

This is originally the exam in JUS5401 Maritime Law: Contracts from autumn 2011 with some minor adjustments.

Part I

Prime Lines AS entered into a contract with the sender First Export AS for the carriage of two containers of computer hardware from Lillevik, Norway, to Houston. It was agreed that the containers could be carried on deck.

Prime Lines used Rotterdam as its main European port. For carriages between Rotterdam and smaller ports, like Lillevik, it made use of the subcontractor Coastal AS who operated coastal vessels bringing cargo to and from Rotterdam. The cross-Atlantic voyages were performed by the bigger oceansteamers operated by Prime Lines.

On 1 December the two containers were received at Coastal's terminal at Lillevik and a bill of lading was issued, signed by Coastal on behalf of Prime Lines, stating: "Received for shipment: Two containers, each said to contain 50 boxes of computer hardware. Load port: Lillevik. Discharge port: Houston". On 3 December the containers were loaded onto the coaster "Agnetha" which was scheduled to depart the same day in order to reach Rotterdam in time for the containers to be transhipped onto the bigger vessel, scheduled to depart Rotterdam 6 December.

There was a gale warning for the Lillevik area both 2 and 3 December, with northerly winds and wave height of 4-5 meters. The captain of the "Agnetha" knew that those conditions did not endanger the safety of the ship but that deck cargo might be at risk if the ship encountered heavy seas from the side; sailing in following seas would not affect the deck cargo. When there were northerly winds, as now, the master would choose a sheltered route in the Lillevik archipelago whereby he would get the heavy seas in from behind when entering open waters, thus not endangering the deck cargo.

However, just two hours before the planned departure the captain learned from the Traffic Control that a rescue operation temporarily blocked his intended sheltered route (a tanker vessel had suffered engine breakdown and was assisted by tugs occupying the narrow straits). The captain now considered two alternatives: He could wait for the weather to abate or the rescue operation to cease but this would most likely cause the "Agnetha" to be late for the planned transshipment at Rotterdam. Alternatively he could choose a different sailing route out of the archipelago but this would expose the vessel to a short distance of seas coming in from the side, before being able to turn southerly. The captain decided to sail as he took pride in not causing delay to Coastal's customers.

When entering open waters the ship took on a heavy wave from the side. The force of the wave combined with the ship's heel caused one of the containers belonging to First Export to be washed overboard. Apart from this incident the carriage was safely performed with "Agnetha" arriving Rotterdam on schedule, and the remaining container was safely carried to Houston.

First Export claimed damages for the lost container against Prime Line. Prime Line denied liability submitting that the loss of the container occurred while the container was in Coastal's custody. Alternatively Prime Line submitted that the loss was caused by the perils of the sea. Still alternatively, Prime Line submitted that if the captain's acts were to be considered negligent, these

acts would entail navigation or management of the ship for which Prime Line would be exempted from liability.

Q 1: Is Prime Line liable for the lost container. Discuss the relevant rule(s) of the Maritime Code and give a reasoned answer to the question. ? (You are not asked to discuss the amount of possible damages.)

First Export claimed damages for the lost container also against Coastal. Coastal denied liability submitting that as it stood in no contractual relation with First Export, it could not be held liable. In addition, Coastal submitted the same defenses as those submitted by Prime Line; that the loss was caused by the perils of the sea, alternatively that there was exception from liability through navigation or management of the ship.

Q 2: Is Coastal liable for the lost container? Discuss the relevant rule(s) of the Maritime Code and give a reasoned answer to the question. (You are not asked to discuss the amount of possible damages.)

Part II

In the following you are to assume that Prime Line and Coastal are liable in damages and that neither of the companies can benefit from the limitation of liability in Section 280 of the Maritime Code.

First Export claimed damages on the following basis: A sales contract for the 100 boxes of computer hardware had been entered into with an American buyer some 6 months earlier. Since then the market value for the hardware had fallen. The purchase price per box was NOK 7.000 while the Houston market value per box at the time the remaining container was timely delivered at Houston, was (the equivalent of) NOK 5.000. Moreover, under the sales contract the buyer was entitled to cancel the whole contract if not all 100 boxes were delivered. Such right of cancellation was exercised. Accordingly First Export claimed damages in the amount of NOK 450.000 (50 boxes @ NOK 7.000 + 50 boxes @ NOK 2.000).

Prime Line and Coastal denied that they were liable for anything above the market price for the 50 boxes which were lost.

Q 3: Discuss the relevant rule(s) of the Maritime Code relevant to the question of recoverable damages and set out the amount you consider recoverable.

Moreover, it turned out that the market value at Rotterdam was lower than that at Houston. Coastal submitted that since it had undertaken only to carry the cargo to Rotterdam (not to Houston), the lower market value at Rotterdam formed the correct basis for assessment of damages.

Q4: Assuming Coastal is not liable for anything beyond the market value, is Coastal entitled to apply the lower market value at Rotterdam ?

Part III

Q 5: In time chartering, who bears the cost of pilotage (use of pilots),

- a) under the Baltimé 1939,

b) under the Maritime Code.