THIS EXAMINATION CONSISTS OF NINE (9) PAGES
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THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION - APRIL 2023

LAW 332

Maritime Law

Section 1

Professors Hawkins and Swanson

**TOTAL MARKS:** 100

**TIME ALLOWED:** 3 HOURS PLUS 15 MINUTES OF READING TIME
(Students may **not** begin to type or write during the reading time).

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**NOTE:** 1. This is an open book examination.

 2. ANSWER ALL QUESTIONS.

THIS EXAMINATION CONSISTS OF 2 PARTS (PART A and PART B) WITH A TOTAL OF 31 QUESTIONS.

**PART A – HAWKINS**

This Part (Part A) has 50 marks out of the total available 100 marks. Professor Swanson’s Part (Part B) has the other 50 available marks. **Answer all questions**.

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| **Marks** |  |  |
| **8** | 1. | Explain the following:(a) Preliminary Act(b) Protection & Indemnity Coverage(c) “Lloyd’s Open Form”(d) Limitation of Liability(e) Subrogated Claim(f) Athens Convention(g) Duty of Good Faith(h) Implied terms of Towage Contract |
| **4** | 2. | You are out in Johnstone Strait on your tugboat returning from a job when you see a vessel, “Tiny Dancer”, in apparent distress. As you approach the skipper tells you that he has run aground and is afraid that if the tide continues to drop his hull will be holed and the vessel might sink. He also states that he is carrying a lot of fuel and that he is worried because this is a very specialized vessel worth a considerable amount of money. You tie on a line and take all necessary precautions in order to safely extract the vessel from its predicament.(a) The owner refused to pay you anything. Explain the requirements and process that you need to take in order to successfully bring a claim and refer to any convention, legislation, or Court.(b) Explain how the skipper of the vessel in distress might have handled the situation when you approached in order to reduce any payment he might have to make. |
| **2** | 3. | Following a trial in a maritime collision case, the judge was unable to decide on apportionment of liability. Advise what he will do pursuant to the *Canada Shipping Act,* 2001. Which Collision Rule is almost always found to have been breached in a collision case? |
| **5** | 4. | A tugboat was towing a fully loaded barge of gravel down the Salish Sea (formerly the Georgia Strait) in the middle of the night. The skipper had checked the weather forecast which called for strong winds and heavy seas. However, since the tug was behind schedule the skipper proceeded. Well into the evening he encountered 50 knot winds and very rough seas whereupon he decided that a run for cover was necessary. As he passed the lighthouse a glint from behind the tug in the light indicated to the skipper that something was wrong. When he turned on the search light it was obvious that the barge had capsized and the cargo was lost. When the skipper radioed the tug owner he was very angry and stated, “I told you that the towline was worn and that the barge starboard hull leaked”.The cargo owner contacted you for advice on how to bring a claim for loss of the cargo. Advise him on the claim and the principles of the law that might apply. Also advise what the tug owner can look to in order to defend the claim.  |
| **4** | 5. | You are a maritime lawyer who receives a telephone call at 2:00 a.m. in the morning from the captain of a deep-sea ship that has collided with another vessel in English Bay. The other vessel is in danger of sinking and given the valuations of vessels, it could be worth millions. The ship is entered in one of the London P & I Clubs (3rd party liability insurer) so you put a call through to advise on the accident. The only question the P & I Club representative had for you was, “What is the limitation regime in British Columbia?” Describe the advice you gave to the P & I Club. What is the limitation amount if the ship you act for is less than 300 tons? |
| **2** | 6. | Describe the two main categories of marine insurance in the world and what they cover. |
| **2** | 7. | Name three groups of persons who are exempted from the mandatory application of the carriage of passenger regime under the *Marine Liability Act*. |
| **2** | 8. | Describe the four conditions that must be met so that Part 4 of the Marine Liability Act respecting passengers will not apply to adventure tourism activity. |
| **2** | 9. | A claim for death or personal injury to a passenger arising from a shipwreck, collision, stranding, explosion, fire, or a defect in the ship, means that the fault of the carrier must be proven by the claimant. True or false? Briefly explain. |
| **6** | 10. | John Dough owned a yacht that he wanted to sell. Freddy Flake dreamed of owning a yacht but knew that a bank would never lend him the money to make the purchase. John suggests that he would sell the yacht but take a typical marine mortgage and collateral loan agreement back whereby Freddy would make monthly payments until the vessel was paid for. After two years, Freddy was fed up with the maintenance and expense of taking care of the yacht and since he lost his job once again, simply stopped making the payments to John. John is not happy about this turn of events and asked you for advice on how to proceed.(a) Can John take the boat and sell it? If so, under what authority and refer to any cases or otherwise.(b) Explain what will happen if he sells the boat but does not recover enough to pay off the mortgage. Freddy Flake wrote a letter saying whatever price John gets for the boat is it and he won’t pay any further. Is this correct?(c) John Dough tells you that he wants to flip the boat to his sister for half the market price. He doesn’t see anything wrong with this since he is going to go after Freddy Flake for the balance anyways. Advise him. |
| **5** | 11. | A chartered carol ship left Coal Harbour and was steaming west under the Lions Gate Bridge. A second carol ship had finished her rounds and was proceeding east bound, also under the Lions Gate Bridge. The vessels were one mile apart.(a) What collision regulations could be applicable?(b) What helm action would be appropriate if the ships appeared to be heading directly into each other?(c) Assume a collision occurs directly beneath the Lions Gate Bridge. Describe four of the most common faults that courts usually find in these collision cases as contributing to the accident. Refer to any case law as examples. |
| **5** | 12. | You act for a shipowner whose deep-sea vessel was proceeding through Seymour Narrows. The area has very little room for manoeuvrability and the currents are treacherous. Pursuant to the *Pilotage Act*, the ship had a compulsory pilot onboard. The master of the vessel was also on the bridge. Suddenly the pilot ordered, “hard to starboard – there’s the channel entrance”. The master was looking at the radar and questioned the pilot as to whether he was correct. The pilot responded, “I’m the pilot and I’m in charge here. I know my way around these waters like the back of my hand. Just turn the darned boat to starboard immediately!” The master was from Turkey and had never been to B.C. before. He therefore reluctantly agreed and ten minutes later the deep-sea vessel was hard aground on the shore of Johnstone Strait.(a) What is the principle of law with respect to pilots and masters?(b) The shipowner’s comment to you is, “The pilot was clearly at fault so we have nothing to worry about, right?” Advise him on the shipowner’s potential liability, if any, and the level of the pilot’s liability under the *Pilotage Act* in Canada.(c) The shipowner then says, “Next time I’m not even taking a pilot onboard!” Advise him why that’s a bad idea. |
| **2** | 13. | Explain the important difference between the definition of “vessel” under the *Canada Shipping Act, 2001* and the definition of “ship” under the *Federal Courts Act*.  |
| **1** | 14. | What important rule in maritime law sets shipping apart from all other areas of industry and commerce? |

