

EXAM

JUS5401 - Maritime Law - Contracts - Autumn 2016

Date: 6 December

Time: 10:00

Coast-Carrier was running a small liner service carrying general cargo along the Norwegian and Swedish coast. Mr. Arberg was an old customer of Coast-Carrier who regularly made use of its services and paid freight on a semi-annual basis. In mid-December Mr. Arberg made an oral agreement with Coast-Carrier for it to carry 50 boxes of firecrackers from Kristiansand, southern Norway, to be delivered to Mr. Arberg in Oslo. The agreed freight was NOK 50.000.

The boxes, which all looked the same, were duly loaded in Kristiansand with 25 boxes stowed on the starboard and 25 on the port side of the ship's cargo hold. The ship was of the old fashioned type which meant that opening and closing of the hatch covers took some time. To save time, it was therefore common for the master to start opening the hatch covers before arriving at the relevant berth, and to complete closing them after departing from the relevant berth – provided weather and sea conditions so allowed.

This procedure was followed also in the present case. The ship left Kristiansand with the hatch covers partly open and with the master planning to duly close them before reaching open waters. However the master was distracted by messages over the vhf-radio concerning a nearby rescue operation, which caused the ship to reach open waters with some sea spray washing over the decks, before the hatch covers were duly closed. This caused the boxes on the starboard side to be wetted and the firecrackers destroyed but the master did not check the cargo for possible sea water damage.

While the ship was on its way to Oslo Mr. Arberg advised Coast-Carrier that he had changed his mind; 25 of the boxes were to be delivered to him in Oslo while the remaining 25 had been sold to Mr. Johanson in Gothenburg, Sweden, hence these were to follow the ship along its route to Gothenburg and there be delivered to Mr. Johansson. The extra freight involved, agreed to be NOK 20.000, would be paid by Mr. Arberg as part of the semi-annual arrangement.



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In Oslo the master randomly selected for discharge the 25 boxes stowed on the port side and which were in good condition. Only when later discharging the remainder in Gothenburg it was discovered that these were destroyed by sea water, and Mr. Johansson claimed damages from Coast-Carrier.

Coast-Carrier admitted that the master had been negligent in allowing himself to be distracted so as not to ensure that the hatch covers were duly closed before entering open waters, but claimed this to be a nautical fault, exempting Coast-Carrier from liability. Mr. Johansson disagreed. Disagreement also arose as to whether the carriage must be considered domestic or international, and what effect might be given to the fact that the master had randomly chosen the boxes to be delivered to Mr. Arberg and Mr. Johansson respectively.

Question 1: Is Coast-Carrier liable for Mr. Johansson's claim for damages? (You are only asked to consider liability, not any amounts involved.)

You are now asked to assume that Coast-Carrier is liable under Question 1 and to consider the following additional facts, the above scenario otherwise remaining unchanged:

Under normal circumstances the ship would reach Gothenburg well in time before New Year's Eve for Mr. Johansson – who was a retailer – to make use of the profitable firecracker market for selling the goods. However on this occasion there was a terrible Christmas storm which caused a significant delay to the voyage, particularly on the leg from Oslo to Gothenburg. This meant that Mr. Johansson received the goods not only in damaged condition (as above) but also after New Year's Eve when the firecracker market had significantly dropped, from NOK 10.000 per box before New Year's Eve to NOK 2.500 per box thereafter. Disagreement arose as to how to assess Mr. Johansson's claim for damages. The weight of each box was 10 kg. (1 SDR=NOK 10)

Question 2: In what amount is Coast-Carrier liable?

