



UNIVERSITY OF CAPE TOWN
University Examinations

Admiralty Jurisdiction & Practice - CML 624F

TIME: THREE HOURS PLUS FIFTEEN MINUTES FOR READING THE PAPER

NOTES

1. *References to "The Act" 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. **Sections:**

The examination is divided into the following sections, with the mark allocation indicated:

<u>Section A</u>	Admiralty Jurisdiction & Practice	55 marks
<u>Section B</u>	Ownership, Salvage, Towage, & Wreck	45 marks

PLEASE ANSWER EACH QUESTION IN A DIFFERENT BOOK

4. *Write on one side of each page only. You may use the other side for rough notes.*
 5. *Answer **all questions**. Note the choice within question and B.1.*
 6. *All answers should be fully supported by the authority of statute and caselaw where appropriate.*
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SECTION A

Admiralty Jurisdiction & Practice

Answer ALL questions in Section A

Question A.1

A.1.(a) What must a claimant who seeks to make a security arrest in terms of section 5(3) of the Act prove in order to obtain such arrest?

[5 MARKS]

A.1.(b) You are consulted by a foreigner who alleges that the MV OCEAN TRADER loading a cargo in Cape Town Harbour is owned by him. He alleges that one X is in unlawful possession of the ship and he wishes to bring an action *in rem* to recover possession on the basis that he is the true owner of the OCEAN TRADER. He wishes to be advised whether he can do so.

Set out your what your advice would be and your reasons for such advice.

[5 MARKS]

A.1(c) You are asked to advise a foreign client what claims will be recognised as maritime liens in admiralty proceedings in South Africa. List these claims and explain your reasons for advising that these claims constitute maritime liens.

[8 MARKS]

A.1(d) Section 6 of The Act provides for the application of English law as at 1983, as being the date of commencement of The Act. To what extent, if at all, are English decisions subsequent to 1983 relevant in deciding a matter before a South African court exercising its admiralty jurisdiction?

[2 MARKS]

Question A.2

Write a full note on jurisdiction clauses (i.e. clauses recording agreements that disputes between the parties will be referred to a particular *forum*) in maritime contracts.

[15 MARKS]

[Total for Question A.1 & A.2.: 35 MARKS]

Question A.3

The MV EVADER called at Cape Town last month. She had been tramping around the world looking for cargoes, and her owners managed to wring \$25 000 credit out of a local ship's chandler for the supply of victuals to the vessel. Payment is overdue, and a very worried chandler comes to you for advice.

There seems little prospect of the EVADER returning to these shores, but you happen to act also for her Cape Town ship's agent who has also been left with an unpaid bill for agency fees and disbursements.

The agent tells you that he has reason to believe that a ship due next weekend, the MV AVOIDER, is in some way connected to the EVADER. He has been getting faxes from the same ship managers as he dealt with for the EVADER, asking him to attend to the AVOIDER. (When the agent tackled the managers about the EVADER's unpaid bill, he was told "EVADER not our problem - you speak their owners").

But the agent does have copies of the EVADER's documents amongst which you find

- a Certificate of Registration in the Cypriot register reflecting your old adversaries the Unscrupulos Shipping Inc ("USI") as the owners of the EVADER;
- a Ship's mortgage by USI mortgaging the EVADER to the Bank of Lisbon for \$5 million with a second mortgage registered in favour of the Bank of Athens as a fleet mortgage to secure the purchase of the AVOIDER;
- a Deed of Pledge requiring the Unscrupulos Family Trust, as the beneficial owners of USI, to pledge their bearer shares to the Bank of Athens as collateral for the purchase of the AVOIDER.

The agent tells you that the two vessels are crewed out of the same manning agency, that they are insured through the same brokers and that a Mr Unscrupulos is named as the managing director of the managers of the AVOIDER with whom you are in contact.

Advise your clients of their rights against the AVOIDER: in particular, advise them what you would have to prove in order to be able to take action against the AVOIDER in Cape Town. Indicate what investigations you would need initiate, and the sort of evidence you would be able to put before the court.

[12 MARKS]

Question A.4

Assume that you are able to arrest the AVOIDER, and that she has a cargo of bagged rice on board which is suffering from lack of ventilation. Your clients ask you if you may sell the vessel and what should be done about the cargo. Both ask where they would rank in any payout from the fund, in view of the fact that the AVOIDER's mortgagees have entered the fray, and the EVADER's mortgagees have indicated that they wish to arrest.

Advise your clients accordingly.

[8 MARKS]

[Total for Questions A.3 & 4: 20 MARKS]

[Total for Section A 55 marks]

SECTION B

Ownership, Salvage, Towage, & Wreck

Answer **both** questions

[Note the choice in Question B.1]

Question B.1

Write notes on **any three** of the following:

- 1(a) Proposed changes in ownership criteria in SA shipping law.
- 1(b) The requirement of *voluntariness* in salvage law.
- 1(c) Salvage vs. *occupatio* (finding) in relation to historical wreck.
- 1(d) Port state control.

[5 MARKS EACH - TOTAL 15 MARKS]

Question B.2

The container ship BOXER is en route around the Cape. She is hit by a ferocious storm which smashes her engine room skylights and floods her engine room. She loses all power and is wallowing at the mercy of the huge swells. The containers on the after deck break loose and are washed overboard.

The salvage tug ROTWEILER is on station at Cape Town and puts to sea upon hearing the BOXER's radio distress call. She is a fully equipped salvage tug, with a bollard pull sufficient to tow the largest of ships.

The ROTWEILER contacts the master of the BOXER on VHF and offers Lloyds Form 1995, to which the Master agrees. By superhuman effort, the ROTWEILER gets a line across to the BOXER and swings her around to hold her into the swell and thereby stop the rolling. No more containers are lost.

After two days the storm abates: the ROTWEILER and her tow have by this stage headed up the coast and are off Table Bay.

Whilst manoeuvring in the bay, the ROTWEILER negligently allows the tow wire to sag, forming a loop which snags the bottom and breaks. The BOXER is in trouble again, and her owners are incensed.

The port tug EAGER BEAVER is hovering around looking for some of the action. Portnet call the BOXER's agents and offer the EAGER BEAVER on a daily hire tow contract to take the BOXER in tow and bring her safely into port. The EAGER BEAVER needs no second invitation, and while the ROTWEILER is licking her wounds, the EAGER BEAVER connects up a line and takes the BOXER in tow.

The ROTWEILER's owners contact the BOXER's owners and protest about being wrongfully dispossessed. They aver that they would have been able to take up the tow again in a matter of minutes, but for the illegal actions of the EAGER BEAVER.

And the Cape weather has been underestimated. The calm was merely the eye of the storm and the weather again turns. The EAGER BEAVER is no match for the wind, and is unable to hold the BOXER which runs firmly aground at Sandy Bay.

Meanwhile the 10 containers have washed up on the rocks in False Bay, and a local opportunist has loaded them up and taken them into his warehouse. He says they are abandoned, and that he is now the owner of them. He refuses to give them over to the representatives of the cargo underwriters who arrive at his warehouse with a fleet of lorries and a crane.

Examine the rights and obligations of the parties and of the SA Minister of Transport. In your answer you should indicate, in relation to each unfolding chapter in the sorry saga, what remedies would be available to enforce such rights and obligations, and what law would apply in terms of sec 6 of The Act.

[30 MARKS]

[Total for Section B 45 Marks]

TOTAL 100 MARKS