under examination pressure, wondered whether the first sentence of the third paragraph should read "The Charterers now dispute that time should not count during the period when the vessel was unavailable to them". This is, of course, grammatically incorrect, since the Charterers, as the question correctly stated, "dispute that time should count".

Question Two

Reasonably well answered overall. It was straightforward and perhaps an “expected” question, requiring answers to mainly concentrate on the Hague/Hague-Visby Rules and Hamburg Rules. However, given that since 2009 there is another set of carriage rules in the waiting, extra marks were awarded to candidates indicating an awareness of the “Rotterdam Rules 2009”. What makes even more important an awareness of these new set of rules, is that a number of maritime nations, such as U.S.A. and Norway, have been quite positive on considering their adoption.

Question Three

Well answered overall. A common omission in part (b) answers was the consideration of any time-bar provision in the actual charter-party (freedom of contract). If the Hague-Visby Rules apply to the charter-party, the time bar would be what the parties agreed provided it is equal or over one year. If the Hague-Visby Rules do not apply, again it would be what the parties agreed but without any time limitation.
In both cases, if there is no provision in the charter-party, i.e. the parties have not agreed, then the time-bars would be one year (Hague-Visby) and six years (English law-Limitation Act 1980) respectively.
**Question Four**

This was the least favoured question and not a very well answered overall. The question required candidates to consider the doctrine of frustration. Where there is an interruption, it must be such as to destroy the whole basis of the contract; *Hong Kong Fir Shipping Co. Ltd. v. Kawasaki Kisen Kaisha Ltd.* (1962), *The Sea Angel* (2006)). On the facts, it would seem that a two month interruption (from a 24 month charter-party) would not frustrate the contract, and the Shipowners’ claim for frustration is not likely to succeed.

**Question Five**

This was the most popular question in this year’s examination, and was well answered overall. Most correctly concluded that the requirement of “real danger” had not been fulfilled in part (b) question, and were aware of *Watson v. Fireman’s Fund Insurance Co. of San Francisco* (1922).

**Question Six**

Part (a) was well answered overall, with most answers correctly identifying at least one instance where the bill of lading becomes the contract of carriage. Clearly when bills of lading are issued under a charter-party, the rule is that they are not the contracts of carriage; *Ardennes v. Ardennes* (1951). Part (b) was reasonably well answered. Some confusion seemed to reign in relation to agency of necessity and ratification. In the former there is no ratification necessary since, subject to requirements, law automatically clothes the person with authority - so such person’s acts are authorised, and there is no choice to be made by such person’s principals. Whereas with ratification the person concerned is unauthorised for his acts, but he may be subsequently authorised, subject to requirements; there is a clear choice to be made by such unauthorised person’s “principal”. Parts (c) and (d) were reasonably well answered by those attempting them.

**Question Seven**

A popular essay-type question, and a well answered one overall. One remark that should be made in relation to contributory negligence, is that normally there would not be a parallel duty of care owed to the defendant, as suggested by some answers. In other words, the defendant does not have to show that the claimant also owed him a duty of care which he breached, in order to ascertain contributory negligence. It is adequate that the defendant shows that a part of the claimant's damages were caused/contributed by the claimant.

**Question Eight**

Reasonably answered overall. Apart from the legal rules of agency applying here, where a question involves brokers, it is expected that any ethical issues are also identified. For example, it would not be unethical that Eva suggests to Jon to seek his “principal’s” ratification. Furthermore, it would be professionally unethical for Jon to attempt to mislead a colleague-broker. More importantly perhaps, is the question of whether Eva knowing of Jon’s lack of authority should benefit by proceeding with the “particularly good fixture”? These are issues that a shipbroker should be aware, and indeed sometimes has to deal and resolve within the limits of professional ethics rather than strict law.