**PART B – SWANSON**

This Part (Part B) has 50 marks out of the 100 total available marks. **Answer all questions**.

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| ***Marks*** |  | ***Question*** |
| **5** | 15 | Jane Bloggs, a plastic surgeon, was planning to go on a day-long boat trip with her friend, Lynn Plain, past Deep Cove, North Vancouver, into Indian Arm (being a body of seawater forming part of the Port of Vancouver, east of the Second Narrows Bridge). During the launching of Lynn’s boat into the water at the Deep Cove marina, Jane was injured when one of the bungee cords holding the boat to the trailer came free and struck her in the hand. The boat was partially in the water at the time of the accident but not completely free from the trailer. It turns out Jane would not be able to perform any surgery for about six months, assuming her rehabilitation proceeded in the normal course. Given the significant loss of income for Jane arising from the accident she decided to commence legal proceedings in the Federal Court against both Lynn and her boat. Lynn, in response, challenged the jurisdiction of the Federal Court to hear the case. Lynn further argued that in any event there was no right *in rem* in the circumstances even if the Federal Court had jurisdiction.Please explain whether the Federal Court has jurisdiction to hear the case and if so whether a right *in rem* also exists. Refer to applicable case law and statutory provisions that may apply to your analysis. |
| **2** | 16 | Do Federal or Provincial limitation laws (i.e. the time within which a lawsuit must be filed before a claim is time-barred) apply to a claim against a marine insurer for breach of a marine insurance policy? Provide applicable case law in support of your answer. What is the latest time within which suit could be brought? Provide applicable statutory provision. |
| **3****1** | 17 | Two fish boats (the F/V “Salmon Star” and the F/V “Fish Oplenty”) collided in Canadian waters while leaving the fishing grounds. At the time of the collision some of the crew from the “Salmon Star” took some crab traps off of the deck of the “Fish Oplenty” which they later used. Does either party to the collision have a right to arrest the other ship. If so, on what basis and under what statutory provisions. Further, does the owner of the “Fish Oplenty” have a right of arrest for the actions of the “Salmon Star” crew in removing crab traps as was done. Refer to any applicable case authority in your answer. |
| **2** | 18 | What must the Prosecution prove to obtain a conviction for a regulatory offence (public welfare offence) under the pollution provisions of the *Canada Shipping Act*, *2001*, the *Fisheries Act*, and the *Migratory Birds Convention Act, 1994*.  |
| **2** | 19 | What, if any, defence is available to an accused charged with discharging a pollutant under the provisions of the *Canada Shipping Act, 2001*. Describe the nature of the defence, who has the burden of proof, and the standard of proof.  |
| **6** | 20 | Doe Fishing Ltd. owns and operates the F/V “Salmon Star” which has a dead weight tonnage of 6,972 tonnes. The “Salmon Star” is primarily used to fish for salmon in the waters off the coast of British Columbia. The “Salmon Star” ran aground on April 1, 2023 east of Vancouver Island while fishing in the Salish Sea (formerly the Strait of Georgia). During the grounding a large drum of dry ice broke open and slid into the water from the aft deck of the “Salmon Star”. Assume for the purpose of this question that dry ice has a negative impact on water quality and is bad for crustaceans and some migratory birds. Doe Fishing Ltd. had gross revenue of $4,982,000 for the 12 months from April 1, 2022.Assume guilty pleas will be agreed and entered by any proper accused. Also assume for the facts set out above that no charge is laid under the *Canada Shipping Act, 2001*. What two statute(s) governs this situation and what is the range of fine for those statute(s), if any, on summary conviction for:* Doe Fishing Ltd.
* The F/V “Salmon Star”

