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Admiralty Jurisdiction & Practice - CML 624F

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TIME: FOUR HOURS

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NOTES

1. *References to "The AJRA" refer to the Admiralty Jurisdiction Regulation Act (Act 103 of 1985 as amended); to "COGSA", the Carriage of Goods by Sea Act (Act 1 of 1986) and to "The MSA", the Merchant Shipping Act (Act 53 of 1951 as amended).*
  2. *Students may take into the exam clean, unannotated but highlighted copies of any local or foreign statute, and of any international convention or instrument.*
  3. *Write on one side of each page only. You may use the other side for rough notes.*
  4. *Answer **all questions**. Note the choice within question 1.*
  5. *All answers should be fully supported by the authority of statute and case law where appropriate.*
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**Question 1**

Write notes on any three of the following:

- (a) Rights of claim against charterers in South African admiralty practice.
- (b) The provision of release security in the light of the High Court decisions in The Allam Tengirri and The Merak S.
- (c) The reasons for the awkward compromise that is section 6(1) of the AJRA.
- (d) The sale of an arrested or attached vessel in pursuance of an order of the High Court in admiralty.

[10 MARKS EACH: TOTAL 30 MARKS]

**Question 2**

- 2(a) In what circumstances will the South African High Court in Admiralty decline to exercise its jurisdiction? Compare these circumstances to those in which the Court is more likely to favour a stay of the action.

[10 MARKS]
- 2(b) Describe fully the origins, nature and legal significance of the English admiralty *maritime lien*.

[15 MARKS]  
[TOTAL 25 MARKS]

### **Question 3**

Article 7.2 of the 1952 Arrest Convention provides:

*If the Court within whose jurisdiction the ship was arrested has not jurisdiction to decide upon the merits, the bail or other security given in accordance with Article 5 to procure the release of the ship shall specifically provide that it is given as security for the satisfaction of any judgement which may eventually be pronounced by a Court having jurisdiction so to decide and the Court or other appropriate judicial authority of the country in which the arrest is made shall fix the time within which the claimant shall bring an action before a Court having such jurisdiction.*

In what way does the South African security arrest differ from the procedures envisaged by the Art 7.2 of the Convention? In your answer, outline the procedure of the South African security arrest, its advantages and disadvantages from the point of view of the maritime claimant and the debtor. You are at liberty also to contrast the South African position with that of any other state.

[15 MARKS]

### **Question 4**

The MV *Good Hope*, listing heavily to starboard, only just makes it into the port precincts of Saldanha Bay. She has encountered heavy weather en route from Brazil, bound for the East, with a cargo of flat iron. The flat iron has shifted, and she has taken such a battering that some of her hull plating has given way, allowing a considerable quantity of sea water to enter her numbers 2 and 3 holds. She has seen better days, and her owners have been toying with sending her to the scrapyard on completion of discharge of the current cargo.

The *Good Hope* is owned by Marilaw Inc of Honduras (a brass plate law firm specialising in minimum-involvement legal ownership of sub-standard ships). Marilaw has bearer shares, which are held for the account of their beneficial owners, the Preposterous Family Trust, by the family's Cypriot lawyer, Dimitri Devios. Devios makes a living from the business of acting as trustee for shipowning families, and has a number of shares in the wall safe in his office.

One such set of shares is the full issued bearer shareholding of the Heavy Iron Trust, which Devios holds for the Unscrupulos family.

His mandate from both families is to do as he is told. He takes no day-to-day decisions on the running of the companies or of the ships which they own, but he does convene and attend bi-annual meetings of the trustees, which he chairs, primarily to settle the amount of his fee for the ensuing six months, in advance.

Marilaw Inc bareboat charters the *Good Hope* to Pretransport Corporation, which in turn has a time charter on NYPE in favour of Prepshipping Limited. Both are limited liability corporations.

Once the Master has made his peace with the SAMSA surveyors, the *Good Hope* is allowed alongside. It is not long before her master is hosting the first of many visits by the Sheriff of the High Court. After three days the vessel's mast is a-flurry with writs, and you are approached by the Master with a brief to act for the *Good Hope* and her owners. The following claims have been served on the vessel:

- (a) The owners of the **cargo of flat iron** have arrested the vessel averring that part of the iron is buckled and part rusted owing to the ingress of seawater. The cargo was shipped under a Bill of Lading signed by the master as agent for the time charterers, Prepshipping.

- (b) The **crew** of the *Good Hope* have not been paid that portion of their wages which is paid to their families (their home allotments) for 14 months, and they have attached the vessel in an action against *in personam* against their employers, BANGSPA (the Bangladeshi Seaman Procurement Agency) with whom Pretransport has a manning contract. They also arrested the *Good Luck in rem*.
- (c) The **suppliers of bunkers** to the vessel in Brazil have not been paid. They have arrested the vessel in an action *in rem* for the cost of the bunkers. They have also attached the bunkers now on board, averring that in terms of the NYPE Preshipping ordered the bunkers, and Preshipping owns the remaining bunkers.
- (d) The **mortgagees** of the *Good Hope* have arrested the vessel to enforce their registered Cypriot mortgage, unpaid for 13 months.
- (e) The *Good Hope* has been arrested by warrant issued on behalf of the owners of a **cargo of pig iron** lost with the sinking of the MV *Rotten Luck*, then voyage chartered by Heavy Iron Inc (wholly owned by The Heavy Iron Trust) on whose behalf the now deceased master of the *Rotten Luck* had signed bills of lading. The claimant cargo owner avers that the *Good Hope* and *Rotten Luck* are associated ships.
- (f) The **mortgagees** of the MV *Rotten Luck* have arrested the *Good Hope* as an associated ship, to enforce the outstanding payments overdue on the *Rotten Luck* mortgage.
- (g) **Hard Currency Finance Inc** has attached the *Good Hope* to enforce a claim for money lent by it to the Preposteros Family Trust to enable the Trust to settle and overdue account for repair work done to the *Good Hope* 10 months ago. Devios signed the repair contract for the Trust.

**Analyse each claim with a view to advising your client of its chances of a defence. In your answer you should discuss the law and admiralty practice fully, making reference to appropriate cases. Advise your clients also on the probable ranking of the claims should the vessel be sold in an admiralty execution.**

**[30 MARKS]**