



UNIVERSITY OF CAPE TOWN
School for Advanced Legal Studies



UNIVERSITY EXAMINATIONS
NOVEMBER 2000

MARITIME LAW & MARINE INSURANCE
[CML625S]
FOUR HOURS, INCLUSIVE OF READING TIME

Notes:

1. *Students are permitted to bring into the examination room highlighted but unannotated copies of any statute or international convention, or any standard contract form or insurance terms. If in doubt, please consult the invigilator.*
 2. *Please write on one side of each page only. You may use the other side for rough notes.*
 3. *Please use a separate book for questions 1 and 2, and mark the outside of each book with the number(s) of the questions answered in that book.*
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QUESTION 1

Write notes on any four of the following questions (a) to (e)

- (a) The liability of Portnet for damage caused by pilot error.
- (b) Ownership of South African ships under the Ship Registration Act.
- (c) The priority of the registered mortgagee over a vessel owned by an insolvent owner, both in terms of current South African law and in terms of the Ships Registration Act.
- (d) The powers of a master on board ship in South African law..
- (e) The role and liability of Classification Societies in shipping law.

[5 MARKS EACH - TOTAL 20 MARKS]

QUESTION 2

THE ERIK A - A MARITIME DISASTER

This scenario contains elements of salvage, towage, pollution, limitation of liability, and marine insurance. It should be used as the basis for your answers to the questions which follow. A mark allocation is shown to indicate the time that should be devoted to each element.

The fully laden tanker, Erik A, suffers a major main engine breakdown 14 miles off the Cape coast. She is unable to effect on-board repairs, and is drifting in worsening gale force conditions. To make her predicament worse, the wind is on-shore. Her master puts out a distress call, indicating that his vessel will run aground near Cape Point "within the next 12 hours". The call is picked up by two salvage tugs, one on station in Cape Town, and the other, the Georgian tug Smirnhoff, fortuitously passing the Cape. The latter is the first to reach the scene, and she hails the master of the Erik A on VHF and offers to put a line across and hold the tanker. The master readily agrees, mentioning on the VHF "UK Standard Conditions of Towage" to which the Russian master replies "Da, UK Salvage OK". The tanker master does not take the tugmaster up on the apparent contradiction of salvage or towage, as he does not want to waste time in getting a line connected.

Whilst maneuvering to connect up a wire, the Smirnhoff falls off a swell right under the Erik A's bow, and collides with her, setting in shell plating of the tanker's No 2 tank, port side. At this stage the vessels are about 13 miles off the coast. After an epic struggle, with the Erik A drifting ever closer to the shore, a rocket line is fired across to the tanker and by hauling first a thin messenger wire and then the tug's main tow wire, a connection is made. The Smirnhoff takes up the strain and the drift of the Erik A is slowed when the tanker is but minutes from touching bottom.

The SA maritime authority, SAMSA, enters the fray, and a surveyor from SAMSA is dropped on board the tanker by helicopter. The master of the tanker tells the SAMSA surveyor that he suspects that his vessel has sustained hull damage in collision with the Smirnhoff, which damage was worsened while drifting broadside to the swell. This is borne out by the appearance of a small oil slick streaming from below the waterline in the way of No 2 tank, port. SAMSA orders that the tanker be towed to a position 55 nm from the nearest land in order that the situation be assessed.

The Smirnhoff is not up to the job. She is straining both her engines to the limit but can do little more than to slowly turn the tanker with the SE wind and head with the wind - a course which will take her parallel with, rather than away from the coast.

The master notifies his owners by radio, and owners immediately contract with the local tug, the Pikkewijn on LOF 2000 to take over from the Smirnhoff and to tow the tanker to the position dictated by SAMSA.

When the Pikkewijn reaches the scene, the Russian master of the tug feigns an inability to speak any known language. He responds to the request given by both the tanker and the Pikkewijn on VHF and through loudhailers that his tug should hand over to the Pikkewijn with the terse comment "Nyet. Have maritime lien. Strong tug". Then his radio goes dead.

With the vessel now clear of the immediate danger of running ashore, but unable to get to proper safety and to comply with SAMSA's instruction, SAMSA takes the matter in hand and orders the crew of the Erik A to slip the Smirnhoff's tow wire. Dangerous as this is, the crew manage to cast off the bridle, and the Smirnhoff's wire sinks, with chain bridle still attached. But at a price: two members of the Erik A's deck crew are injured, and require evacuation by helicopter, hospitalisation and eventual repatriation.