Be specific including the relevant statute(s), section numbers for the offence provisions and penalty provisions, and the range of fines where there is such regulatory exposure.  |
| **1** | 21 | How many standard size bathtubs are required to hold 2,700 litres of liquid? |
| **3** | 22 | Describe the general requirements necessary to prove a civil liability claim against a shipowner whose ship discharged oil within Canadian waters. Describe the possible defences available to the shipowner for any such civil claim.Can the shipowner seek compensation from others who might be at fault for the discharge? Provide any relevant law that might prove useful to the shipowner in this respect. |
| **3** | 23 | Describe the main different types of charterparties and key distinguishing features for each, i.e. features that help identify the type of charter.  |
| **4** | 24 | An owner and a charterer entered into a charterparty that included the following contract clause:Any claim or dispute arising from this charter shall be arbitrated in Vancouver, Canada in accordance with the rules of the Vancouver Maritime Arbitrators Association with Canadian law to be applied.Following a dispute over payment under the charter, the owner commenced suit in the Federal Court, Vancouver registry against the charterer. The charterer wants to force arbitration, and not defend the Federal Court suit. Describe what laws and legal principles, including cases, the charterer could rely on to compel arbitration and any timing requirements. What is the likelihood a court would force the parties to arbitrate or allow the litigation to proceed? |
| **3** | 25 | What are the three key features of a negotiable bill of lading? Explain the purpose of each feature. |
| **1** | 26 | Which one of the three key features of a negotiable bill of lading is absent in a waybill? |
| **1** | 27 | Does s. 46 of the *Marine Liability Act* apply to a waybill? Provide any applicable case reference. |
| **2** | 28 | Describe the main purpose of the *Bills of Lading Act*.  |
| **2** | 29 | In a contract for the carriage of goods by sea from Prince Rupert, B.C. to a destination elsewhere in Canada when and under what circumstances can the carrier exclude its liability for loss of or damage to the cargo carried? |
| **3** | 30 | In a contract for the carriage of goods from Canada to a destination in Asia, will the Hague-Visby Rules always apply to a claim for loss or damage to cargo? Explain your answer. |
| **6** | 31 | In January 2022 the Panama registered bulk carrier GOLDEN FRATERNITY was arrested in Vancouver while at anchorage in English Bay by Marine Oil Ltd. (“Marine Oil”). GOLDEN FRATERNITY was owned by Fraternity Inc., a Bolivian company, which had purchased the vessel, then called BLUE NILE, from Diamond Inc. in March 2020.Within days of GOLDEN FRATERNITY’s arrest the vessel was arrested by two more creditors; several other creditors served and filed caveat releases. In June 2022, on the application of the mortgagee, GOLDEN FRATERNITY was sold by court order and the proceeds of sale were paid into court. At a priorities hearing the court considered the following claims:a. Marine Oil, which had not been paid for bunkers it had supplied to GOLDEN FRATERNITY in Halifax in March 2021 at the request of the vessel’s time charterers.b. NorBank A/S (“NorBank”), which held a registered mortgage over GOLDEN FRATERNITY for an amount in excess of the proceeds from sale. Because NorBank was owed substantially more than the value of the vessel, Norbank did not take steps to realize on its mortgage until after the vessel was arrested in Vancouver, even though Fraternity Inc. had made no mortgage payments after June 2021.c. The master and crew, which had not been paid since November 2021.d. We-Lift-It Inc., a Vancouver based stevedoring company that provided stevedoring services to load cargo to the GOLDEN FRATERNITY at the request of the owner in November 2020.e. International Spare Parts Limited, an American company that supplied parts to the vessel in late February 2021 at New York, and over which they asserted maritime lien rights under US law.f. Korean Oil Ltd., which supplied bunker fuel to the vessel at Pusan, Korea in February 2020 at the request of the then time charterer.g. Vancouver Compass Adjusters Ltd, which had adjusted the vessel’s compass and repaired her second radar set in November 2021.h. The sheriff who served the warrant of arrest on the GOLDEN FRATERNITY in English Bay sent an invoice to Marine Oil for $5,000 to cover the launch and related costs to complete the arrest.In what order do you think the court would rank these claims, and why? |

 **END OF EXAMINATION**