

## EKSAMEN I JURIDISKE VALGEMNER

VÅR 2013

Dato: Tirsdag 7. mai 2013

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 1

The fish-exporter Seafood AS entered into agreement for carriage of general cargo with the liner company Coastline AS concerning carriage of frozen fish from Vadsø, northern Norway, to Esbjerg, Denmark. In the sea waybill which was issued the goods were described as: "10 pallets of frozen fish, 40 boxes on each pallet, 100 kg per pallet".

Coastline's vessel the "m/s Finnmark" arrived at Vadsø and the goods were loaded into a separate refrigerating compartment which at that point in time held an appropriate temperature (minus 18 degrees Celsius). After departure the chief engineer was going to start the engine room air circulation fan (for circulating fresh air into, and hot air out of, the engine room), as was routine after a few hours sailing time. The switchboard for the engine room fan contained also switches for the cooling generators for the refrigerating compartment, and while turning on the engine room fan the chief engineer managed inadvertently to turn off the switch for the cooling generators. Upon discharge at Esbjerg the fish was found to be destroyed by melting; the local health authorities ordered destruction of it due to risk of bacterial infection.

Seafood claimed damages from Coastline. Coastline admitted that the chief engineer's mishap with the switches constituted negligence but claimed exception from liability based on nautical fault (MC Section 276). In that respect it was undisputed that the chief engineer had no history of similar errors, and that the switchboard had been installed according to governing regulations. Coastline admitted however that ideally the switchboard could have been arranged in different way to avoid the risk of erroneous use but claimed this to be irrelevant when, as here, the error was caused by negligence.

The parties were in disagreement also concerning the assessment of damages. It was agreed that the market value of the lost cargo was NOK 2 mill. and that Coastline was entitled to limit its potential liability. Seafood claimed damages of NOK 2 mill. based on unit/package limitation and the number of boxes. Coastline denied liability (as stated above) but in the alternative claimed that whatever liability should in no event exceed NOK 66.700 based on unit/package limitation and the number of pallets. (1 SDR=NOK 10)



**Q 1:** Discuss and decide whether Coastline is liable for the cargo damage (with reference to the relevant provision(s) of the MC).

**Q 2:** Assuming that Coastline is liable, discuss and decide the proper amount of damages (with reference to the relevant provision(s) of the MC).

## Part II

We now make the following changes to the facts as set out in Part I: Coastline AS was a freight forwarder with no tonnage of its own. Coastline undertook vis-à-vis Seafood AS to carry the fish from Vadsø (Norway) to Esbjerg (Denmark). Coastline in turn entered into agreement with a sub-carrier, Sea Carrier AS, to carry the fish from Vadsø to Bergen (Norway) and with another sub-carrier, Oceanline AS, to carry it from Bergen to Esbjerg. Sea Carrier arrived at Vadsø with its ship "m/v Finnmark" and the mishap as described in Part I happened during the voyage from Vadsø to Bergen. The damage was discovered during transshipment at Bergen; the local health authorities ordered destruction of the fish due to risk of bacterial infection. The market value of the lost cargo was agreed to be NOK 2 mill.

Before Seafood managed to submit its claim for damages Coastline went bankrupt. This caused Seafood to claim damages against Sea Carrier. Sea Carrier denied liability by pointing to there being no contractual relations between Sea Carrier and Seafood, and in any event claimed entitlement to invoke exception from liability by nautical fault (as set out in Part I). Seafood submitted that Sea Carrier was liable as performing carrier, and denied that Sea Carrier was entitled to invoke nautical fault exceptions since the voyage from Vadsø to Bergen was a voyage in domestic trade Norway (MC 276 third paragraph). With respect to this latter question it turned out that Coastline, when booking the sub-carriage, had advised Sea Carrier that the carriage from Vadsø to Bergen formed part of a through-carriage to Esbjerg, but this was not reflected in the sea waybill later issued by Sea Carrier to Coastline which merely stated: "Vadsø-Bergen: 10 pallets of frozen fish, 40 boxes on each pallet, 100 kg per pallet".

The parties disagreed also concerning the assessment of damages. Sea Carrier submitted that to the extent Seafood was right that the carriage must be considered domestic, the damages should be limited to NOK 170.000 based on the rules for weight/kilo limitation. Seafood disagreed. According to Seafood it could not be right that a cargo owner would become disadvantaged by a domestic carriage compared to an international carriage, and Seafood claimed damages of NOK 2 mill. based on rules for unit/package limitation.

**Q 3:** Discuss and decide whether Sea Carrier is liable for the cargo damage, and as part of this: decide whether the carriage must be considered domestic (with reference to the relevant provision(s) of the MC).

**Q 4:** Assuming that Sea Carrier is liable, discuss and decide the proper amount of damages (with reference to the relevant provision(s) of the MC).

**Part III**

**Q 5** (to be answered briefly): What do we understand by the principle: "once on demurrage, always on demurrage" – and is it reflected in any provision(s) of the MC?

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