The Pikkewijn puts a wire across, her mighty engines get the Erik A's head around, and she is successfully towed to a position 54 miles offshore. Unfortunately there is a considerable oilspill which pollutes the entire western coastline of the peninsula, and which closes the commercial fishing harbour of Hout Bay for a week while a boom is kept in place across the harbour entrance.

While undergoing inspection 54 miles off, more oil leaks out, and causes havoc to a deepwater oil rig stationed 60 miles into the deep. The rig is shut down for 10 days, and requires substantial cleaning. Some 7 000 tonnes of oil escapes - the entire content of No 2 tank.

After divers have inspected the Pikkewijn and she is declared safe for a transshipment, SAMSA gives authority for the tanker to be towed back to False Bay, there to await a receiving vessel. While on tow slowly back to the coast, the Erik A's chief engineer announces that his engineers have managed to restore the tanker's main engine power, and that she can proceed under her own steam. A transshipment will still be necessary because of the damage to her hull plating.

But the Pikkewijn now refuses to cast off the tow, saying that they are contracted to salvage the tanker on LOF, and that they doubt the tanker's ability to make way herself. They consider it prudent to keep the tow wire attached, and on this basis they tow the Erik A to the calm waters of False Bay. There they insist on negotiating the transshipment contract with a receiving vessel, and they also appoint their own transshipment master as part of their LOF services, saying that they will only be prepared to tender the re-delivery of the tanker under the LOF once the cargo is safely discharged, and the Erik A is alongside in the port of Cape Town (into which she can only go in an unladen condition because of draft limitations).

Upon successful completion of the transshipment, the Erik A is towed by the Pikkewijn into Table Bay, where she is safely berthed. The Cape Town port Captain is initially reluctant to allow the damaged vessel in, but is later persuaded to relent on threat of a court application. Re-delivery of the Erik A is tendered by the tug to the tanker's owners.

Meanwhile, the Smirnhoff's problems are not over. Her tow wire, with bridle attached, snags on the seabed. She is lying stern on to the swell and her emergency tow wire cutting gear cannot be used in time to prevent her from sinking. Her crew take to her liferaft, and are rescued by the National Sea Rescue Institute. The first stop her master makes on getting ashore is to his owner's local lawyers.

Consider the case of The Erik A, The Smirnhoff & The Pikkewijn from the following perspectives, looking at issues such as liabilities, contractual obligations, and statutory provisions. You should not be content with a mere analysis of the facts and the law relating to those facts. You should explore each aspect of the law fully, around the basics of the facts of the case. Your arguments should be supported by relevant case and legislative authority. The expected mark allocation for each topic is indicated. Please answer each topic as far as possible under its paragraph number and heading.

2(a) SALVAGE & TOWAGE

What are the salvage and possibly towage implications of the case? In your answer examine the legality of the actions of both tugs, and the manner in which either or both might be rewarded or be liable for the consequences of their actions.

[20 MARKS]

2(b) **OIL POLLUTION**

What oil pollution liabilities rest on whom, and in consequence of what international and/or domestic convention or statute would these liabilities be settled? In your answer indicate what defences, if any, would be open to the owners of the *Erik A*, and how they might be able to limit their liability.

[15 MARKS]

2(c) **COLLISION**

What are the consequences of the collision between the two ships, and how would liability for those consequences be determined. In your answer consider the possibility that the *Erik A* shared some measure of fault for the collision, in that her master had instructed the *Smirnhoff* to come in closer under the port bow of the tanker than the Russian master had wanted to do.

[10 MARKS]

2(d) **SAMSA Powers**

Was SAMSA acting within the scope of its powers under South African law? Explain the powers of SAMSA both to deal with an oil pollution casualty such as the case scenario, and also more generally to play its role in ridding South African waters of unseaworthy ships.

[10 MARKS]

2(e) **MARINE INSURANCE**

Analyse the marine insurance implications of the case, with particular emphasis on which type of marine insurance effects cover for the various losses which were suffered by all parties, and on which insurers may ultimately bear the cost of the various losses by cross claims between the parties.

[15 MARKS]

2(d) **LIMITATION OF LIABILITY FOR NON-OIL POLLUTION DAMAGE AND LOSS**

In what way would any of the parties be able to limit their liability for losses and damage not flowing from oil pollution? You should point out how the South African limitation regime for non-oil pollution liability differs from that of most other maritime states, and why this sometimes leads to "forum shopping".

[10 MARKS]

Total for Question 2: 80 Marks
TOTAL MARKS 100