

## EKSAMEN I JURIDISKE VALGEMNER

HØST 2012

Dato: Tirsdag 27. november 2012

Tid: Kl. 10:00 – 14:00

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### JUS5401 – Maritime Law - Contracts

The language of examination for this course is English: students may answer in English ONLY, answers in any other language than English will be given a F (F for fail).

#### Part I

Bulk Transport A/S (BT) chartered their ship M/V Vega to Leca A/S (Leca) for the carriage of 10.000 tons of cement in bulk from Drammen, Norway, to Bergen, Norway. The agreement was based on the Gencon 1994 form, however since the carriage was domestic Section 322 second paragraph of the Maritime Code (MC) applied.

Loading and discharge was performed by the ship's crane and the crane was operated by the ship's crew. Accordingly, Gencon Part I, box 15 was filled in: "Vessels' cargo handling gear to be used". In Gencon Part II, clause 5, lines 52-59 and 66-75 were deleted.

The agreed 10.000 tons were duly loaded and the voyage performed without mishap. However, during discharge the crane driver did not pay close attention during one of the heaves, and the crane grab slammed into the side of the cargo hold, causing cracks to the ship's piping system which was located there. The damage was not clearly visible from the position of the crane driver due to cement dust. The crane driver continued discharging. The master, who at the time rested in his cabin, heard the noise of the impact but did not think more of it; such slamming of the grab usually had no more serious effect than slight dents in the cargo hold walls.

Some hours later the master ordered ballasting to commence (ballasting means that sea water is pumped into separate tanks to enable the ship to sail safely when the weight of the cargo is removed). Shortly thereafter ballast water flooded into the cargo hold; the broken pipe had the function of supplying ballast water, hence ballast water leaked into the cargo hold when the pump was started. The ballast pump was stopped immediately but enough water had immersed so that 2000 tons of cargo was damaged by the cement solidifying.

Leca claimed damages, submitting that the cargo damage was caused by negligence by BT's servants.



BT admitted that the broken ballast water pipe was caused by negligence by its servant, the crane driver, but submitted that this damage did not in itself harm the cargo. BT argued that the proximate cause of the cargo damage must be considered the starting of the ballast pump which, if negligent, must be considered a nautical fault (MC Section 276) exempting BT from liability.

Leca did not accept BT's argument on causation. Moreover, Leca disagreed that the nautical fault exception was at all applicable during discharge operations. Furthermore, Leca submitted that even if the nautical fault exception prima facie was applicable, it could not extend to situations where the cargo damage could have been avoided by proper supervision of the discharge operation. According to Leca the master had failed to properly supervise the discharge operation.

**Q1:** Discuss and decide whether BT is liable for the cargo damage.

### **Part II**

We now assume that the carriage was not domestic but that loading occurred in Bremen, Germany (MC Section 322 second paragraph not applying) but otherwise the facts were as described in Part I.

In defence to Leca's claim for damages BT referred to Gencon clause 2. Leca denied that Gencon clause 2 exempted BT from liability by submitting, inter alia, that Gencon clause 2 must be construed in favour of the charterer, and that matters dealing with the ship's safety – as argued by Leca under Part I – must fall outside the scope of the clause.

**Q2:** Discuss and decide whether BT is liable for the cargo damage.

### **Part III**

A separate discussion arose in respect of payment of freight. Freight was agreed as a lumpsum (not reckoned per ton) of NOK 100.000 which was inserted into Gencon box 13, where it was also stated that clause 4 (c) lines 40-41 applied.

It was agreed that the 2.000 tons of solidified cement (concrete) was rendered worthless. Leca claimed that a corresponding 1/5 of the lumpsum freight (i.e. NOK 20,000) was not earned and payable irrespective of whether or not Leca succeeded with its claim for cargo damage.

BT disagreed, submitting that since the whole of the cargo was actually carried to and delivered at the discharge port, the full freight was earned and payable. Moreover, BT submitted that since the freight was agreed as a lumpsum, there was in any event no basis for a proportionate reduction based on the amount of cargo being damaged.

**Q3:** Discuss and decide what amount of freight BT is entitled to.

**Part IV**

**Q4:**

- a) What are the main differences between time chartering and bare boat chartering?
- b) Does the MC contain provisions relating to bare boat chartering?