

JUS5401 Exam H21

Part I

The MS Breeze was fixed on a voyage charter on the Gencon form (attached with the parts relevant for this exam not stricken out), between Norship AS as owner and Norchart AS as charterer. The charter was for a voyage of rocks and grain, the respective cargoes to be carried in different holds of the ship. The charter i.a. stated: "In charterer's option: one/two load ports southern Norway – one/two discharge ports Denmark/northern Germany." The charter provided for Norwegian law to apply.

Norchart opted for Larvik, Norway, as the first load port, for a cargo of a particular type of slate rock (Larvikitt), and opted for Stokke, Norway, as the second load port, for a cargo of high quality bread wheat. Later Norchart opted for Hirtshals, Denmark, as discharge port for the wheat, and Kiel, Germany, as discharge port for the slate.

After having loaded the slate cargo at Larvik, the ship sailed to Stokke and duly loaded the wheat cargo. Separate bills of lading were by the master for the wheat cargo, stating i.a. "about 500 tons of wheat duly received on board, in apparent good order and condition". The bills referred to the terms of the voyage charter.

Norchart, as seller of the cargo, later transferred the bills for the wheat to its buyer, Nortrade AS, who paid the purchase price against receiving the bills.

Upon completion of loading of the wheat at Stokke the master decided to leave the hatch covers open while sailing in sheltered waters. The weather was fine with no winds. Generally it was considered healthy for grain cargoes to be vented in fresh air, if conditions so allowed, to avoid accumulation of moist. This was the main motivation for the master to sail with the covers open. An additional motivation was that the bosun (deck mate) could then do some maintenance work on the hatch coamings (structure holding the covers in place) but such maintenance work was not needed for ship or cargo safety purposes.

The master however misjudged the situation: when after about 40 minute's sailing time reaching open waters in the area of Svenner light house, there were to the master's surprise heavy swells (long waves from earlier wind conditions). The swells, combined with the ship's low freeboard due to the heavy slate cargo, caused a wave to wash over the decks, resulting in some seawater entering the grain cargo hold. The master noticed the calamity and yelled to the buson, who was down on the decks, to close the hatch covers immediately. The busson became very stressed by this sudden yelling. By mistake he pushed the wrong button on the hydraulic system for lowering of the covers. This he noticed only too late: another wave washed over the decks, resulting in additional seawater entering the hold, before the covers were duly closed.

The seawater damage was revealed upon discharge of the wheat cargo to Nortrade at Hirtshals. The overall reduced quality amounted to NOK 700.000. It was assessed that each of the two waves that had washed over the decks contributed to half of the overall damage, i.e. NOK 350.000 each.

After discharge at Hirtshals the ship proceeded to Kiel with the rest of the voyage being performed without ado.

Nortrade claimed NOK 700.000 in damages against Norship. Norship denied liability by i.a. referring to the terms of bills of lading incorporating Gencon clause 2, and that in any event the damage was caused by perils of the sea and/or nautical fault for which Norship was exempt from liability. Nortrade disagreed.

During the legal proceedings the following transpired.

It was agreed that the master's misjudgment of the state of the seas to be expected, constituted negligence.

It was further agreed that the wash of the second wave would have been avoided if the bosun had pushed the right button. It further turned out that arrows indicating the direction of the respective buttons (directing hatch covers up or down) had been painted over as part of earlier maintenance work to the ship, but it was likely the bosun would have made the mistake anyway, since he pushed the button in the state of some panic.

Q1: Is Norship liable in damages towards Nortrade, and if so, in what amount?

Part II

We now assume that Norship was liable to compensate Nortrade in the amount of NOK 700.000. Norship claimed indemnity from Norchart by referring to Gencon clause 10. Norchart denied liability by i.a. pointing to the mandatory nature of liability being imposed on Norship, and that, in Norchart's view, Gencon clause 2 would not be given effect even if Norchart had been the owner of the cargo. Norship disagreed.

Q2: Is Norship entitled to indemnity from Norchart, and if so, in what amount?

Part III

The facts and questions are as in Part I and Part II apart from the following: Rather than bills of lading being issued as cargo documents, the parties had agreed to use sea waybills. This means that sea waybills were issued for the grain cargo, with the same insertion about the amount and nature of cargo, and the same reference to the terms of the voyage charter, as stated in Part I. Moreover, Norchart had given an irrevocable instruction for Norship to deliver the cargo to Nortrade at Hirtshals (see MC s. 308 second paragraph second sentence), and Nortrade had paid the purchase upon receipt of the waybills, as stated in part I.

A claim for damages was made as in Part I, and a claim for indemnity was made as in Part II.

Q3: Is Norship liable for cargo damage towards Nortrade?

Q4: Assuming Norship is so liable, is Norship entitled to indemnity from Norchart?